



# **Environmental Liability Insurance: Contractors Professional Environmental Liability (CPEL)**

Policy wording



# Environmental Liability Insurance: Contractors Professional Environmental Liability (CPEL)

Policy wording

## Contents

<b>Section 1: Insuring Agreements</b> .....	<b>3</b>
<b>Section 2: Defence and Settlement</b> .....	<b>4</b>
<b>Section 3: Exclusions</b> .....	<b>4</b>
<b>Section 4: Limits of Liability and Excess</b> .....	<b>7</b>
<b>Section 5: Conditions</b> .....	<b>7</b>
<b>Section 6: Definitions</b> .....	<b>12</b>



Throughout this Policy the words "you" and "your" refer to the **named insured** shown in the Schedule and any other person or organisation qualifying as a **named insured** under this Policy.

The words "we," "us" and "our" refer to the company providing this insurance.

Except for headings, words that appear in **bold print** have special meaning. See SECTION 6 – DEFINITIONS.

In consideration of the payment of the premium and in reliance upon the statements and information that you or your agent provides to us in the Application or Questionnaire, or both, or other information submitted to us that forms the basis of coverage, we agree to provide coverage as shown in the Schedule and subject to the terms as follows:

## Section 1: Insuring Agreements

### 1. Professional Liability

#### a. Contractor Professional Liability

We will pay up to the Sublimit of Liability listed in Item 5 of the Schedule, exclusive of the Excess, defence costs and those sums that the **insured** becomes legally obligated to pay as professional damages because of a claim resulting from an actual or alleged act, error or omission in professional services, provided:

- i. The **claim** arises out of **professional services** rendered on or after the professional liability **retroactive date** and prior to the expiration of the **policy period**; and
- ii. The **claim** is first made against the **insured** and first reported to us, in writing, during the **policy period** or within the extended reporting period; and
- iii. Such **claim** is not covered under SECTION 1 – INSURING AGREEMENTS, paragraph 3, Contractors Pollution Liability.

### 2. Mitigation Expense:

a. We will pay up to the Sublimit of Liability listed in Item 5 of the Schedule as **mitigation expense** on behalf of the **insured** resulting from an actual act, error or omission in **professional services** rendered by the **insured**, provided:

- i. The **professional services** are rendered during the **policy period** or on or after the **mitigation expense retroactive date**; and
- ii. The **insured**, during the **policy period**, provides us with immediate written notice of the act, error or omission in **professional services** and the proposed mitigation action, if any, prior to incurring any **mitigation expense**; and
- iii. All mitigation expense must be approved by us to be incurred by the **insured** and must not be covered under SECTION 1 – INSURING AGREEMENTS, paragraph 3, Contractors Pollution Liability.

### 3. Contractors Pollution Liability

#### a. Contractors Operations Pollution Liability

We will pay up to the Sublimit of Liability listed in Item 5 of the Schedule, exclusive of the Excess, **defence costs** and those sums that the **insured** becomes legally obligated to pay as **damages** arising out of **bodily injury, property damage or environmental damage** that occur during the **policy period** and are caused by an **occurrence**, provided:

- i. There is a **claim** for **bodily injury, property damage or environmental damage** caused by a **pollution incident** from **your work, transportation, completed operations, or a non-owned site** and the **claim** is asserted against the **insured** within a period of three years commencing on the inception date in the Schedule; or
- ii. **Clean-up costs, emergency clean-up costs** are caused by a **pollution incident** from **your work or transportation**, where:
- iii. Such **pollution incident** first occurs on or after the effective date of this Policy; and
- iv. **Discovery** of such **pollution incident** first occurs during the **policy period**; and
- v. You report that **pollution incident** to us, in writing, as soon as practicable during the **policy period** or extended reporting period, if applicable.

#### b. Your Insured Location Liability

We will pay up to the Sublimit of Liability listed in Item 5 of the Schedule, exclusive of the Excess, **defence costs** and those sums that the **insured** becomes legally obligated to pay as **damages** arising out of **bodily injury, property damage or environmental damage** that occur during the **policy period** and are caused in any one **occurrence**, provided:

- i. There is a **claim** for **bodily injury, property damage or environmental damage** caused by a **pollution incident** on, at, under or migrating beyond the legal boundaries of your insured **location**; or
- ii. That **clean-up costs or emergency clean-up costs** caused by a **pollution incident** on, at, under or migrating beyond the legal boundaries of your insured **location** result in **environmental damage**, but only to the extent:
  - a. As required by **environmental law**; or
  - b. In the absence of (a) directly above, to the extent recommended by an **environmental professional**.

It is condition precedent to coverage under this SECTION 1 – INSURING AGREEMENTS, paragraph 3.b., Your Insured **Location** Liability, that:

- i. **Discovery** of such **pollution incident** first occurs during the **policy period**; and
- ii. The **pollution incident** originates at your insured **location**; and
- iii. The **pollution incident** first commences during the **policy period** at an identifiable time and place; and

The **pollution incident** ceases fully within ten (10) days of its commencement.



Progressive, indivisible **bodily injury, property damage or environmental damage**, including any continuation, change or resumption, over any period of extended time caused by the same or related **pollution incident** shall be deemed to have occurred only on the date of first exposure to such **pollution incident** and only the Policy in force on the date of first exposure will apply. In the event that the date of first exposure to such **pollution incident** is before the inception date of the first policy providing contractor pollution liability and issued to you by us, or cannot be determined, but the progressive, indivisible **bodily injury, property damage or environmental damage**, including any change or resumption, continues to exist during the **policy period** such **pollution incident** will be deemed to have occurred on the inception date of the first policy providing contractor pollution liability issued to you by us. In the event that the date of first exposure to such pollution incident occurs during this **policy period** and continues to exist during subsequent policies providing contractor pollution liability issued by us, then the following applies:

- i. All such **bodily injury, property damage and environmental damage** shall be deemed to have taken place only during this **policy period**; and

All **damages or defence costs** arising from all such **bodily injury, property damage or environmental damage** shall be deemed to have arisen from one **occurrence** and shall be subject to the Each Pollution Incident Limit listed in Items 5, 3A or 3B of the Schedule (respectively).

