

SWISS RE INTERNATIONAL SE – AUSTRALIA BRANCH

PROJECT SPECIFIC PROFESSIONAL, GENERAL AND PRODUCTS LIABILITY

Important Notices

Understanding the Policy

You should read the entire **Policy** carefully, including the definitions and the exclusions to ensure that it meets your requirements. We recommend that you consult an insurance adviser to ensure a clear understanding of your rights and obligations under this insurance contract.

Claims Made and Notified; and Occurrence Policy

This is partly a claims made and notified policy and partly an occurrence policy. We shall only cover you for:

- claims made against you during the **Policy Period** and notified to us as soon as practicable during the **Policy Period**; or
- **Occurrences** happening during the **Policy Period**.

The **Policy** does not provide cover in relation to events that occurred before the commencement of the **Policy**.

Your duty of disclosure

When you are completing the **Proposal** it is important that you understand you are answering questions for yourself and anyone else that you want to be covered by the **Policy**.

Before you enter into the **Policy**, you have a duty to tell us anything that you know, or could reasonably be expected to know, which 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 the **Policy**.

You do not need to tell us anything that:

- reduces the risk we insure you for;
- is common knowledge;
- 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 shall 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.

Notification of Facts that might give rise to a claim

Section 40(3) of the *Insurance Contracts Act 1984* (Cth) provides that if you give notice in writing to us of facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of such facts but before the insurance cover provided by the **Policy** expires, then we are not relieved of liability under the **Policy** in respect of the claim, when made, by reason only that it was made after the expiration of the period of the insurance cover provided by the **Policy**.

Privacy Statement - Privacy Information

We are bound by the Australian Privacy Principles set out under the *Privacy Act 1988* (Cth) when we collect and handle your personal and or sensitive information. We shall only collect personal and or sensitive information that is necessary in order for us to process and administer the **Policy** and any claims made under the **Policy**. Where possible, we shall collect personal information directly from you or, where that is not reasonably practical, from other sources. We may also use your personal and or sensitive information for the purpose of designing or underwriting new insurance products, for research and analytical purposes, to perform administrative functions, and to comply with our legal obligations.

We may disclose your personal and or sensitive information to third parties for the purposes described above, including insurers, reinsurers, reinsurance brokers, loss adjusters, external claims data collectors, investigators and others involved in the claims handling process, agents and service providers and related entities some of whom may be located in overseas countries, including Hong Kong, India, Singapore, Switzerland, the United States of America and the Slovak Republic.

In providing personal and or sensitive information, you consent to the collection, use and disclosure, including overseas disclosure of your personal and or sensitive information for the purposes described above. Where you provide us with personal and or sensitive information about others, you represent to us that you have made them aware of that disclosure and of our privacy policy and that you have obtained their consent.

If you do not consent to provide us with the personal and or sensitive information that we request, or withdraw your consent to the use and disclosure of your personal and or sensitive information at any stage, we may not be able to offer or continue to offer you the products or provide the services that you seek including claims assessment and handling.

We realise that this information is often very sensitive in nature and shall treat it with the utmost care and security. Information on how we handle your personal and or sensitive information is explained in our privacy policy, including:

- What information we collect and how we use it;
- When do we disclose your information overseas;
- How do we hold and protect your information;
- How we disclose the information;
- How you can check, update or change the information we are holding;
- What happens if you wish to complain.

A copy of our privacy policy is available by contacting your broker or available on our website:

corporatesolutions.swissre.com/australia-newzealand

Contact Details

You may seek access to, and correction of, the personal information we hold about you by contacting our Privacy Compliance Officer on (02) 8295 9500 or by writing to:

Privacy Compliance Officer
Swiss Re International SE Australia Branch
Level 36, Tower Two, International Towers Sydney
200 Barangaroo Avenue, Sydney NSW 2000
Email: complaints_anz@swissre.com

We shall respond to your request within a reasonable time after we receive it.

Complaint & Dispute Resolution Process

We have Complaints Handling and Dispute Resolution processes in place. We aim to respond to a complaint or to a dispute within 15 business days once we have all necessary information and have completed any investigation that may be needed.

If we cannot respond within 15 business days, we shall let you know as soon as practicable within the 15 business day time frame, and nominate a reasonable alternative time. When doing this we shall attempt where possible to meet any reasonable time requirements you express.

We shall keep you informed about the progress of your complaint or dispute every 10 business days until we have responded to you on it.

Should you wish to make a complaint, you can contact our Complaints Officer on (02 8295 9500) or by writing to:

The Complaints Manager
Swiss Re International SE, Australia Branch
Level 36, Tower Two, International Towers Sydney
200 Barangaroo Avenue, Sydney NSW 2000
Email: complaints_anz@swissre.com

If you feel our response does not resolve your complaint you may tell us and ask us to treat it as a dispute. It will then be independently reviewed by our Internal Dispute Resolution Panel comprising employees with appropriate experience, knowledge and authority who have not been involved in the matter before.

The General Insurance Code of Practice

We abide by the General Insurance Code of Practice (Code). The Terms of the Code require us to be open, fair and honest in our dealings with you. The Code outlines the standards by which we have agreed to deal with you in relation to the standards for our employees, authorised representatives, financial hardship, information and education and access to information. The Code aims to:

- Commit us to high standards of service.
- Promote more informed relations between you and us.
- Promote trust and confidence in the insurance industry.

LEGAL PANEL

<p>Clyde & Co Matthew Smith, Special Counsel Level 15 333 George Street Sydney NSW 2000 +61 2 9210 4400 matthew.smith@clydeco.com</p>	<p>Kennedys Matt Andrews, Partner Level 22 85 Castlereagh St Sydney NSW 2000 +61 2 8215 5999 Matt.Andrews@kennedyslaw.com</p>
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SCHEDULE

1. **Policy Number:** <Please include>
2. **Policyholder:** <Company Name>
<Company Number>
3. **Subcontractors:** <Company/ Name>, <ACN>
<Company Name>, <ACN>
<Company Name>, <ACN>
4. **Principal:** <Principal>
5. **Project:** <Project Name>
6. **Novated Contracts:** <Contract details: Description/Parties/Date>
7. **Inception Date:** 4.00pm. Local Standard Time, <Date> at the **Policyholder's** principal place of business
8. **Expiry Date:** 4.00pm Local Standard Time, <Date> at the **Policyholder's** principal place of business
9. **Limit of Liability:** **Section 1** - <[XX]> each and every **Claim** and in the aggregate inclusive of **Costs and Expenses**

Section 2 - <[XX]> any one **Occurrence**

Section 3 - <[XX]> any one **Occurrence** and in the aggregate
10. **Sub-Limits of Liability:**

Section 1: Professional Liability Extensions		Included / Not Included
1.3	Competition and Consumer Act	Included
1.4	Criminal Prosecution	<Not Included> / <[\$Amount]>
1.5	Implied Warranties and Conditions	<Not Included> / <[\$Amount]>
1.6	Intellectual Property	<Not Included> / <[\$Amount]>
1.7	Defamation	<Not Included> / <[\$Amount]>
1.8	Loss of Documents or Computer Records	<Not Included> / <[\$Amount]>
1.9	Interference with Privacy	<Not Included> / <[\$Amount]>

