



Professional Indemnity Insurance Policy

Important Notice

Please note that this is a Claims Made policy. Accordingly, **Liberty** will only cover the **Insured** in respect of **Claims** which are first made against the **Insured** during the **Policy Period** and reported to **Liberty** during the **Policy Period**. The **Insured** should carefully read all of this **Policy**, including all definitions and, in particular, the exclusions, to ascertain the precise scope of cover afforded by this **Policy**. The **Insured** is advised to consult its insurance agent or broker to ensure a clear understanding of the **Insured's** rights and obligations under this **Policy**.

PI Policy

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Policy Wording

In consideration of payment of the **Premium** by the **Insured**, and subject to all the terms, conditions and exclusions, including all definitions, of this **Policy**, **Liberty** agrees as follows:

1. Insuring Clauses

1.1 Professional Liability

Liberty will pay on behalf of the **Insured** the **Loss** which the **Insured** becomes legally liable to pay as a result of a **Claim** alleging an act, error or omission of the **Insured** in the provision of **Professional Services**.

1.2 Defence Costs

Liberty will also pay on behalf of the **Insured** the **Defence Costs** incurred in respect of any **Claim** covered under Insuring Clause 1.1 or under any applicable extension.

Defence Costs are subject to the **Excess** and are included within the **Limit of Liability** specified in the **Schedule**.

2. Extensions

Subject to all the terms, conditions, exclusions, including all definitions, of this **Policy**, **Liberty** further agrees to extend cover provided under this **Policy** as follows:

2.1 Loss of Documents

Liberty will pay on behalf of the **Insured** the costs the **Insured** incurs solely in respect of its own liability and with the prior written consent of **Liberty** for replacing or restoring any **Documents** which are destroyed, damaged or, after diligent search, cannot be found.

Such destruction, damage or loss must result from the provision of **Professional Services** by the **Insured** and be discovered for the first time during the **Policy Period** and reported to **Liberty** during the **Policy Period**.

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

- (a) wear and tear or gradual deterioration;
- (b) any computer virus; or
- (c) an act, error or omission committed or allegedly committed by any person who is not a current director, partner, principal or employee of the **Insured** at the time the destruction, damage or loss of such **Documents** is first discovered.

The maximum amount payable by **Liberty** under this extension is subject to the **Sub-Limit of Liability** specified in the **Schedule**.

2.2 Defamation

Liberty will pay on behalf of the **Insured** the **Loss** which the **Insured** becomes legally liable to pay as a result of a **Claim** alleging any libel, slander or defamation or injurious falsehood by the **Insured** in the provision of **Professional Services**. No cover is provided under this extension for any **Claim** resulting from any intentional libel, slander or defamation.

2.3 Trade Practices Act

Liberty will pay on behalf of the **Insured** the **Loss** which the **Insured** becomes legally liable to pay as a result of a **Claim** alleging the **Insured** has engaged in conduct that is misleading or deceptive or likely to mislead or deceive under the terms of the Trade Practices Act 1974 (Cth) or any Fair Trading legislation of any State or Territory of Australia in the provision of **Professional Services**.

2.4 Joint Ventures

Liberty will pay on behalf of the **Insured** the **Loss** which the **Insured** becomes legally liable to pay as a result of a **Claim** alleging an act, error or omission of the **Insured** in the provision of **Professional Services** in the **Insured's** capacity as a joint venture partner but only to the extent of the **Insured's** own liability as a joint venture partner.

Liberty will only pay **Defence Costs** incurred by the **Insured** in respect of such **Claim** in respect of the **Insured's** own liability as a joint venture partner.

2.5 Vicarious Liability

Liberty will pay on behalf of the **Insured** the **Loss** which the **Insured** becomes legally liable to pay as a result of a **Claim** alleging an act, error or omission by an **Agent** of the **Insured** in the provision of **Professional Services**.

Liberty will not be liable under this extension for the **Agent's** own liability, nor will **Liberty** be prevented from seeking recovery from any **Agent**.

2.6 Inquiries

Liberty will pay on behalf of the **Insured** the **Inquiry Costs** which the **Insured** incurs on its own behalf and with the prior written consent of **Liberty** in preparing for and attending an **Inquiry** provided that the notice requiring the **Insured** to attend the **Inquiry** is first served upon the **Insured** during the **Policy Period** and reported to **Liberty** during the **Policy Period**.

The maximum amount payable by **Liberty** under this extension is subject to the **Sub-Limit of Liability** specified in the **Schedule**.