## Section 2:

### Defence and Settlement

1. We will have the right to defend any **claim** made against any **insured** seeking sums payable under this Policy.
2. **Defence costs** are in addition to the Limits of Liability and are excluded from the applicable Excesses stated in the Schedule.
3. The **insured** will not assume or admit liability, make any payment, consent to any judgment, settle any **claim** or incur any **defence costs** without the prior written consent of us. We will not be liable for any payment, settlement, consent order or admission made by the **insured** to which we have not consented.
4. If the **insured** does not agree with our decision to settle a **claim**, the **insured** can elect to contest the **claim** at its own expense but our liability will not exceed the amount for which the **claim** could have been settled in the opinion of a senior legal counsel (to be mutually agreed upon by the **insured** and us or in the absence of agreement by determination of the President of the New Zealand Law Society). We shall pay all **defence costs** incurred up to the date the **insured** notifies us in writing of its election under this clause, and shall pay the **insured** (subject to the Excess) the amount for which the **claim** could have been so settled. The **insured** expressly agrees that our liability in respect of such **claim** shall then be at an end.
5. In addition, if we recommend a settlement of a **claim** to which this insurance applies within the Policy's applicable Limit of Liability that is acceptable to the claimant, and the **insured** consents to such settlement, then your applicable Excess for such **claim** shall be retroactively reduced by ten (10) percent. It shall be a condition to such reduction that **insured** must consent to the settlement amount within thirty (30) days after the date we recommend to you such settlement amount, or in the case of a settlement amount which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after we recommend to the **insured** such settlement offer. If the **insured** does not consent to the settlement within the time prescribed above, the applicable Excess shall remain the respective amount set forth in the Schedule or applicable endorsement, even if consent is given to a subsequent settlement.
6. We shall have the right to select counsel for the investigation, adjustment and defence of **claims** to which this insurance applies. If more than one **insured** is involved in a **claim** to which this insurance applies, we may, in our sole discretion, appoint separate counsel for one or more of such **insureds** if there is a material (actual or potential) conflict of interest among any such **insureds**.
7. We accept that it may be necessary for **insureds** to retain separate legal representation if there is a conflict of interest between them. If such instance arises, we will pay the **defence costs** of each **insured** up to the aggregate **defence costs** Limit of Liability specified in item 3B of the Schedule. However, we will not pay an hourly rate above what is reasonable in the geographic area where the **claim** is pending. Once the aggregate Limit of Liability for **defence costs** has been eroded our liability for such costs shall then be at an end.
8. Additionally, we may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency including experience in defending **claims** similar to the one pending against the **insured** and to require such counsel have errors and omissions insurance coverage. As respects any such counsel, the **insured** agrees that counsel will timely respond to our requests for information regarding the **claim**, except with regard to information that is confidential or privileged, or both, or that affects insurance coverage for the **claim**.
9. Furthermore, the **insured** may at any time, by the **insured's** signed consent, freely and fully waive the right to select independent counsel.

## Section 3:

### Exclusions

This Policy does not apply to any **claim, professional damages, mitigation expense, pollution incident, damages, clean-up costs, emergency clean-up costs or defence costs**:

#### 1. Contractual Liability

Arising from the **insured's**:

- a. Assumption of other's liability in a contract or agreement; or
- b. Breach of contract or agreement.

This exclusion does not apply to liability: (1) That the **insured** would have in the absence of the contract or agreement; (2) as respects paragraph 1.b. above, for actual or alleged act, error or omission in **professional services**; or (3) Solely with regard to SECTION 1 - INSURING AGREEMENTS, paragraph 3.a., Contractors Operations Pollution Liability, liability assumed by the **named insured** in a contract or agreement that is an **insured contract**, provided the **bodily injury, property damage, environmental damage or emergency clean up costs** occurs subsequent to the execution of the contract or agreement.



## 2. Criminal Fines

Arising from any criminal fines, criminal penalties or criminal assessments imposed by law directly against an **insured**.

## 3. Damage to Property

Arising from loss of use, physical injury, or destruction of:

- a. Real property owned by the **named insured** or rented, leased or loaned to the **named insured**; or
- b. Personal property in the care, custody control of the **named insured** used to perform **your work**.

This exclusion does not apply to: (1) real or personal property owned or leased by or in the care, custody or control of the **client**; or (2) **environmental damage** to your insured **location**.

## 4. Dishonest Acts/ Intentional Non-compliance

Arising from any:

- a. Dishonest, fraudulent, criminal, intentional or malicious act, error or omission or those of a knowingly wrongful nature committed by or at the direction of any **insured**, however, this exclusion will not apply to an **insured** who did not commit, participate in, or have knowledge of such conduct; or
- b. Intentional disregard of or deliberate willful or dishonest non-compliance with any statute, regulation, ordinance, order, administrative complaint, notice of violation, notice letter, or instruction by or on behalf of any government agency or representative or other state, local or other applicable legal requirement by or at the direction of any **responsible manager** or an agent of an **insured**.
- c. This exclusion does not apply to intentional disregard of or deliberate willful non-compliance with any law or regulation:
  - i. to the **insured's** good faith reliance upon the written advice of qualified outside counsel received in advance of such compliance; or
  - ii. good faith efforts at mitigation of **emergency clean up costs**.

## 5. Discrimination

Based upon or arising out of actual or alleged discrimination by an **insured** including but not limited to discrimination on the basis of race, creed, national origin, disability, age, marital status, sex, or sexual orientation.

## 6. Divested Location

Based upon or arising out of a **pollution incident** that first commences after **your insured location** has been divested, sold, abandoned, given away, taken by eminent domain or condemned.

## 7. Electronic Services

Arising from any failure to prevent unauthorised access to or use of an electronic system or program, unless such unauthorised access arises out of an act, error or omission in the rendering of or failure to render **professional services** by you.

## 8. Employer's Liability

Arising from any injury to:

- a. An employee, including **leased worker** and a **temporary worker**, of the **insured**, arising out of and in the course of:
  - i. Employment by the **insured**; or
  - ii. Performing duties related to the conduct of the **insured's** business
- b. The spouse, child, parent, brother or sister or any relation of that employee, including **leased worker** and a **temporary worker**, who has a right to make a **claim** against an insured as a consequence of paragraph 8.a.(i) above.

This exclusion applies whether the **insured** may be liable as an employer or in any other capacity and to any obligation to share **damages** with or repay someone else who must pay **damages** because of the injury.

This exclusion does not apply to liability assumed by the **insured** under an **insured contract** executed prior to the date such injury occurs as a result of **your work** for such contract.

## 9. Faulty Work/Own Work

Solely with regard to SECTION 1 - INSURING AGREEMENTS, paragraph 3.a., Contractors Operations Pollution Liability:

Arising out of the cost to repair or replace faulty workmanship in any construction, erection, fabrication, installation, assembly or manufacturing process performed or provided by the **named insured** or anyone for whom any **insured** is legally responsible or any organisation or affiliate that controls, manages or holds more than a twenty-five (25%) percent ownership interest in an **insured**, including materials, parts or equipment furnished in connection therewith, including any workmanship which is not in accordance with the drawings and specifications with respect to any construction, erection, fabrication, installation, assembly or manufacturing process.

## 10. Hostile Acts

Arising directly, in whole or in part, as a result of or in connection with war, whether declared or not, or any act or condition incident to war. War includes:

- a. Civil war;
- b. Armed conflict between two or more nations, armed conflict between military forces of any origin, or warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.



## 11. Insured Versus Insured

- a. Arising from any **claims** made by any **insured** against any other **insured**; or
- b. Any claims brought against any individual or entity or its subrogees or assignees:
  - i. That wholly or partially owns or operates you; or
  - ii. In which you have an ownership interest in excess of twenty-five (25%) percent or
  - iii. That is controlled or operated by you; or
  - iv. In which you are an officer or director.