Section 2: General Liability Extensions		Included / Not Included
2.3	Property in Physical or Legal Control	<Not Included> / <[\$Amount]>
2.4	Medical Treatment Expenses	<Not Included> / <[\$Amount]>
Section 2: General Liability Optional Extensions		Included / Not Included
2.5	Costs and Expenses In Addition	<Not Included> / <Included>
Section 4: Products Liability Optional Extensions		Included / Not Included
3.4	Costs and Expenses In Addition	<Not Included> / <Included>
Section 4: Extensions Applicable to all Sections		Included / Not Included
4.1	Complimentary Legal Advice	Included
4.2	Limitation of Liability Contracts	<Not Included> / <[\$Amount]>
4.3	Vicarious Liability	Included
4.4	Proportionate Liability	<Not Included> / <[\$Amount]>
4.5	Novated Contracts	<Not Included> / <[\$Amount]>
4.6	Emergency Costs	<Not Included> / <[\$Amount]>
4.7	Inquiry Costs	<Not Included> / <[\$Amount]>
4.8	Court and Inquiry Attendance Expenses	<Not Included> / <[\$Amount]>
4.9	Innocent Insured	<Not Included> / <[\$Amount]>
4.10	Public Relations Expenses	<Not Included> / <[\$Amount]>
4.11	Reputation Protection Expenses	<Not Included> / <[\$Amount]>
4.12	Recoveries	Included
4.13	Financial Interest in Covered Entities	Included

Section 5 : Optional Extensions Applicable to all Sections		Included / Not Included
5.1	Loss Mitigation	<Not Included> / <[\$Amount]>
5.2	Principal's Liability	<Not Included> / <[\$Amount]>
5.3	Subcontractors	<Not Included> / <[\$Amount]>
5.4	Fines and Penalties	<Not Included> / <[\$Amount]>

11. **Retention:** **Section 1** - <[XX]> each and every **Claim** inclusive of **Costs and Expenses**
- Section 2** - <[XX]> any one occurrence inclusive of **Costs and Expenses**, except for any **Worker to Worker Claim**, in which the Retention shall be <[XX]>
- Section 3** - <[XX]> any one occurrence inclusive of **Costs and Expenses**
12. **Jurisdictional Cover:** <World Wide Excluding United States of America its territories and protectorates>
13. **Currency:** <AUD unless otherwise specified>
14. **Premium:** As Agreed

For and on behalf of the **Insurer**.

Dated 11 February 2020

Authorised **Employee**

Authorised **Employee**

ANNEXURE: OTHER INSURANCE

Policy Type	Limit	Insurer	Policy Number
<Insert>	<\$ Amount>	<Insurer>	<Policy Number>
<Insert>	<\$ Amount>	<Insurer>	<Policy Number>

PROJECT SPECIFIC PROFESSIONAL, GENERAL AND PRODUCTS LIABILITY POLICY

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PREAMBLE

Subject to payment of the **Premium**, and subject to all the provisions of the **Policy**, and, in reliance upon the disclosures made in the **Proposal**, the **Insured** and the **Insurer** agree as follows:

SECTION 1: PROFESSIONAL LIABILITY

Insuring Clauses

1.1 Civil Liability

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** alleging civil liability arising from the provision of **Construction Advice and Services**.

1.2 Costs and Expenses

The **Insurer** shall pay for, or on behalf of the **Insured**, **Costs and Expenses** in the defence or settlement of any **Claim** covered under Section 1.

Extensions

1.3 Competition and Consumer Act

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** alleging misleading or deceptive conduct under the *Competition and Consumer Act 2010 (Cth)*, or any equivalent state or territory provisions, by the **Insured** in the provision of **Construction Advice and Services**.

1.4 Criminal Prosecution

Notwithstanding Exclusion 6.4 – Fraud or Dishonesty, the **Insurer** agrees to pay for, or on behalf of the **Insured**, **Costs and Expenses** of legal representation arising out of a criminal prosecution first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** alleging criminal liability arising from the **Construction Advice and Services**, provided that:

- (a) The **Insurer** shall be entitled to nominate a solicitor or barrister to represent the prosecuted **Insured**;
- (b) the **Insured** shall give to the **Insurer** written notice of any such criminal prosecution or notice of any criminal prosecution made against the **Insured** as soon as practicable but in no event later than fourteen (14) days of the **Insured** becoming aware of any criminal prosecution or notice of criminal prosecution, and always within the **Policy Period**;
- (c) the **Insured** shall keep the **Insurer** fully informed as regards all developments relating thereto as soon as practicable; and

- (d) in the event that the **Insured** is found guilty the **Insured** shall repay to the **Insurer** within fourteen (14) days of such conviction all of the **Costs and Expenses** incurred or paid by the **Insurer** under this Optional Extension.

1.5 **Implied Warranties and Conditions**

Notwithstanding Exclusion 6.1 (a) & (d) – Commercial and Financial Risks and Exclusion 6.9 - Warranty, the **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period**, alleging breach of:

- (a) warranty; or
- (b) condition as to fitness for purpose, skill and care or merchantable quality,

implied in a contract either by common law or by the *Competition and Consumer Act 2010 (Cth)*, or any equivalent state or territory provisions, which results from the provision of **Construction Advice and Services**.

1.6 **Intellectual Property**

Notwithstanding Exclusion 6.1 (b) – Commercial and Financial Risks, the **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** alleging that the **Insured** has unintentionally infringed intellectual property rights in the provision of **Construction Advice and Services**.

No coverage is provided under this Extension for any **Claim** resulting from any infringement of patent.

1.7 **Defamation**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** alleging any unintentional libel, slander, defamation or injurious falsehood by the **Insured** in the provision of **Construction Advice and Services**.

1.8 **Loss of Documents or Computer Records**

The **Insurer** shall pay for, or on behalf of the **Insured**, costs and expenses incurred to replace or restore any **Documents** which have been stolen, destroyed, damaged or mislaid and, after diligent search, cannot be found, provided that:

- (a) the **Insured** is liable to the customer or client for the loss or damage to such **Documents**;
- (b) the discovery of such loss or damage of **Documents** occurred during the **Policy Period** and was notified in writing to the **Insurer** within thirty (30) days after the date of discovery and no later than during the **Policy Period** or any applicable **Extended Reporting Period**;
- (c) the loss or damage is not a result of any computer virus or unauthorised access to a computer; and

- (d) such coverage shall apply only in respect of any **Documents** which were in the physical custody or control of the **Insured** or any other person to whom the **Insured** entrusted, lodged or deposited such **Documents** in the ordinary course of business, including whilst in transit anywhere in the world.

1.9 **Interference with Privacy**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** alleging unlawful interference with privacy by the **Insured** in the provision of **Construction Advice and Services**.

Exclusions

No cover shall be provided under Section 1 for, arising out of, or in any way connected with:

1.10 **Related Entity**

any **Claim** brought by or on behalf of a **Related Entity**, other than a claim for contribution or indemnity which results from another **Claim** which would be covered under the **Policy** if made against the **Insured**.