2.7 Continuous Cover

If the **Insured** was aware of any facts that might give rise to a **Claim** prior to the **Policy Period** and had not notified **Liberty** of such facts prior to the commencement of the **Policy Period**, then Exclusion 3.8(b) in respect of "Prior Matters" will not apply to the notification of a **Claim** resulting from such facts, provided that:

- (a) the failure to notify such facts was not a result of fraudulent misrepresentation or fraudulent non-disclosure by the **Insured**; and
- (b) the **Insured** has been insured continuously under a primary professional indemnity policy with **Liberty** and was so insured by **Liberty** at the time the **Insured** first became aware of such facts; but
- (c) the limit of liability, sub-limits of liability and excesses under the policy in force when the **Insured** first became aware of such facts shall apply; and
- (d) **Liberty** will reduce its liability to the extent of any prejudice suffered as a result of the **Insured's** failure to notify such facts giving rise to a **Claim** prior to the **Policy Period**.

3. Exclusions

Liberty will not cover the **Insured** for any **Loss, Defence Costs** or any other amounts insured under this **Policy** which arise out of or are in any way connected with:

3.1 Contractual Liability & Commercial Risks

- (a) a contract the **Insured** has entered into where the **Insured** has assumed liability unless such liability would have attached in the absence of such contract;
- (b) the insolvency, receivership, administration, bankruptcy or liquidation of the **Insured** or any party involved in any project;
- (c) the failure to provide, effect, or maintain any bond, surety or insurance;
- (d) the provision of, or failure to provide, advice in respect of any bond, surety or insurance.
- (e) any trading debt incurred by the **Insured**;
- (f) the refund of professional fees; or
- (g) any guarantee given by the **Insured** for a debt.

3.2 Personal Injury

death, bodily or mental injury, sickness or disease, emotional distress or mental anguish of any person unless it results directly from an act, error or omission of the **Insured** in the provision of **Professional Services**.

3.3 Employer's Liability

death, bodily or mental injury, sickness or disease, emotional distress or mental anguish of any person who is or was or could be deemed to be an:

- (a) employee of the **Insured**;
- (b) **Agent**; or
- (c) employee or subcontractor of any **Agent** who could in turn be deemed to be an employee of the **Insured**.

This exclusion applies notwithstanding Exclusion 3.2 in respect of "Personal Injury".

3.4 Property Damage

loss, damage or destruction of any real or personal property, including any consequential loss flowing from such loss, damage or destruction unless it results directly from an act, error or omission of the **Insured** in the provision of **Professional Services**.

3.5 Intellectual Property Rights

any actual or alleged infringement of **Intellectual Property Rights** unless the infringement is unintentional and results directly from an act, error or omission of the **Insured** in the provision of **Professional Services**.

3.6 Fraud & Dishonesty

any actual or alleged fraudulent, criminal, wilfully reckless, malicious or dishonest act, error or omission committed or allegedly committed by the **Insured** or its **Agent**.

3.7 Retroactive Date

any act, error or omission committed or allegedly committed prior to the **Retroactive Date** specified in the **Schedule**.

3.8 Prior Matters

- (a) any **Claim** made, threatened or intimated against the **Insured** prior to the commencement of the **Policy Period**;
- (b) any facts that the **Insured** was aware of before the commencement of the **Policy Period** that might give rise to a **Claim** against the **Insured**;
- (c) any facts that might give rise to a **Claim** which have been reported, or which can be or could have been reported, to an insurer under any insurance policy entered into before the commencement of the **Policy Period**;
- (d) any facts that might give rise to a **Claim** which have been disclosed to any insurer in any proposal for insurance made before the commencement of the **Policy Period**; or
- (e) any facts that might give rise to a **Claim** which have been disclosed to **Liberty** in the **Proposal**.

3.9 Related Parties

any **Claim** made by or on behalf of:

- (a) one or more **Insured** against another **Insured**;
- (b) a spouse or partner of an **Insured**, a parent of an **Insured**, a parent of a spouse or partner of an **Insured**, a child of an **Insured** or a sibling of an **Insured**;
- (c) any entity which is owned, controlled or managed by any **Insured**; or
- (d) any parent or subsidiary of any **Insured**.

3.10 Owners & Occupiers Liability

the ownership, management, control or occupation of real property by the **Insured**.

3.11 Aircraft & Watercraft

the operation, ownership, maintenance or use of aircraft or watercraft.

3.12 War

war or military action which includes without limitation the following:

- (a) war, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
- (b) warlike action by 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.