This exclusion does not apply to a **claim** by an entity that is an **insured** solely by the definition in SECTION 6 – DEFINITIONS, paragraph 15.d.

## 12. Non-Disclosed Known Conditions

Based upon or arising out of a **pollution incident** or an actual or alleged act, error or omission in **professional services** in existence prior to the inception date of the Policy or prior to the effective date of an endorsement to this Policy and known by or reported to a **responsible manager**.

However, this exclusion shall not apply to:

- a. With respect to a **project site**, a **pollution incident** in existence prior to you first performing **your work** or **professional services** at such project site; or
- b. The exacerbation of a **pollution incident** at a **project site** as a result of **your work** provided:
  - i. Such **pollution incident** was in existence prior to the **insured** first performing your work; and
  - ii. Such exacerbation was not known or reported to a **responsible manager** prior to the inception date of the Policy or prior to the effective date of an endorsement to this Policy; or
- c. Any **pollution incident** that is expressly disclosed to us and scheduled under this Policy or by endorsement as an Accepted Known Condition. Such **pollution incident** shall be deemed to have been first discovered on the inception date or the effective date of the applicable endorsement.

## 13. Use Of Your Insured Location

Based upon or arising out of:

- a. Any material change in use or operations at your insured **location** from the use or operations stated by you in the Application or Questionnaire, or both, or other information submitted to us that forms the basis of coverage; or
- b. The operation of a waste transfer, storage, treatment, or disposal facility or landfill at your insured **location** unless such **location** is approved by us and listed in your **Location** Schedule endorsed on to this Policy.

## 14. Prior Claims Or Incidents

Based upon or arising from a **claim**, **professional damages**, **mitigation expense**, **damages**, **clean-up costs**, **emergency clean-up costs** or **defence costs** or actual or alleged act, error or omission in **professional services** or other circumstances reported by you under any prior policy that was not issued by us or any entity affiliated with us or that was known by a **responsible manager** prior to the inception of the **policy period**.

## 15. Products

Arising from any goods, materials, products or equipment designed, manufactured, sold, handled, distributed or disposed by the **insured** or others trading under the **insured's** name, after possession of such goods, materials, products or equipment have been relinquished by the **insured** or others trading under its name, unless such **claim**, **damages**, **clean-up costs**, **emergency clean-up costs** or **defence costs** or any other coverage afforded under this Policy arises out of the assembly, fabrication or installation of such products as part of **your work**.

This exclusion does not apply to such products while within the boundaries of **your insured location** or during **transportation**.

## 16. Nuclear

Based upon or arising directly or indirectly from the radioactive, toxic or explosive properties of radioactive material, nuclear fuel or waste, and/ or nuclear reactors and nuclear power stations or plants, and any other premises or facilities whatsoever related to or concerned with the production of nuclear energy or the production or storage or handling of nuclear fuel or waste.

## 17. Related Entities

Based upon or arising out of a **claim** by an entity or individual that:

- a. is an affiliate of an **insured**; or
- b. an **insured** controls, manages, operates or holds more than twenty-five (25%) ownership interest in, or which controls; or
- c. manages, operates or holds more than a twenty-five (25%) percent ownership interest in an **insured**; or
- d. is controlled or managed by an **insured**.

## 18. Underground Storage Tanks

Based upon or arising out of a **pollution incident** resulting from an **underground storage tank** whose existence is known by you as of the inception of this Policy and which is located at **your insured location**, unless such **underground storage tank** is scheduled on the Policy by endorsement. However, this exclusion does not apply to any **underground storage tank** that is:

- a. An **underground storage tank** which has been closed in place or removed prior to the inception date of this Policy in compliance with all applicable laws and/or regulations in effect during such closure or removal; or
- b. A process tank, including septic tanks and oil/water separators, located partially in the ground; or



- c. Located on or above the floor of structures built below the ground surface such as vaults or subsurface floors of buildings.

#### 19. Transportation

Based upon or arising out of **property damage** to any **conveyance** utilised during **transportation**. This exclusion does not apply to claims made by third-party carriers for such **property damage** arising from the **insured's** negligence.

#### 20. Warranty/Guarantee

Based upon or arising out of any express warranty or guarantee unless liability would have attached by law to the **insured** in the absence of such warranty or guarantee.

This exclusion does not apply to any warranty or guarantee by the **insured** that the **insured's professional services** or **your work** are in conformity with the generally accepted standard of care or a legal obligation that would be applicable in the absence of such warranty or guarantee.

#### 21. Workers Compensation

Based upon or arising out of any obligation for which any **insured** or any insurance carrier will be liable under any worker's compensation, unemployment compensation, employer's liability, disability benefits law or under any similar law.

#### 22. Your Insured Location – Asbestos And Lead- based Paint

Based upon or arising out of the existence of, required removal or abatement of asbestos or lead-based paint in any form including but not limited to asbestos containing materials, products containing asbestos, asbestos fibers and asbestos dust.

This exclusion does not apply to **your work**, including any unintentional disturbance by you or your subcontractor of asbestos or lead-based paint, **completed operations, transportation** or a **non-owned site**.

### Section 4:

#### Limits of Liability and Excess

##### 1. Limits Of Liability

1. The Aggregate Limit of Liability for this Policy (excluding **defence costs**) is the amount specified in Item 3A of the Schedule, and is our maximum liability under this Policy.
2. Any Sublimit of Liability for this Policy as set forth in Item 5 of the Schedule:
  - a. Shall be part of, and not in addition to, the Limit of Liability of this Policy; and
  - b. Is the maximum liability of the Underwriters for all amounts to which the Sublimit of Liability applies.
3. Payment of any **claim** under this Policy shall reduce and may exhaust the Aggregate Limit of Liability of this Policy set forth in Item 3A of the Schedule. If the Aggregate Limit of Liability of this Policy is exhausted by the payment of a **claim**, we will have no further obligations of any kind with respect to this Policy, including any obligation to pay any further **defence costs**, and the Premium set forth in Item 14 of the Schedule will be fully earned.
4. Payment of any **claim** under this Policy shall reduce and may exhaust the applicable Sublimit of Liability set forth in Item 5 of the Schedule. If any Sublimit of Liability of this Policy is exhausted by the payment of a **claim**, we shall have no further obligations under this Policy with respect to any matter to which such Sublimit of Liability applies.
5. **Defence costs** are not part of, and are in addition to, any Sublimit of Liability of this Policy. Payment by us of **defence costs** shall not reduce any such Sublimit of Liability. Payment of **defence costs** shall reduce and may exhaust the **defence costs** Limit of Liability in Item 3B of the schedule. Once this limit is eroded, we will have no liability for any further **defence costs** during the Policy Period.