1.11 **General and Product Liability**

- (a) **Personal Injury;**
- (b) **Property Damage;** or
- (c) **Advertising Injury.**

1.12 **Prior or Pending Matters**

- (a) any **Claim** made, threatened or intimated against the **Insured** prior to the **Inception Date**;
- (b) any fact or circumstance of which notice has been given, or could have been given, under any earlier insurance policy; or
- (c) any fact or circumstance of which the **Insured** first became aware prior to the **Inception Date** and which the **Insured** knew or should reasonably have known had the potential to give rise to a **Claim** or **Inquiry**.

SECTION 2: GENERAL LIABILITY

Insuring Clauses

2.1 General Liability

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** alleging civil liability in respect of any:

- (a) **Personal Injury;**
- (b) **Property Damage;** or
- (c) **Advertising Liability,**

caused by an **Occurrence** during the **Policy Period** arising out of the **Project**.

2.2 Costs and Expenses

The **Insurer** shall pay for, or on behalf of the **Insured**, **Costs and Expenses** incurred in the defence or settlement of any **Claim** covered under Section 2. **Costs and Expenses** paid under Section 2 form part of the applicable **Limit of Liability**.

Extensions

2.3 Property in Physical or Legal Control

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** alleging **Property Damage** to property owned, leased by, or in the **Insured's** physical or legal control for the purpose of the **Project**, caused by an **Occurrence** during the **Policy Period** other than:

- (a) premises which are leased or occupied at no cost to the **Insured**;
- (b) premises not owned by or leased or rented to the **Insured** which the **Insured** temporarily occupies in order for the **Insured** to carry out work provided no indemnity is granted for liability in respect of **Property Damage** to that part of the property upon which the **Insured** is or has been working;
- (c) **Employee's** personal property; or
- (d) any other property temporarily in the **Insured's** physical or legal control (except **Property Damage** to that part of the property upon which the **Insured** is or has been working).

2.4 Medical Treatment Expenses

The **Insurer** shall pay for, or on behalf of the **Insured**, expenses incurred by the **Insured** for first aid administered to others by **Medical Persons** at the time of an **Occurrence** for any **Personal Injury** to which the **Policy** applies.

Optional Extensions

2.5 **Costs and Expenses In Addition**

Costs and Expenses incurred in the defence or settlement of any **Claim** covered under Section 2 shall be paid by the **Insurer** in addition to the applicable **Limit of Liability**.

In respect to any **Claim** brought in any court or before any other legally constituted body in the United States of America, all amounts claimed for **Costs and Expenses** shall be part of and not in addition to the **Limit of Liability**.

Exclusions

No cover shall be provided under Section 2 for, arising out of, or in any way connected with:

2.6 **Products**

any **Product** of the **Insured**.

2.7 **Pollution**

the presence, discharge, dispersal, release or escape of **Pollutants**.

This Exclusion does not apply to any liability that arises from a sudden identifiable, unintended and unexpected discharge, dispersal, release or escape of **Pollutants** from the standpoint of the **Insured** which takes place in its entirety at a specific time and place during the **Policy Period** and occurs outside of the United States of America, its territories and possessions; and, Canada.

2.8 **Completion**

(a) any **Occurrence** after the completion of the **Project**, which shall be determined as the earliest of:

- (i) the issuance of the certificate of practical completion; or
- (ii) the completion of the work to be provided, irrespective of any maintenance work, repair or replacement work required;

under the contracts for the **Project**.

(b) any **Occurrence** arising from the operationalisation of any part of the **Project**.

2.9 **Construction Advice and Services**

the **Construction Advice and Services** or any other professional advice or service.

SECTION 3: PRODUCTS LIABILITY

Insuring Clauses

3.1 Product Liability

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** alleging civil liability in respect of any:

- (a) **Personal Injury;**
- (b) **Property Damage;** or
- (c) **Advertising Liability;**

caused by an **Occurrence** during the **Policy Period** arising out of any **Product** of the **Insured**.

3.2 Costs and Expenses

The **Insurer** shall pay for, or on behalf of the **Insured**, **Costs and Expenses** incurred in the defence or settlement of any **Claim** covered under Section 3. **Costs and Expenses** paid under Section 3 form part of the applicable **Limit of Liability**.

Optional Extensions

3.4 Costs and Expenses In Addition

Costs and Expenses incurred in the defence or settlement of any **Claim** covered under Section 3 shall be paid by the **Insurer** in addition to the applicable **Limit of Liability**.

In respect to any **Claim** brought in any court or before any other legally constituted body in the United States of America, all amounts claimed for **Costs and Expenses** shall be part of and not in addition to the **Limit of Liability**.

Exclusions

No cover shall be provided under Section 3 for, arising out of, or in any way connected with:

3.5 Pollution

the presence, discharge, dispersal, release or escape of **Pollutants**.

This Exclusion does not apply to any liability that arises from a sudden identifiable, unintended and unexpected discharge, dispersal, release or escape of **Pollutants** from the standpoint of the **Insured** which takes place in its entirety at a specific time and place during the **Policy Period** and occurs outside of the United States of America, its territories and possessions; and, Canada.

3.6 Product Defect

- (a) sale, storage or distribution;
- (b) any manufacturing, (re)installation or dismantling;



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- (c) defect or deficiency in the materials used; or
- (d) the costs relating to recall;
of any products, goods or materials.

3.7 **Construction Advice and Services**

the **Construction Advice and Services** or any other professional advice or service.

SECTION 4: EXTENSIONS APPLICABLE TO ALL SECTIONS

4.1 Complimentary Legal Advice

The **Insurer** has arranged for any **Insured** to receive up to one (1) hour of **Complimentary Legal Advice** during the **Policy Period** from a member of its **Legal Panel** with respect to matters arising under the **Policy**.

Contact details for members of the **Legal Panel** are located on page 4 of the **Policy** and are accurate as at the date of placement but may be updated from time to time. Please contact the **Insurer** if further information is required.

4.2 Limitation of Liability Contracts

Notwithstanding General Condition 8.4 – Subrogation, coverage under the **Policy** will not be prejudiced by the **Insured** entering into a contract with a third party which limits or excludes liability arising from the performance of **Construction Advice and Services** by that third party under any contract that was submitted to, and approved by, the **Insurer** as part of the **Project**.

No cover is provided under this Extension for any liability assumed under a contract with a third party requiring the **Insured** to effect insurance of any kind where the **Insured** fails to effect such insurance.

4.3 Vicarious Liability

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** alleging civil liability arising from the provision of **Construction Advice and Services** by consultants, contractors, sub-consultants or sub-contractors of an **Insured**.

No coverage is provided under the Extension to such consultants, contractors, sub-consultants, or sub-contractors. This Extension does not prevent or restrict action to obtain recovery from any such person or entity.

4.4 Proportionate Liability

Notwithstanding Exclusion 6.1 (a) – Commercial and Financial Risks, coverage under the **Policy** will not be prejudiced by the **Insured** entering into a contract with a third party which assumes a liability under a contract by reason of having contracted out of the operation of the **Proportionate Liability Legislation**.

4.5 Novated Contracts

Exclusion 6.1 (a) – Commercial and Financial Risks, shall not apply to a **Novated Contract** pursuant to which the **Insured** has assumed the liability of another party which provided **Construction Advice and Services** to the extent that any **Claim** that may arise would have been covered under the **Policy** had the other party been an **Insured**.