##### 2. Excess

Subject to the Limit of Liability set out in paragraph 1 above, we are liable only for that portion of coverage provided under this Policy in excess of the applicable Excess, if any. In the event multiple insuring agreements or coverage parts apply, only one Excess will apply which shall be the highest Excess amount of the applicable coverage parts. These respective Excesses shall be paid by the **named insured** and remain uninsured. We may pay any part or all of the Excess amount to effect settlement of any claim or suit, or to pay **clean-up costs** or **emergency clean-up costs** which may be covered under this Policy, and upon notification of the action taken, you shall promptly reimburse us for such part of the Excess amount as has been paid by us.

The applicable Excess under this Policy shall be exclusive of **defence costs**.

### Section 5:

#### Conditions

##### 1. Audit and Inspection

We will be permitted upon reasonable prior notice to audit, monitor and inspect on a continuing basis any of the **insured's** books and records at any time during the **policy period** and within three years after the final termination of this Policy, as far as they relate to the subject matter of this Policy. We will also be permitted upon reasonable prior notice to inspect, sample and monitor on a continuing basis the **insured's** operations. Neither our right to make inspections, sample and monitor nor the actual undertaking thereof nor any report thereon will constitute an undertaking, on behalf of us or others, to determine or warrant that operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation.

We may modify, amend or delete any of the terms and conditions of this Policy including the right to charge additional premium and the right to cancel, rescind or void this Policy, if our examination, audit, monitoring or inspection reveals any material risk, hazard or condition that was not previously disclosed by any **insured** in the Application or supplemental materials, or which deviates from the information disclosed in the Application or supplemental materials.



## 2. Subrogation

In the event of any payment under this Policy, we will be subrogated to all the **insured's** rights of recovery thereof and the **insured** will execute and deliver all instruments and papers and do whatever else is necessary to secure such rights. The **insured** will do nothing to waive or prejudice such rights. Any amounts recovered in excess of our total payment will be paid to the **insured**, less the cost to us of recovery. However, it is agreed that we waive our rights of subrogation under this Policy against clients of the **named insured** to the extent the client's written contract with the **named insured** requires such a waiver of subrogation, but only:

- a. To the extent required by such contract; and
- b. When such contract has been executed prior to any event, work or **professional services**
- c. that would give rise to coverage under this Policy.

## 3. Changes

Notices to any agent or knowledge possessed by any agent will not effect a waiver or a change in any part of this Policy or prevent us from asserting any rights under the terms of this Policy, nor will the terms of this Policy be waived or changed, unless endorsed hereon by us.

## 4. Assignment

It is agreed that the insurance provided herein cannot be transferred or assigned to another party without the express written consent of us. Assignment of interest under this Policy shall not bind us until our consent, which shall not be unreasonably withheld, is endorsed thereon.

## 5. Cancellation

- a. This Policy may only be cancelled by us for any of the following reasons:
  - i. Non-payment of any premium or Excess amount; or
  - ii. A material misrepresentation or concealment of facts which affects our assessment of the risks insured by this Policy; or
  - iii. A material breach of or failure to comply with any provision of, or obligation under this Policy.
- b. If this Policy is cancelled by us, notice of cancellation will be sent in writing to the **named insured**, at the address indicated on the Schedule. We will provide such written notice at least ninety (90) days, or ten (10) days for non-payment of premium, prior to the date such cancellation is to take effect.
- c. The effective date and hour of cancellation will be stated in such notice. Cancellation by us also cancels the Automatic Extended Reporting Period and Extended Reporting Period. Both the **policy period** and the Automatic Extended Reporting Period and Extended Reporting Period will end on that date. If we cancel for the reason specified in subparagraph (i) there will be no return premium. If we cancel for reasons stated in subparagraphs (ii) or (iii), the earned premium will be computed pro-rata of the Policy term premium. Payment of any return premium will not be a condition of cancellation.
- d. This Policy may be cancelled by the **named insured** for any reason. In the event that the **named insured** cancels the Policy, the earned premium will be computed short-rate of the Policy term premium.
- e. In the event the Policy has a minimum earned premium, the premium returnable after the minimum earned is retained by us will be computed utilizing the customary short rate or pro-rate tables, whichever is applicable. If the minimum earned is one hundred (100) percent, you are not entitled to any return premium regardless of the reason for cancellation. In the event of a loss under this Policy, the premium will be deemed one hundred (100) percent earned and you are not entitled to any return premium.
- f. In the event of cancellation by us by reason of paragraph 5.a.(iii) above, you will have sixty (60) days from the date of notice of cancellation to remedy each breach and each failure that is a ground for cancellation, but only as to each and every breach and failure that are capable of being remedied. If your remedial efforts are completed within such sixty (60) day period and are satisfactory to us, we will rescind such Notice of Cancellation with a written confirmation to the **named insured**.

## 6. Legal Action Against Us

No person or organisation has a right under this Policy:

- a. To join us as a party or otherwise bring us into a suit asking **damages** from an **insured**; or
- b. To sue us on this Policy unless all of its terms have been fully complied with.

A person or organisation may sue us to recover on an agreed settlement or on a final judgment against an **insured**; but we will not be liable for **damages** that are not payable under the terms of this Policy or that are in excess of the applicable Limit of Liability. An agreed settlement means a settlement and release of liability signed by us, the **insured** and the claimant or the claimant's legal representative.

## 7. Bankruptcy

The **named insured's** bankruptcy or insolvency will not relieve us of our obligations under this Policy.

## 8. Governing Law And Disputes

This Policy is governed by and shall be construed in accordance with the law of New Zealand.

The Underwriters accepting this Insurance agree that:

- (i) if a dispute arises under this Insurance, this Insurance will be subject to New Zealand law and practice and the Underwriters will submit to the jurisdiction of any competent Court in New Zealand;
- (ii) any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's General Representative in New Zealand  
Level 29  
Plimmer Tower  
2-6 Gilmer Terrace



Wellington 6011  
New Zealand

who has authority to accept service on the Underwriters' behalf;

(iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

## 9. Severability

If any material provision or clause of this Policy is declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, that provision will immediately become null and void, leaving the remainder of this Policy in full force and effect.

Except with respect to the Limits of Liability and the excess amounts, SECTION 3 – EXCLUSIONS, paragraph 11, Insured Verses Insured, and any rights or duties specifically assigned in this Policy to the **named insured**, this insurance applies:

- a. as if each **named insured** were the only **named insured**; and
- b. separately to each **insured** against whom a **claim** is made.

Any misrepresentation, act or omission that is in violation of a term, duty or condition under this Policy by one **insured** shall not prejudice another **insured** under this Policy. This condition shall not apply to an **insured** who is a parent, subsidiary or affiliate of the **insured** which committed the misrepresentation, act or omission referenced above.

## 10. Sole Agent

If there is more than one **insured** named in this Policy, the first **named insured** shall act on behalf of all **insureds** for all purposes, including but not limited to the payment or return of premium, payment of any applicable Excess, receipt and acceptance of any endorsement issued to form a part of this Policy, complying with all applicable **claims** provisions, giving and receiving notice of cancellation or non renewal, reimbursement to us of any Excess advanced and the exercise of the rights provided in the Extended Reporting Period or Subrogation provisions of this Policy.