4.6 **Emergency Costs**

Notwithstanding Claims Condition 7.3 – Reporting and Notice, 7.6 – Consent to Payments, and Optional Extension 5.1 – Loss Mitigation, if applicable, the **Insurer** shall pay for, or on behalf of the **Insured**:

- (a) **Costs and Expenses;**
- (b) expenses in mitigating potential **Property Damage** by the temporary repair, shoring up or other preservation of property;
- (c) expenses in mitigating potential **Personal Injury**;

incurred by the **Insured** in cases of emergency or legal restraint where it was not possible for the **Insured** to obtain the **Insurer's** prior written consent provided that:

- (iii) the **Insured** shall not admit liability or negotiate any settlement; and
- (iv) the **Insured** obtains the retrospective consent of the **Insurer** as soon as practicable but not later than the end of the **Policy Period**.

4.7 **Inquiry Costs**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Inquiry Costs** incurred in preparing for and being represented at an **Inquiry** first served upon the **Insured** and notified to the **Insurer** during the **Policy Period**.

4.8 **Court and Inquiry Attendance Expenses**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Court and Inquiry Attendance Expenses** incurred by an **Insured** who is required to attend any legal proceeding or at an **Inquiry** which is the subject of cover under the **Policy**.

4.9 **Innocent Insured**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** resulting from **Fraud or Dishonesty** which would, in the absence of Exclusion 6.4 – Fraud or Dishonesty, be covered under the **Policy**.

This Extension shall not provide cover to an **Insured** that has committed or condoned any **Fraud or Dishonesty**.

No coverage is provided under this Extension if the **Fraud or Dishonesty** is actually or allegedly committed or condoned by the principals, directors or shareholders who own more than five per cent (5%) of the **Policyholder**, any **Subsidiary** or **Subcontractor**.

No coverage is provided under this Extension for physical loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

4.10 **Public Relations Expenses**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Public Relations Expenses** incurred in respect of a covered **Claim**.

4.11 **Reputation Protection Expenses**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Reputation Protection Expenses** incurred in respect of a covered **Claim**.

4.12 **Recoveries**

Any amounts recovered by the **Insurer** or the **Insured** in connection with a payment under the **Policy** will be distributed in order of priority as follows:

- (a) firstly, in satisfaction of reasonable legal costs incurred in effecting a recovery, regardless of whether the **Insurer** or **Insured** incurred such recovery costs;
- (b) secondly, to the **Insured** for sums exceeding the **Limit of Liability**, to the extent that such sums would have otherwise been covered under the **Policy**;
- (c) thirdly, to the **Insurer** for all amounts paid by the **Insurer** under the **Policy**;
- (d) fourthly, to the **Insured** in satisfaction of the applicable **Retention**; and
- (e) lastly, to the **Insured** for any amounts in excess of the total amount paid by the **Insurer** under the **Policy**.

4.13 **Financial Interest in Covered Entities**

The **Insurer** shall make best efforts to reimburse the **Policyholder** for its **Financial Interest** if the **Policyholder** has suffered loss due to the **Insurer** being prevented from making a payment under the **Policy** to an **Insured** solely because the **Insureds** claim under the **Policy** has been brought in a **Non-Admitted Jurisdiction**. This is provided that:

- (a) matters known to the **Insured** are deemed to be known to the **Policyholder**;
- (b) the **Policyholder** and the **Insured** comply with all the provisions and requirements of the **Policy**; and
- (c) the total reimbursed under this Extension shall be the calculated as the equivalent of the payment the **Insurer** had been prevented from paying to the **Insured** and shall fully release the **Insurer** from any further payments of such amounts.

SECTION 5: OPTIONAL EXTENSIONS AVAILABLE TO ALL SECTIONS

5.1 Loss Mitigation

The **Insurer** shall pay for, or on behalf of the **Insured**, **Costs and Expenses** incurred by the **Insured** in taking action necessary to rectify, or to mitigate the effects of, any act, error or omission of the **Insured**, entity or person for whom the **Insured** is legally liable that would otherwise result in a covered claim under the **Policy**, provided that the **Insured** establishes to the satisfaction of the **Insurer** that:

- (a) the act, error or omission would otherwise result in a covered **Claim**;
- (b) the proposed mitigation costs are less than the likely costs of such **Claim**; and
- (c) such costs are reasonable in all of the circumstances.

No coverage is provided under this Optional Extension for any:

- (d) indirect costs and expenses such as loss, diminution or additional profit, bonus, incentive payment or opportunity cost;
- (e) salary, wages, overheads, administrative or office costs of the **Insured**;
- (f) **Costs and Expenses** which would result in any betterment;
- (g) the costs relating to recall of any products, goods or materials;
- (h) liability that arises from taking such action; or
- (i) **Retention**.

Notwithstanding anything to the contrary in this Extension, in the event of an emergency which poses an immediate threat to life or property the **Insured** shall take all reasonable steps to mitigate potential **Loss** and shall thereafter comply with the provisions of this Extension as soon as reasonably practicable.

5.2 Principal's Liability

The **Insurer** shall pay for, or on behalf of the **Principal**, **Loss** which the **Principal** is legally liable to pay for any **Claim** arising from any act, error or omission of the **Insured** in respect of the **Project** and for which the **Insured** is liable; provided that, and only to the extent that, the **Claim** against the **Principal** would have been covered had such a **Claim** been brought directly against the **Insured**.

For the purpose of this Extension only:

- (a) **Loss** does not include consequential loss; and
- (b) whilst the **Principal** is not an **Insured**, the **Principal** shall comply with the terms and obligations of the **Policy** and at law generally as if they were an **Insured**.

5.3 **Subcontractors**

The **Policy** shall apply to **Subcontractors** who shall be deemed to be **Insureds** for the purposes of the **Policy**.

5.4 **Fines and Penalties**

Notwithstanding Exclusion 6.12 – Fines and Penalties, the **Insurer** shall pay for, or on behalf of the **Insured**, **Fines or Penalties** that arise directly from a **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period**, provided that such **Fines or Penalties** are insurable at law and do not result from **Fraud or Dishonesty**.

SECTION 6: EXCLUSIONS APPLICABLE TO ALL SECTIONS

No cover shall be provided under the **Policy** for, arising out of, or in any way connected with:

6.1 Commercial and Financial Risks

- (a) any liability which the **Insured** has assumed under contract or agreement except:
 - (i) to the extent such liability would have attached to the **Insured** in the absence of such contract or agreement; or
 - (ii) as provided under any Extension;
- (b) breach of intellectual property;
- (c) the refund of professional fees;
- (d) guarantees or warranties;
- (e) any trading debt incurred or guaranteed by the **Insured**;
- (f) any failure by the **Insured** or any party acting on for the **Insured**:
 - (i) to effect or maintain any form of insurance, surety or bond for the **Project**; or
 - (ii) to procure or maintain financing for the **Project**; or
- (g) insolvency, bankruptcy, liquidation, official administration of the **Insured** or any party to the **Project**.

6.2 Obligations to Employees

- (a) any harassment, unlawful termination of employment or any other liability arising from the employee and employer relationship; or
- (b) **Personal Injury** for any **Employee** or person deemed to be an **Employee** of the **Insured** under any workers compensation law except to the extent that it is not required to be insured under any workers compensation law.

6.3 **Anti-Competitive Practices**

any actual or alleged anti-competitive trade practices and market conduct including but not limited to monopolisation, price fixing and restraint of trade.

6.4 **Fraud or Dishonesty**

any **Fraud or Dishonesty**.

6.5 **Management Liability**

any actual or alleged act, error or omission or series of acts, errors or omissions of the **Insured** made or allegedly made in connection with the **Insureds** duties as a director, officer or trustee of any entity, company or trust.

6.6 **Advertising Liability**

- (a) for statements made at the direction of the **Insured** with the knowledge of the illegality or falsity thereof;
- (b) for incorrect description or any mistake in the advertised price of products, goods or services sold, offered for sale or advertised.

6.7 **Aircraft, Hovercraft, Watercraft and Motor Vehicles**

the ownership, use, maintenance or operation by or on behalf of the **Insured** of:

- (a) any aircraft or aerial device including a drone;
- (b) any watercraft exceeding ten (10) metres in length;
- (c) any hovercraft;
- (d) any **Vehicle** or **Trailer** which is legally required to be registered or insured. This Exclusion does not apply to the extent that no other indemnity is available under any motor insurance policy; or
- (e) any **Vehicle** or **Trailer** which is not owned, leased or used by the **Insured** which is in the **Insured's** physical or legal control whilst in a car park operated by the **Insured**.

6.8 **Delay and Overrun**

- (a) delay in or lack of performance of the **Project** including not meeting the milestones, timeframes, phases or any other time dependent obligation, irrespective of the cause; or
- (b) cost overrun or any error in estimation of the cost of the **Project**, irrespective of the cause.

6.9 **Warranty**

the failure of the **Project** or a **Product** to attain or perform at a standard, capacity, durability, purpose or any other quality or characteristic represented or warranted expressly or impliedly by the **Insured** unless provided under an Extension 1.5 - Implied Warranties and Conditions.

6.10 **Asbestos**

asbestos, asbestos fibres or any derivatives of asbestos in any form or quantity.

6.11 **Faulty Workmanship**

the cost of performing, completing, correcting or improving any work undertaken by the **Insured**.

6.12 **Fines and Penalties**

finer or penalties unless provided under an Extension.

6.13 **Property in Physical or Legal Control**

Property Damage to property owned, leased by; or in the **Insured's** physical or legal control unless provided under an Extension.

6.14 **Radioactive Contamination**

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel, weapon, medical isotope, waste from the combustion of nuclear fuel or other material whether occurring naturally or otherwise;
- (b) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof; or
- (c) the storage, transport, assembly, disassembly, maintenance or operation of any nuclear weapon or nuclear component thereof.

6.15 **War and Terrorism**

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to popular rising, military rising, martial law, riot, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition of or damage to property by or under the power of any government or public local authority; or
- (b) any actual or threatened act of terrorism including but not limited to the use of force or violence or the threat thereof, of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear or any action taken to control, prevent or suppress any act of terrorism.

6.16 **Computers, Internet and Privacy**

- (a) **Property Damage** to computer data or programs and their storage media;
- (b) the **Internet Operations** of the **Insured**; or
- (c) a breach of the *Privacy Act 1998 (Cth)*.

This Exclusion does not apply to **Personal Injury** or **Property Damage** arising out of any material which is already in print by manufacturers in support of its products, including but not limited to product use and safety instructions or warnings, and which is also reproduced on site.

6.17 **Tobacco**

Personal Injury directly or indirectly due to the inhalation or ingestion of or exposure to tobacco or tobacco smoke or any tobacco products (or ingredients thereof) or any tobacco substitute products, including e-cigarettes.

SECTION 7: CLAIMS CONDITIONS APPLICABLE TO ALL SECTIONS

7.1 Multiple Claims

All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under the **Policy**. All such acts, errors or omissions shall be treated as having occurred at the time of the first of such acts, errors or omissions occurred.

For any **Related Claims and Related Inquiries**, only one **Retention** and one **Limit of Liability** shall be applicable.

7.2 Multiple Occurrences

With respect to **Personal Injury** or **Property Damage**, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one **Occurrence**.

With respect to **Advertising Liability**, all liability arising out of the same injurious material or act regardless of the number or kind of media used, the frequency or repetition thereof and number of claimants shall be deemed to be one **Occurrence** and to have occurred during that **Policy Period** in which the first such **Advertising Liability** occurred irrespective of the number of claimants or the period over which such **Advertising Injury** occurs.

7.3 Reporting and Notice

As soon as reasonably practicable the **Insured** shall give written notice to the **Insurer** of any **Claim, Inquiry** or claim for any other matter covered under the **Policy**. Such notice shall be provided irrespective of whether or not any potential or actual amount payable under the **Policy** may fall within the **Retention**.

All such notices shall include, but not be limited to, the following:

- (a) a detailed description of the subject matter of the **Claim, Inquiry** or claim for any other matter covered under the **Policy**;
- (b) details of all the parties involved;
- (c) the nature of the alleged or potential loss;
- (d) the manner and date upon which the **Insured** first became aware of the matters giving rise to the notification;
- (e) a copy of the **Claim** or **Inquiry**; and
- (f) a copy of any other insurance policy that may be applicable.

Notice and all information shall be sent in writing to:

The Claims Manager
Swiss Re International SE Australia Branch
Tower Two International Towers
Level 36, 200 Barangaroo Avenue,
Sydney, NSW 2000, Australia
Email: ClaimsANZ_CorporateSolutions@swissre.com

The **Insured** shall keep the **Insurer** fully informed as regards all developments relating to such **Claim, Inquiry** or claim for any other matter covered under the **Policy** as soon as reasonably practicable.

7.4 **Defence and Settlement**

The **Insured** agrees not to settle any **Claim**, incur any **Costs and Expenses**, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any **Claim** without the **Insurer's** prior written consent, such consent not to be unreasonably withheld or delayed. The **Insurer** will not be liable for any **Claim**, settlement, **Costs and Expenses**, admission, offer or payment, assumed obligation, **Inquiry Costs** or claim for any other matter covered under the **Policy** to which it has not consented. The **Insurer** shall be entitled to associate with any **Insured** in the defence and negotiation of any settlement of any **Claim**.

The **Insured** shall have the obligation to defend and contest any **Claim** made against them.

The **Insurer** agrees to the appointment of any solicitor or firm of solicitors that is a member of the **Insurers Legal Panel** to act on behalf of the **Insured**.

Each **Insured** shall render all reasonable assistance to and fully co-operate with the **Insurer** in the investigation, defence, settlement, or appeal of any **Claim** and provide the **Insurer** with all relevant information as the **Insurer** may require. In the event of any **Claim**, each **Insured** shall take reasonable steps to minimise or reduce any **Loss**.

7.5 **Insurer's Right to Assume Conduct**

The **Insurer** shall, in its discretion, be entitled to conduct in the name of the **Insured**, the defence or settlement of any **Claim**.

7.6 **Consent to Payments**

The **Insured** shall obtain the written consent of the **Insurer**, which shall not be unreasonably withheld or delayed, before any amounts payable under the **Policy** are incurred.

The **Insurer** shall only be liable under the **Policy** for payment of any **Costs and Expenses** or any other amounts which are reasonable and necessary.