## 11. Other Insurance

If there is other valid and collectible insurance, our obligations are as follows:

- a. With regard to SECTION 1 – INSURING AGREEMENTS, paragraph 1, Professional Liability, this insurance is excess over any other valid and collectible insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise;
- b. This insurance is excess over any other valid and collectible insurance under a project specific insurance policy, contractor controlled insurance program, owner controlled insurance program, consolidated (wrap-up) insurance program or any other similar insurance or program, whether such other insurance or program is stated to be primary, contributory, excess, contingent or otherwise.
- c. Where other valid and collectible insurance is available and is also primary, our obligation to the **insured** is as follows:
  - i. If other primary insurance permits contribution by equal shares, we will also follow this method. Under this method, each insurer contributes equal amounts until it has paid the applicable Limit of Liability or none of the loss remains, whichever comes first; or
  - ii. If any other insurance does not permit contribution by equal shares, we will contribute pro-rata by limits. Under this method, each Insurer's share is based on the ratio of its applicable Limit of Liability to the total applicable Limit of Liability of all primary insurers.
- d. With regard to **restoration costs**, this insurance is excess over any other valid and collectible insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

## 12. Multiple Claims

Two or more **claims** arising out of a single act, error, omission, incident or **pollution incident**, or arising out of a series of acts, errors, omissions or incidents related to each other, will be considered a single **claim** subject to the respective single Each Loss Limit of Liability and one Excess, and will not operate to increase our Limits of Liability. All such **claims**, whenever made, will be considered first made during the **policy period** of the earliest **claim** was first made.

## 13. Extended Reporting Period for SECTION 1 – INSURING AGREEMENTS, Paragraph 1.a., Contractor Professional Liability

The **named insured** shall be entitled to an Automatic Extended Reporting Period, and (with certain exceptions as described in Paragraph b. of this section) be entitled to purchase an Optional Extended Reporting Period for SECTION 1 – INSURING AGREEMENTS, paragraph 1, Professional Liability, upon termination of coverage as defined in paragraph 13.b.(iii). Neither the Automatic nor the Optional Extended Reporting Period shall reinstate or increase any of the limits of liability of this Policy.

### a. Automatic Extended Reporting Period

Provided that the **named insured** has not purchased any other insurance to replace this insurance and the **claim** is otherwise covered hereunder, the **named insured** shall have the right to the following: a period of ninety (90) days following the effective date of such termination of coverage in which to provide written notice to us of claims first made and reported within the Automatic Extended Reporting Period. A **claim** first made and reported within the Automatic Extended Reporting Period will be deemed to have been made on the last day of the **policy period**, provided that the **claim** arises from an actual or alleged act, error or omission in the performance of your **professional services** rendered on or after the professional liability **retroactive date** and prior to the end of the **policy period** and is otherwise covered by this Policy. No part of the Automatic Extended Reporting Period shall apply if the Optional Extended Reporting Period is purchased.

### b. Optional Extended Reporting Period

The **named insured** shall be entitled to purchase an Optional Extended Reporting Period upon termination of coverage as defined herein (except in the event of nonpayment of premium), as follows:

- i. A **claim** first made and reported within the Optional Extended Reporting Period, if purchased in accordance with the provisions contained in paragraph (ii) below, will be deemed to have been made on the last day of the **policy period**, provided that the **claim**



arises from an actual or alleged act, error or omission in the performance of your **professional services** rendered on or after the professional liability **retroactive date** and prior to the end of the **policy period** and is otherwise covered by this Policy; and

- ii. We shall issue an endorsement providing an Optional Extended Reporting Period of up to thirty-six (36) months from termination of coverage hereunder, provided that the **named insured**:
  - a. Makes a written request for such endorsement which we receive within thirty (30) days after termination of coverage as defined herein; and Pays the additional premium when due. If that additional premium is paid when due, we may choose not to cancel the Extended Reporting Period, provided that all other terms and conditions of the Policy are met, such determination to be made at our sole discretion.
- iii. Termination of coverage occurs at the time of cancellation or non renewal of this Policy by the **named insured** or by us.
- iv. The Optional Extended Reporting Period is available to the **named insured** for not more than two hundred (200) percent of the full Policy premium stated in the Schedule.

#### 14. Currency

All reimbursement shall be made in New Zealand currency at the rate of exchange prevailing on:

- a. The date of judgment if judgment is rendered; or
- b. The date of settlement if settlement is agreed upon with our written consent; or
- c. The date **defence costs** are paid.

#### 15. Schedule and Representations

By acceptance of this Policy, you agree that the statements and information contained in the Application or Questionnaire, or both, and other supplemental materials submitted to us are:

- a. true and correct;
- b. such statements and information are material to our underwriting of this Policy; and
- c. that this Policy has been issued by us in reliance upon the truth and correctness of such statements and information.

#### 16. Duties In The Event Of Claim Or Pollution Incident

##### a. Notice Of Possible Claim

1. If during the **policy period**, the **insured** becomes aware of an act, error or omission in **professional services** or **pollution incident** which may be expected to give rise to a **claim** (hereafter referred to as a "**possible claim**") under the Policy, the **insured** must provide written notice to us during the **policy period** containing all the information listed under paragraph 16.a.(2) below. Any **possible claim** that subsequently becomes a **claim** shall be deemed to have been first made and reported during the **policy period** of this Policy. Such **claim** shall be subject to the terms, conditions and limits of coverage of the Policy under which the possible **claim** was reported.
2. It is a condition precedent to the rights afforded to the **insured** under this Condition 16 and any possible coverage afforded by this Policy that such written notice under 16.a.(1), directly above contain all of the following information:
  - a. The circumstances and date of the actual or alleged errors or omissions in **professional services** and the specific nature, date and extent of any injury or **professional damages** which are the subject of the possible claim;
  - b. The date and details of the **pollution incident** and related services or work that may have caused such condition;
  - c. Copies of any contract executed by the **insured** that is related to such **possible claim**;
  - d. The circumstances by which the **insured** first became aware of the **possible claim**.

##### b. Claim For Professional Damages

You must see to it that we are notified in writing as soon as practicable within the **policy period** or extended reporting period when you become aware of an act, error or omission which may be expected to give rise to a **claim** for **professional damages**. To the extent possible, notice should include:

1. The time, place and explanation of the act, error or omission including how you first became aware of the act, error or omission; and
2. The names and addresses of any injured persons and witnesses and **claim** for
3. **professional damages** which have or may result from such act, error or omission; and
4. Any and all investigative or engineering reports, data or information about the act, error or omission, or **claim** for **professional damages**; and copies of any relevant contracts between you and your **client** for **professional services**.

The **insured** shall take reasonable measures to protect their interests. We shall not be liable for **professional damages** or any other coverage afforded under this Policy admitted by the **insured** without our prior written consent.