7.7 **Right to Contest**

If the **Insured** or **Insurer** wishes to settle the **Claim** or **Inquiry** and the other wishes to contest the **Claim** or **Inquiry**, then the **Insured** may elect to have a **Senior Counsel** appointed to advise the parties as to whether such **Claim** or **Inquiry** should be settled

or contested. In formulating such advice, **Senior Counsel** shall take into consideration the economics of the matter, including the damages and costs that may be payable, the likely **Costs and Expenses** or **Inquiry Costs** and the prospects of the **Insured** successfully challenging the **Claim** or being exonerated in the **Inquiry**. The cost of such **Senior Counsel's** opinion shall be part of the **Limit of Liability**.

In the event that the **Insurer** recommends settlement and, if elected, the appointed **Senior Counsel** has advised the parties to settle, in respect of any **Claim** or **Inquiry** and the **Insured** does not agree that such **Claim** or **Inquiry** should be settled, then the **Insured** may elect to contest such **Claim** or **Inquiry**. The **Insurer's** liability in connection with such **Claim** or **Inquiry** shall not exceed the amount for which such **Claim** or **Inquiry** could have been so settled or could reasonably have been expected to be settled plus the **Costs and Expenses** incurred with the **Insurer's** prior written consent up to the date of such election.

7.8 **Allocation**

If a **Claim** or **Inquiry** or any other matter is partially covered under the **Policy**, the **Insured** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation between such covered matters and not-covered matters based upon the relative legal and financial exposures and the relative benefits obtained by the parties.

If the **Insurer** and the **Insured** cannot agree on allocation within thirty (30) days of any allocation issue first notified in writing to the **Insured** by the **Insurer**, they agree to refer the determination to a **Senior Counsel**. The **Senior Counsel** is to determine the fair and proper allocation as an expert not an arbitrator. The **Insured** and the **Insurer** shall be entitled to make written submissions to **Senior Counsel**. The **Senior Counsel** is to take account of the parties' submissions, but the **Senior Counsel** is not to be confined by such submissions and is to determine the fair and proper allocation in accordance with their own judgement and opinion. The **Senior Counsel's** expenses in providing such determination will be paid by the **Insurer** and any such payments will not erode the **Limit of Liability**.

Whilst a dispute as to allocation of any matter claimed under the **Policy** remains unresolved, the **Insurer** shall advance such amounts it considers to be a fair and proper allocation. The allocation finally agreed or determined shall be applied retrospectively to any amounts incurred or paid.

7.9 **Advancement of Cost and Expenses and Inquiry Costs**

Once the **Insurer** has received written notice of a **Claim** or **Inquiry** under the **Policy**, it shall advance **Costs and Expenses** or **Inquiry Costs** as and when incurred, but no later than thirty (30) days after the **Insurer** has received itemised bills for those **Costs and Expenses** or **Inquiry Costs**.

Such payments by the **Insurer** shall be repaid to the **Insurer** by the **Insured** in the event and to the extent that any such **Insured** is subsequently determined not to be entitled to cover under the **Policy**.

SECTION 8: GENERAL CONDITIONS APPLICABLE TO ALL SECTIONS

8.1 Limit of Liability

The **Insurer's** maximum liability under the **Policy** shall not exceed the **Limit of Liability** in the **Schedule** with respect to each Section of the **Policy**. Further, **Costs and Expenses** and any cover granted under any Insuring Clause, Extension or Optional Extension shall form part of and do not increase the **Limit of Liability** unless otherwise specifically stated in the **Policy**.

The **Insurer's** maximum liability under Section 2 and Section 3 of the Policy shall not exceed the higher of either applicable **Limits of Liability** in the **Schedule** with respect to any one **Occurrence**; and with respect Section 3 the aggregate **Limit of Liability** in any one **Policy Period**.

If provided, cover under Section 4 – Extensions Applicable To All Sections and Section 5 - Optional Extensions Applicable To All Sections shall be part of, and not in addition to, the most applicable of Section 1, 2 or 3 **Limit of Liability**.

8.2 Retentions

The **Insurer** shall only be liable for any amount covered under the **Policy** in excess of the applicable **Retention**. The **Retention** shall remain uninsured.

If different parts of a single **Claim** or **Inquiry** are subject to different **Retentions**, the applicable **Retentions** will be applied separately to each part of such **Claim** or **Inquiry**, but the sum of such **Retentions** shall not exceed the highest applicable **Retention**.

In the case of any **Related Claim and Related Inquiry**, the highest **Retention** applicable to any **Claim** or **Inquiry** constituting a **Related Claim and Related Inquiry** shall be deemed the **Retention** applicable to all **Loss** arising from such **Related Claim and Related Inquiry** unless the **Policy** expressly provides otherwise.

If provided, cover under Section 4 – Extensions Applicable To All Sections and Section 5 - Optional Extensions Applicable To All Sections shall be subject to the most applicable Retention of Section 1, 2 or 3.

8.3 Other Insurance

The coverage provided under the **Policy** is excess over any other valid and collectible:

- (a) Professional Indemnity, General Liability or Product Liability insurance;
- (b) **Other Insurance**; or
- (c) any other insurance providing similar cover thereto;

unless such other insurance is specifically written as excess insurance over the **Limit of Liability** provided by the **Policy**. The **Policy** shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer may be obligated to pay.

8.4 Subrogation

In the event of any payment under the **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery, and the **Insured** shall do everything necessary to secure and preserve such rights, including but not limited to the execution of documents necessary to enable the **Insurer** to effectively commence any action in the name of the **Insured**.

The **Insured** must not do anything to prejudice the position of the **Insurer** in its actual or potential rights of recovery against another party.

8.5 Alteration to Risk

The **Insured** shall give to the **Insurer** written notice as soon as practicable of any material alteration to the risk during the **Policy Period** including but not limited to:

- (a) changes to the **Project** including any variations of the contracts submitted to the **Insurer**, any variation in contract price of more than ten (10%) percent or any change to the **Subcontractors**;
- (b) any **Insured** engaging in activities that are materially different from those in the **Proposal**;
- (c) the **Policyholder** or any **Subsidiary** being unable to pay its debts as and when they fall due; or
- (d) the **Policyholder** being acquiring another company or being acquired by another company.

In the event of material alteration to the risk during the **Policy Period** the **Insurer** reserves the right to impose additional terms and conditions and to charge an additional premium.

8.6 Cancellation

The **Policy** is non-cancellable, non-avoidable and non-rescindable by the **Insurer** except for non-payment of **Premium**, misrepresentation or fraud. In the event that any **Premium** due under the **Policy** is not received by the **Insurer** within ninety (90) days of the **Inception Date** the **Policy** may be cancelled or avoided by the **Insurer**.

8.7 Third Party Interests

No right or interest with respect to the **Policy** can be assigned without the **Insurer's** prior written consent. The **Policy** is not intended to confer rights to any person or entity not a party to the **Policy**.

8.8 Authorisation

By acceptance of the **Policy**, the **Policyholder** agrees to act on behalf of each and every **Insured** with respect to any matters pertaining to the **Policy**, including but not limited to the giving of notice of a **Claim** or **Inquiry**, the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under the **Policy**, and the negotiation, agreement to and acceptance of any endorsements issued to form part of the **Policy** and each of the other **Insured** agree that the **Policyholder** shall so act on their behalf.

This Condition shall not limit the ability of any other **Insured** to provide notice of a **Claim**.

8.9 **Premium**

The **Policyholder** agrees that the **Premium** and any adjusted **Premium** shall be fully earned on inception.

8.10 **Inspection and Audit**

The **Insurer** may inspect the property and operations of the **Insured** on reasonable notice. The right of the **Insurer** to make, and report on, inspections will not constitute a warranty that the property or operations are safe or compliant with any law. The **Insurer** may audit the records of the **Insured** during, or after the **Policy Period** should any liability arising out of the **Policy** remain outstanding.

8.11 **Joint Insureds**

Where the **Insured** comprises more than one party, information supplied to the **Insurer** shall be deemed to have been furnished by and on behalf of all such parties and any information supplied to the **Insurer** or any omission or non-disclosure in relation to any renewal or extension hereof, shall likewise be deemed to have been furnished, omitted or withheld on behalf of all such parties.

8.12 **Jurisdictional Cover**

The coverage provided under the **Policy** shall extend to any **Claim** brought in a court of law in the countries stated under **Jurisdictional Cover** and **Claims** arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to the laws of the countries stated under **Jurisdictional Cover**.

Notwithstanding anything to the contrary in the **Policy**, no cover shall be provided where to do so would constitute a breach by the **Insurer** of any economic, trade or other sanction or law applicable to the **Insurer** including pursuant to the laws or regulations of Australia, the European Union, United Kingdom, Singapore or the United States of America or a resolution of the United Nations and the **Insurer** shall have no liability to the **Insured** to the extent that to do so would be in breach of the foregoing.

8.13 **Governing Law**

The construction, interpretation and meaning of the provisions of the **Policy** shall be determined in accordance with the law in force in the Australian State or Territory in which the **Policy** is issued. All matters relating to the construction or operation of the **Policy** shall be submitted to the exclusive jurisdiction of the courts exercising jurisdiction under the law of that State or Territory.

8.14 **Policy Construction and Interpretation**

The headings in the **Policy** are included for descriptive purposes only and do not form part of the **Policy** for the purpose of its construction or interpretation.

Under the **Policy**, where appropriate, the masculine includes the feminine, and the singular includes the plural and vice versa. For the meaning of any words in bold refer to the **Schedule** or Section 9 – Definitions.

8.15 **Electronic Communications**

The **Insurer** may issue notices to the **Insured** which are required to be given pursuant to the *Insurance Contracts Act 1984 (Cth)* by electronic mail or post.

8.16 **Confidentiality**

The existence and terms of the **Policy** are confidential as between the **Insured** and the **Insurer** and shall not be disclosed by the **Insured** to any person except:

- (a) to professional advisers including legal advisers and accountants;
- (b) as required by law or in accordance with an order of a court; or
- (c) with the written consent of the **Insurer**.

8.17 **Currency**

All **Premiums**, limits, **Retentions**, **Loss** or other matters under the **Policy** are expressed and payable in the **Currency**. If a payment under the **Policy** is to be made in a currency other than that **Currency**, such payment shall be made at a rate of exchange as published in the Australian Financial Review on the date the obligation to pay **Loss** is established or, if not published on that date, on the date of the next publication of the Australian Financial Review.

SECTION 9: DEFINITIONS APPLICABLE TO ALL SECTIONS

9.1 **Advertising Liability** means civil liability in respect of:

- (a) libel, slander or defamation;
- (b) infringement of copyright or of titles or slogans;
- (c) misrepresentation by the **Insured** of its products; or
- (d) invasion of rights of privacy,

committed or alleged to have been committed in connection with the **Project** during the **Policy Period** in any advertisement, publicity article, broadcast or telecast arising out of any advertising activities conducted by or on behalf of the **Insured**, in the course of advertising any **Product** of the **Insured**.

9.2 **Claim** means the receipt by the **Insured** of any written demand or legal proceedings for compensation.

9.3 **Complimentary Legal Advice** means legal advice regarding Australian law provided by a member of the **Legal Panel** at no charge for up to a maximum of one (1) hour per enquiry to any **Insured** during the **Policy Period** with respect to any factual or legal matter arising from or in connection with the subject matter of the **Policy**.

9.4 **Construction Advice and Services** means any of the following services performed, or advice provided, in connection with the **Project**:

- (a) design, drafting and plan preparation;
- (b) technical calculation and specification;
- (c) project and construction management including delineation of project scope, scheduling, procurement management, setting performance requirements and risk management;
- (d) surveying and quantity surveying;
- (e) certification of elements of construction for compliance with laws, regulations, codes of practice, town planning and construction plans; and
- (f) training in respect of the above,

provided always that such services are performed, or advice given, by or under the direct supervision of an engineer, architect, surveyor or quantity surveyor or other person providing services or advice of a skilful character according to established professional disciplines.

Construction Advice and Services does not include:

- (a) performance or supervision of construction, manufacture, assembly, erection, alteration or maintenance of construction or **Products**;
- (b) work or supervision usually undertaken by a building contractor or contract supervisor;
- (c) functions ancillary to the performance of the services or provision of advice which is administrative in character.

9.5 **Costs and Expenses** means the costs and expenses incurred by or on behalf of the **Insured** in the investigation or defence of a **Claim** or preparation for, and representation at, an **Inquiry** and shall include legal costs and disbursements.

Costs and Expenses does not include salaries, wages, allowances, fees, commissions, awards, bonuses, and travel or accommodation expenses.

9.6 **Court and Inquiry Attendance Expenses** means an allowance of \$500 per day for any **Insured** whose attendance is required as a witness, or is otherwise necessary, at any legal proceeding, including an **Inquiry** which is the subject of cover under the **Policy**.

9.7 **Documents** means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature that are owned by a customer of client of the **Insured**, whether written, printed or reproduced by any method including computer records but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

9.8 **Employee** means any past, present or future employee, partner, director, self-employed person, seconded or agency staff under the direction and control of the **Insured**.

- 9.9 **Financial Interest** means the direct or indirect financial interest of the **Policyholder** in an **Insured**.
- 9.10 **Fraud or Dishonesty** means any actual or alleged:
- (a) fraudulent, criminal or malicious act, error or omission; or
 - (b) intentional or wilful breach of any statute, law or regulation, contract or duty; of any **Insured**.
- 9.11 **Insured** means:
- (a) the **Policyholder** and any **Subsidiary** that was a **Subsidiary** at the **Inception Date**;
 - (b) any **Employee**;
 - (c) any spouse or domestic partner whether or not the same sex, estate or legal representative of any **Employee** to the extent that such **Employee** would have been covered under the **Policy**; or
 - (d) the heirs, legal representatives or executor of a deceased or incompetent, insolvent or bankrupt **Employee's** estate to the extent that such **Employee** would have been covered under the **Policy**.
- 9.12 **Insurer** means:
Swiss Re International SE Australia Branch,
Registered Office: Tower Two International Towers,
Level 36, 200 Barangaroo Avenue,
Sydney, NSW 2000, Australia
AFSL 355088 - ABN 38 138 873 211
- 9.13 **Internet Operations** means the operation and maintenance of e-mail, the internet (including the **Insured's** website) or any intranet.
- 9.13 **Inquiry** means any administrative or regulatory proceeding, official investigation, inquiry or hearing, including a Coroner's Inquest or Fatal Accident Inquiry or an **Occurrence**, where the findings of such proceeding, official investigation, inquiry or hearing could lead to a **Claim** covered under the **Policy** and includes responding to any lawful request which requires a response including to produce documents.
- Inquiry** does not include a proceeding, inquiry, hearing, investigation, audit or similar review into licensing, registration or accreditation, by or of the **Insured**.
- 9.14 **Inquiry Costs** means the **Costs and Expenses** incurred by or on behalf of the **Insured** in preparing for, and being represented at an **Inquiry** and shall include legal costs and disbursements. **Inquiry Costs** do not include salaries, wages, allowances, fees, commissions, awards, bonuses, and travel or accommodation expenses.