##### c. Pollution Incident Or Claim For Damages

You must see to it that we are notified in writing as soon as practicable of **discovery** of a **pollution incident** which may result in a **claim**, or receipt of a **claim**. To the extent possible, notice should include:

1. How, when and where the **pollution incident** took place; and
2. The names and addresses of any injured persons and witnesses; and
3. The nature and **location** of any injury or **damages** arising out of the **pollution incident**.

The **insured** shall take reasonable measures to protect their interests. We shall not be liable for **damages** or any other coverage afforded under this Policy admitted by the **insured** without our prior written consent. Nor shall we be liable for any **defence costs** incurred in respect of such a **claim**.



The **insured** shall have the right and duty to retain an **environmental professional**, subject to our consent, to perform the investigation or remediation of any **pollution incident** covered by this insurance after **discovery** or you are notified of the existence of such **pollution incident**. We have the right, but not the duty, to review and approve all aspects of any such investigation or clean-up. Except for **emergency clean-up costs**, any costs incurred without our consent will not be covered under this Policy or credited against the Excess.

#### d. Cooperation

You and any other involved **insured** must:

1. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **claim** for **professional damages** or suit; and
2. Authorise us to obtain records and other information; and
3. Cooperate with us in the investigation or settlement of the **claim** for **professional damages** or defence against the suit; and
4. Assist us, upon our request, in the enforcement of any right against any person or organisation which may be liable to the **insured** because of injury or **damages** to which this Policy may also apply; and
5. Take reasonable measures to protect their interests.

If we are prohibited under applicable law from investigating, defending or settling any such **claim** or suit, the **insured** shall, under our supervision, arrange for such investigation and defence thereof as is reasonably necessary, and subject to our prior authorisation, shall effect such settlement thereof.

#### e. Voluntary Payment

No **insured** will, except at that **insured's** own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our prior written consent.

If we are prohibited under applicable law from investigating, defending or settling any such **claim** or suit, the **insured** shall, under our supervision, arrange for such investigation and defence thereof as is reasonably necessary, and subject to our prior authorisation, shall effect such settlement thereof.

#### f. Clean-Up Costs

When any **insured** becomes obligated to pay **clean-up costs** to which this Policy applies, the **insured** must:

- a. Attempt to minimise and mitigate such costs as reasonably and necessary; and
- b. Obtain our prior written approval for any costs, charges or expenses incurred by the **insured** for materials supplied or services performed by the **insured**; and
  1. Submit, for our approval, all proposed work prior to submittal to any regulatory agency; and
  2. Submit, for our approval, all bids and contracts for **clean-up costs** prior to execution or issuance; and
  3. Forward progress submittals regarding **clean-up costs** at reasonable intervals and always prior to submittal to any regulatory agency that is authorised to review and approve such submittals.

We have the right, but not the duty, to review and approve all aspects of any such investigation or clean-up costs. In addition, we shall have the right, but not the duty, to assume direct control of such **clean-up costs**, including investigation or remediation of such **pollution incident**, on behalf of the insured. Any **clean-up costs** incurred by us shall be applied against the applicable Excess and applicable Limit of Liability shown in the Schedule of this Policy.

#### g. Emergency Clean-up Costs

- a. In the event of **emergency clean-up costs**, the **insured** may select an **environmental professional** without our prior consent. Except for **emergency clean-up costs**, any costs incurred without our consent will not be covered under this Policy or credited against the Excess.
- b. As a condition precedent for coverage of **emergency clean-up costs** under this Policy, we must be notified by the **insured** as soon as practicable of such **emergency clean-up costs**. When **emergency clean-up costs** have been incurred, the **insured** shall forward to us within seven (7) consecutive days of the commencement of the **pollution incident** for which the **emergency clean-up costs** have been incurred all information including but not limited to: the cause and **location** of the **pollution incident**, technical reports, laboratory data, field notes, expert reports, investigations, data collected, invoices, regulatory correspondence or any other documents relating to such **emergency clean-up costs**. We retain the right to determine which **emergency clean-up costs** are deemed reasonable and necessary.

## 17. Sanctions

We shall not:

- a. be required to provide any cover; or
- b. be liable to pay any claim or provide any benefit,

under this Policy to the extent that doing so would expose us to any legally enforceable sanction, prohibition, restriction, measure, ban or imposition under the laws or regulations of New Zealand, Australia, the United Kingdom, the European Union, the United States of America and/or the United Nations.

## 18. Policy Territory

Unless otherwise specified in the Schedule, this Policy shall only apply to a **claim** arising out of your operations or services covered under this Policy and conducted in New Zealand and provided the **claim** is first brought in New Zealand.



## 19. GST

Where the **insured** is liable to pay tax under section 5 (13) of the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the section or Act) upon receiving any indemnity payment under this Policy. The indemnity under this SECTION 5 – CONDITIONS, paragraph 19, GST is payable by us in addition to the Limit of Liability and any Sublimit of Liability set out in the Schedule.

## 20. Complaints Procedure

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Delta Insurance New Zealand Limited in the first instance:

Complaints officer  
Delta Insurance New Zealand Limited  
complaints@deltainsurance.co.nz  
Auckland +64 9 300 3079  
Level 22 48 Shortland Street  
Auckland Central  
Auckland 1010  
PO Box 106 276  
Auckland 1143

We will acknowledge receipt of your complaint within 5 business days and do our utmost to resolve the complaint to your satisfaction within 10 business days, unless we require further information in which case, we will agree an alternate time frame with you.

If we cannot resolve your complaint to your satisfaction, you can escalate the matter to Lloyd's General Representative in New Zealand:

Lloyd's General Representative in New Zealand  
Email: IDRNewZealand@lloyds.com  
Telephone: +64 4 472 7582  
Post: PO Box 5639  
Wellington  
New Zealand

Following receipt of your complaint, you will be advised whether your dispute will be handled by the Complaints team at Lloyd's Australia or the Lloyd's Complaints team in the UK, or what other avenues are available to you.

A final decision will be provided to you within two months of the date on which you first made the complaint unless certain exceptions apply

If your complaint is not resolved in a manner satisfactory to you or we do not resolve your complaint within two months of originally receiving it, you may refer the matter to the Insurance and Financial Services Ombudsman (IFSO Scheme). IFSO Scheme can be contacted as follows:

Telephone: 0800 888 202 or +64 4 499 7612  
Email: info@ifso.nz or via their website www.ifso.nz .  
Post: PO Box 10-845 Wellington New Zealand

Your complaint must be referred to IFSO Scheme within 3 months of the final decision, unless IFSO Scheme considers special circumstances apply. If your complaint is not eligible for consideration by IFSO Scheme, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice.

You can also access any other external dispute resolution or other options that may be available to you.

## Section 6:

### Definitions

1. **Bodily injury** means bodily injury, physical injury, sickness, building related illness, disease, including death resulting therefore or mental anguish, emotional distress or shock sustained by any person and associated medical and environmental monitoring for such person.
2. **Claim** means demand, notice or assertion of a legal right seeking a remedy or alleging liability or responsibility on the part of the **insured**.
3. **Client** means the individual or entity who hires the **named insured** to perform **your work**.
4. **Clean-up costs** means reasonable and necessary expenses and **restoration costs**, resulting from **environmental damage** incurred to investigate, abate, contain, treat, remove, remediate, monitor, or dispose of soil, surface water, groundwater or other contaminated media.
5. **Completed operations** means **your work** that has been completed. **Your work** is deemed complete at the earliest of the following times:
  - a. **Your work** to be performed under a contract is completed; or
  - b. **Your work** to be performed at a **project site** has been completed; or
  - c. When a portion of **your work** has been put to its intended use.

**Completed operations** do not include **your work** that has been abandoned.



- 6. Conveyance** means only motor vehicle, trailer or semi-trailer, rolling stock, watercraft or aircraft operated by you or a third-party carrier, provided you or such third-party carrier are properly permitted and licensed to transport such goods, materials, product or waste. **Conveyance** does not include pipelines.
- 7. Damages** means:
- a.** Monetary judgment, awards or settlement of compensatory damages for **bodily injury, property damage, environmental damage or clean-up costs**;
  - b. Clean-up costs** including **emergency clean-up costs**;
  - c.** Punitive, exemplary or multiplied damages for which the **insured** is legally liable, but only where insurance coverage for such fines and penalties is allowable by law;
  - d.** Civil fines and penalties assessed against a client for which the **named insured** is legally liable, but only where insurance coverage for such fines and penalties is allowable by law;
  - e.** Civil fines, penalties, assessed against the **insured**, but only where insurance coverage for such fines and penalties is allowable by law; and
  - f. Restoration costs.**
- Damages does not include:
- 1.** Injunctive or equitable relief;
  - 2.** The return of fees or charges for services rendered or
  - 3. Defence costs.**
- 8. Defence costs** means:
- a.** Reasonable legal fees, costs and expenses incurred by an **insured** in the investigation, defence, settlement or appeal of a **claim** and approved in writing by us, prior to the retention of such legal representation; and
  - b.** Reasonable fees, costs and expenses incurred by the **insured** at our request to assist us to investigate a **claim**.
- For the avoidance of doubt **defence costs** does not include:
- 1.** Legal fees, costs and expenses of legal representation unless approved in writing by us, prior to the retention of such legal representation; or
  - 2.** Salary charges of your employees; or
  - 3. Emergency clean-up costs**; or
  - 4. Mitigation expenses.**
- 9. Discovery** means when an **insured** first has knowledge of a **pollution incident**.
- 10. Emergency clean-up costs** means **clean-up costs** incurred by the **named insured** in response to a **pollution incident** that:
- a.** Presents an imminent and substantial threat to human health or the environment, or both; or
  - b.** Requires an immediate response in order to mitigate or reduce potential **damages**.
- You must see to it that we are notified as soon as practicable of a **pollution incident** which may result in or required emergency clean-up costs under this Policy. When emergency clean-up costs have been incurred, the **named insured** shall forward to us within seven (7) days of the commencement of the **pollution incident** for which the emergency clean-up costs have been incurred all information including but not limited to: the cause and location of the **pollution incident**, technical reports, laboratory data, field notes, expert reports, investigations, data collected, invoices, regulatory correspondence or any other documents relating to such emergency clean-up costs. Such expenses must be deemed reasonable and necessary by us.
- 11. Environmental damage** means physical damage to soil, any water course or body of water including groundwater, atmosphere including indoor air, plant or animal life, or to buildings or other structures caused by a **pollution incident** and resulting in remediation activities. **Environmental damage** does not include **property damage**.
- 12. Environmental law** means any federal, state, territory, or other local laws, statutes, ordinances, regulations, rules, codes, policies, guidance, court or administrative orders or judgments and directives and all amendments thereto relating to pollution or protection of the environment, health, safety or natural resources, including state voluntary clean-up or risk-based corrective action guidance, if applicable.
- 13. Environmental professional** means an individual or entity approved by us in writing that is licensed and certified to provide environmental services. We shall consult with you in conjunction with the selection of the **environmental professional**.
- 14. Fungi** means any of numerous eukaryotic organisms of the kingdom fungi, which lack chlorophyll and vascular tissue and range in form from a single cell to a body mass of branched filamentous hyphae that produce specialised fruiting bodies.
- 15. Insured(s)** means:
- a.** The **named insured**;
  - b.** Any present or former partner, director, officer, manager, member or employee, including a **leased worker** and a **temporary worker**, of the **named insured** solely while acting on behalf of the **named insured**;
  - c.** Any **insured** with regard to its participation in a legal entity including a joint venture, but solely for the **insured's** legal liability for its performance of **professional services** or **your work** under the respective legal entity or joint venture. **Insured** does not include the legal entity itself, the joint venture itself or any other entity that is part of either the legal entity or joint venture, except as respects liability assumed by the **insured** for a **pollution incident**;