- 9.15 **Loss** means monetary damages, claimant's costs, and settlements. **Loss** shall not include:
- (a) non-compensatory damages, including punitive, multiple or exemplary damages;
 - (b) liquidated damages imposed 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;
 - (c) any liability which arises from delay by the **Insured** or any other person or entity;
 - (d) any liability which arises from the calculation of any cost whatsoever, but not including an error in the calculation of quantity;
 - (e) taxes, except GST for which the **Insured** is not entitled to an Input Tax Credit; or
 - (f) any matter which may be deemed uninsurable by law.
- 9.16 **Medical Person** means a legally qualified medical practitioner, legally qualified registered nurse, dentists, first aid attendants employed by the **Insured** and emergency service personnel employed by an Ambulance Service or similar.
- 9.17 **Non-Admitted Jurisdiction** means any jurisdiction that does not permit the **Insured** to be covered by the **Policy** because the **Insurer** is not registered or authorised as an insurer to do so in that jurisdiction.
- 9.18 **Novated Contract** means a novated contract submitted, and approved in writing by the **Insurer** and detailed on the **Schedule**.
- 9.19 **Occurrence** means an event including continuous or repeated exposure to substantially the same general conditions which results in **Personal Injury, Property Damage** or **Advertising Liability** neither expected nor intended by the **Insured**, occurring in connection with the **Project** during the **Policy Period**.
- 9.20 **Other Insurance** means the insurance nominated in the **Schedule** or any renewal or replacement thereof.
- 9.21 **Personal Injury** means:
- (a) bodily injury, death, sickness, disease, illness, mental anguish or mental injury;
 - (b) false arrest, false detention, wrongful imprisonment or malicious prosecution;
 - (c) the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - (d) defamation, libel or slander; or

- (e) assault and/or battery committed by any Employee of the Insured but excluding acts committed at the direction of the Insured unless so directed for the purpose of preventing or eliminating danger to persons or property;

occurring in connection with the **Project** during the **Policy Period**.

9.22 **Policy Period** means the period between the **Inception Date** and the earlier of the **Expiry Date** or the effective date of any cancellation or avoidance of cover.

9.23 **Policy** means the **Schedule**, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions, Endorsements and any other terms contained or incorporated herein.

Policy does not include any Section, Optional Extension or any other part of the **Policy** that has not been purchased by the **Insured**.

9.24 **Pollutant** means any air emission, odour, waste, oil or oil product, infectious or medical waste, noise, fungus (including mould or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption), and electric or magnetic or electromagnetic field. Such matters shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminations or smoke, vapour, soot, fumes, acids, alkalis, chemicals, waste materials or materials to be recycled or reclaimed.

9.25 **Premium** means the premium in the **Schedule** or in any Endorsement forming part of the **Policy**.

9.26 **Product** means anything after it has ceased to be in the **Insured's** possession or control which has been, or is deemed by law, to have been manufactured, extracted, produced, processed, treated, sold, handled, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by the **Insured** (including packaging or containers) in the course of the **Project**.

9.27 **Project** means the project nominated in the **Schedule** and as fully described in the contracts submitted to the **Insurer** prior to the **Inception Date**.

Project does not include any variations or amendments to the contracts made after submission to the **Insurer** unless expressly approved in writing by the **Insurer**.

9.28 **Property Damage** means:

- (a) physical damage to or loss of or destruction of tangible property including loss of use resulting therefrom; or
- (b) loss of use of tangible property which has not been physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property;

occurring in connection with **Project**.

All such **Loss** of use shall be deemed to happen at the time of the physical damage that caused it.

- 9.29 **Proportionate Liability Legislation** means the *Civil Liability Act 2002 (NSW) Pt 4, Wrongs Act 1958 (Vic) Pt IVA, 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, Trade Practices Act (Cth) s87C, Development Act 1993 (SA) s72, Building Act 2004 (ACT) s141 and Building Act 2000 (Tas) s252, and similar legislation or any amendment or re-enactment thereof.*
- 9.30 **Proposal** means any proposal form completed and signed for the **Policy** or for any other policy issued by the **Insurer** for which the **Policy** is a replacement or renewal (including any attachments thereto) and any information and statements or materials requested by the **Insurer** or supplied to the **Insurer** by or on behalf of the **Insured** included therewith or incorporated therein.
- 9.31 **Public Relations Expenses** means the costs and expenses of a public relations firm or consultant, crisis management firm or law firm which an **Insured** may engage in order to prevent or limit adverse effects or negative publicity which has arisen from any covered **Claim** or **Inquiry**.
- 9.32 **Related Claim and Related Inquiry** means any **Claims** or **Inquiries** or other matters covered under the **Policy** which are causally connected or which arise from interrelated acts, errors or omissions.
- 9.33 **Related Entity** means
- (c) another **Insured**;
 - (d) a parent company or subsidiary of the **Insured**; or
 - (e) or any person or entity having a financial or executive interest in the operation of the **Insured**.
- 9.34 **Reputation Protection Expenses** means the costs and expenses of a public relations firm or consultant, crisis management or law firm which an **Insured** may engage in order to disseminate the findings of a final adjudication in favour of the **Insured**, arising from a covered **Claim** or **Inquiry** in which there has been negative publicity.
- 9.35 **Schedule** means the Schedule attached to the **Policy** and signed by two people authorised by the **Insurer**.
- 9.36 **Senior Counsel** means a senior lawyer to be mutually agreed upon by the parties, or in the absence of agreement, to be appointed by the Chair/President of the Bar Association, Law Society, or equivalent organisation in the jurisdiction in which the **Policy** is issued.

- 9.37 **Subsidiary** means any entity which the **Policyholder**, on or before the **Inception Date**, either directly or indirectly through one or more of its other **Subsidiaries**:
- (a) has control of the composition of the board of directors;
 - (b) has control of more than half of the shareholder or equity voting power;
 - (c) holds more than half of the issued share capital or equity; or
 - (d) exercises effective control of management, including of any joint venture.
- 9.38 **Trailer** means a vehicle that is built to be towed by a **Vehicle**, and is not capable of movement in the normal course of use unless it is being towed by a **Vehicle**.
- 9.39 **Vehicle** means any description of a vehicle on wheels.
- 9.40 **Worker** means the definition provided in the relevant worker's compensation law.
- 9.41 **Worker to Worker Claim** means any **Claim** brought by a **Worker** against any other **Insured** other than their direct employer.