- d. With regard to SECTION 1 – INSURING AGREEMENTS, paragraph 3, Contractors Pollution Liability only, any **client** of the **named insured** that the **named insured** has agreed by written contract to name as an additional insured on this Policy, but only with respect to covered damages caused by **your work**;
  - e. Any entity which is specifically referenced as an **insured** by endorsement;
  - f. The estate, heirs, executors, administrators or legal representatives of an **insured** in the event of such **insured's** death, incapacity or bankruptcy but only to the extent such **insured** would otherwise be provided coverage under this Policy;
  - g. Any entity newly formed or acquired by the **named insured** during the **policy period** in which the **named insured** has more than fifty (50) percent legal or beneficial interest. However:
    - 1. Coverage will only be provided for **claims** arising out **professional services** or **your work** performed on or after the date of formation or acquisition; and
    - 2. This coverage will expire within ninety (90) days of such formation or acquisition or the end of the **policy period**, whichever is earlier, unless the **named insured** provides written details of such newly formed or acquired entity to us and pays the additional premium requested by us, if any.
- 16. Insured contract** means that part of any written contract or written agreement under which the **named insured** assumes the tort liability of another party to pay compensatory **damages** for **bodily injury, property damage, environmental damage or emergency response expense**, to a third person or organisation, provided that such written contract or written agreement is signed by the **named insured** prior to the **bodily injury, property damage, environmental damage or emergency response expense**. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- 17. Leased worker** means a person leased to you by a labour leasing firm under an agreement between you and the labour leasing firm, to perform duties related to the conduct of your business. **Leased worker** does not include a **temporary worker**.
- 18. Location** means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
- 19. Microbial matter** means **fungi, mould, bacteria** or viruses which reproduce through the splitting of cells, the release of spores or by any other means, whether or not such **microbial matter** is living.
- 20. Misdelivery** means the delivery of any liquid product into a wrong receptacle or to a wrong address or the erroneous delivery of one liquid product for another.
- 21. Mitigation expense** means the cost and expense incurred by the **insured** in connection with an act, error or omission in the performance of or failure to perform **professional services**:
- a. That is deemed by us, to be reasonable and necessary to prevent **professional damages**; and
  - b. That reduce or avoids the **insured's** potential liability to third parties for **professional damages** covered under SECTION 1 – INSURING AGREEMENTS, 1.a. Contractor Professional Liability; and
  - c. That includes, but is not limited to, third-party consultation regarding disputed design flaws, additional reviews and inspections, forensic analysis of designs, and any other costs to remedy the deficiency; and
  - d. Which in the sole discretion of us will prevent a future **claim**.
- Mitigation expense** does not include: overhead, mark-up, profit or cost or expense incurred by the **insured** for materials supplied or services performed by the **insured**, unless such costs, charges or expenses are incurred with our prior written consent.
- 22. Mould** means any of the various **fungi** responsible for the disintegration of organic or inorganic matter, or the growth of such **fungi**.
- 23. Named insured** means the person or entity named in Item 1A of the **Schedule** and is responsible for acting on behalf of all other **insureds**, if any, under this **Policy** as described SECTION 5 – CONDITIONS, paragraph 10, Sole Agent.
- 24. Natural resource damage** means physical injury to or destruction of, including the resulting loss of value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the government agency or department where the **pollution incident** occurred or where the **pollution incident** migrated to.
- 25. Non-owned site** means any site or **location** used by the **insured** for the purpose of treatment, storage, disposal, recycling or processing of waste or material provided that:
- a. The site or **location** is not owned, leased, managed or operated by the **insured**; and
  - b. The waste or material was generated from **your work** during the **policy period**. **Non-owned site** does not include:
    - 1. Any site or **location** which is not licensed by the appropriate state or federal authority to perform storage, disposal, processing or treatment of waste from your operations or **your work** in compliance with **environmental law**; or
    - 2. Any site or **location** or any part thereof that has been subject to a consent order or corrective action under **environmental law** prior to waste from your operations or **your work** being legally consigned for delivery or delivered for storage, disposal, processing or treatment.
- 26. Occurrence** means an event or circumstance, including the continuous or repeated exposure to substantially the same general conditions, that precipitates and results in a **pollution incident**.
- 27. Policy period** means the period of time as shown in Item 2 of the **Schedule**, however, if the **Policy** is cancelled in accordance with SECTION 5 – CONDITIONS, paragraph 5, Cancellation, of this **Policy**, the **policy period** ends on the effective date of such cancellation.
- 28. Pollution incident** means:
- a. The discharge, emission, seepage, migration, dispersal, release or escape of any **pollutants** into or upon land, or any structure on land, the atmosphere including indoor air or any watercourse or body of water including groundwater, provided such conditions are not naturally present in the environment in the concentration or amounts discovered;
  - b. The presence of **microbial matter** on, at or within buildings or structures;



- c. Misdelivery;**
- d.** The presence of **pollutants** that have been illegally disposed of or abandoned at **your insured location** or at a **project site** by parties other than the **insured** provided such disposal or abandonment are unknown to the **insured**.
- 29. Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including: smoke, vapors, soot, fumes, acids, alkalis, chemicals, hazardous substances, petroleum hydrocarbons; low level radioactive waste and material; **microbial matter**; legionella pneumophila; medical, infectious and pathological waste; waste materials; and electromagnetic fields.
- 30. Professional damages** means:
- a.** Monetary judgment, awards or settlement of compensatory **damages**;
  - b.** Punitive, exemplary or multiplied **damages** for which the **insured** is legally liable but only where insurance coverage for such fines and penalties is allowable by law;
  - c.** Civil fines, penalties, assessed against a third party other than the **insured** for which the **insured** is legally liable but only where insurance coverage for such fines and penalties is allowable by law; and
  - d.** Civil fines and penalties assessed against the **insured** but only where insurance coverage for such fines and penalties is allowable by law.
- Professional damages** does not include:
- 1.** Injunctive or equitable relief;
  - 2.** The return of fees or charges for services rendered;
  - 3.** Costs and expenses incurred by the **insured** to redo, change, supplement or fix the **insured's** work or services, including redesign; or;
  - 4.** Any of the **insured's** overhead, mark-up or profit.
- 31. Professional services** means those services and activities shown in Item 1C of the Schedule or specifically defined by endorsement that are rendered by or on behalf of the **named insured**.
- a. Professional services** include ordinary technology services provided for others in the course of rendering **Professional services** described above. Such technology services include the design, development, programming, analysis, training, use, hosting, management, support and maintenance of any building information management, software, database, internet service, or website.
- 32. Project site** means:
- a.** The **location** where **your work** is performed; or
  - b.** A site that is rented or leased by you or loaned to you and utilised in direct support of **your work** for a specific contract or project.
- Project site** does not include **your insured location**.
- 33. Property damage** means:
- a.** Physical injury to or destruction of tangible property, other than the **insured's**, including the resulting loss of use and diminished value of that property;
  - b.** Loss of use or diminished value of tangible property of parties, other than the **insured's**, that has not been physically injured or destroyed or
  - c. Natural resource damage.**
- Property damage** does not include **clean-up costs** or **environmental damage**.
- For the purpose of this insurance, electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 34. Responsible manager** means any of your officers, directors, partners or managers, your manager or supervisor responsible for health and safety or environmental affairs, control or compliance or any other employee authorised by you to give or receive notice of an **occurrence** or **claim**.
- 35. Restoration costs** means reasonable and necessary expenses incurred by an **insured**, with our written consent, to repair or replace damaged real or personal property to substantially the same condition it was in prior to being damaged because of **clean-up costs**. If repair or replacement results in kind or quality exceeding that of the real or personal property before it was damaged, whether at your option or not, we will not pay for the amount of the betterment.
- 36. Retroactive date** means the applicable coverage section date set forth in Item 6 of the Schedule and from which coverage as provided herein first begins.
- 37. Temporary worker** means a person who is furnished to you to substitute for a permanent worker on leave or to meet seasonal or short-term workload conditions.
- 38. Transportation** means the movement, via a **conveyance**, of goods, materials, product, or waste which is a result of work or operations insured under this Policy. **Transportation** includes the movement from the point of origin until the final destination and any loading and unloading of such goods, materials, product or waste into, onto or from such **conveyance**.
- 39. Underground storage tank** means any tank that has at least ten (10) percent of its volume below ground at inception of the **policy period**, or installed thereafter including associated underground piping and apparatus connected to the tank.
- 40. Your work** means:
- a.** Contracting services, work or operations as stated in the application or by endorsement performed by the **insured** or on behalf of the **insured** at a **project site**; and
  - b.** Goods, materials, products or equipment furnished in connection with such work or operations.



**41. Your insured location** means any real property or **location** owned, leased or rented by the **named insured** and disclosed in the Application or Questionnaire, or both, or other information submitted to us that forms the basis of coverage, or a **location** approved by us and listed in the **Your Insured location** Schedule endorsed on to this Policy. **Your insured location** does not include **project site**.





**Embrace  
Change.**

**Delta Insurance New Zealand Limited**

Level 22 48 Shortland Street

Auckland Central

Auckland 1010