3.13 Terrorism

any actual or threatened act of **Terrorism** or any action taken, or taken in an attempt, to control, prevent or suppress any act of **Terrorism**.

3.14 Radiation & Nuclear

- (a) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or
- (b) any weapon of war employing atomic or nuclear fission or fusion or other like reaction or radioactive force or matter.

3.15 Pollution

the actual or alleged presence, discharge, dispersal, release or escape of any **Pollutant** or the cost of removing, nullifying or cleaning up any **Pollutant**.

3.16 Products & Workmanship

- (a) any defect or alleged defect in any product or good manufactured, supplied, sold, installed, assembled, repaired, erected or maintained by the **Insured** unless it results directly from an act, error or omission of the **Insured** in the provision of **Professional Services**;
- (b) any cost or expense incurred in withdrawing any product or good from sale or recalling any product or good; or
- (c) any construction, assembly, installation or maintenance unless it results directly from an act, error or omission of the **Insured** in the provision of **Professional Services**.

3.17 Licensing Inquiries

any prosecution, inquiry, hearing, commission or other investigation in relation to the **Insured** failing to be properly licensed, registered or accredited to provide **Professional Services** as required by any Act, rule, regulation or industry code of practice.

3.18 Building Contractor Activities

the performance or supervision of construction-related activities either on-site or off-site including temporary works, assembly, installation, maintenance, programming, time flow management, environmental protection, workplace health and safety or industrial relations by the **Insured** or its **Agent**, where such performance or supervision would normally be undertaken by a building contractor.

3.19 Cost Estimates

any estimate of construction or other costs being exceeded.

3.20 Primary Production

the provision of, or failure to provide, any advice, services or goods to any person or entity in respect of any primary production activities including but not limited to the production of any crops or other plants for a commercial purpose.

3.21 Jurisdictional Limitation

- (a) legal proceedings brought outside Australia or any of its territories or protectorates;
- (b) the enforcement of any judgment or award obtained in, or determined pursuant to the laws of any country or jurisdiction outside Australia or any of its territories or protectorates;
- (c) legal proceedings in which the laws of any country or jurisdiction other than Australia or any of its territories or protectorates are applicable even if only to a limited extent.

3.22 Territorial Limitation

any act, error or omission of the **Insured** in the provision of **Professional Services** committed or allegedly committed outside Australia.

In addition, the following exclusions apply:

3.23 Penalties & Punitive Damages

Liberty will not pay for:

- (a) any fines or penalties; nor
- (b) any exemplary, aggravated, multiple or punitive damages.

3.24 Goods & Services Tax

Liberty will not pay any **GST** Imposed or payable in respect of the **Premium** or any payment of insured amounts made under this **Policy**.

4. Claims Conditions

4.1 Notification of Claims & Co-operation

As soon as the **Insured** becomes aware of a **Claim** during the **Policy Period**, the **Insured** must:

- (a) notify **Liberty** in writing of the **Claim**. The notification must be sent to:

The Claims Department
Liberty International Underwriters
Level 27, 'Gateway'
1 Macquarie Place
Sydney, New South Wales, Australia 2000
Tel: 61-2-8298 5800
Fax: 61-2-8298 5887

- (b) give **Liberty** such information and co-operation as it may reasonably require including but not limited to:

- (i) a description of the **Claim**;
- (ii) the nature of the alleged act, error or omission;
- (iii) the nature of the alleged or potential loss;
- (iv) the names of actual or potential claimants; and
- (v) the manner in which the **Insured** first became aware of the **Claim**.

4.2 Defence & Settlement

Liberty may, in its absolute discretion, take over the conduct of any investigation, settlement or defence of any **Claim**.

The **Insured** must:

- (a) take all reasonable steps to avert or minimise any loss that might give rise to a **Claim** under this **Policy**;
- (b) not agree to any waiver or limitation of or delay as to their legal rights of recovery against any other party;
- (c) not admit liability, negotiate any settlement, enter into any settlement agreement or incur any **Defence Costs** without the prior written consent of **Liberty**; and
- (d) give **Liberty** all the information and assistance that **Liberty** requires for the purpose of investigating:
 - (i) the cause and consequences of any **Claim**;
 - (ii) the **Insured's** liability to any party in respect of any **Claim**; and
 - (iii) whether **Liberty** has any liability to the **Insured** under this **Policy** and, if so, the extent of its liability,and for conducting the defence of any **Claim**.

4.3 Other Insurance

If **Loss, Defence Costs** or any other amounts insured under this **Policy** are also potentially insured under any other insurance policy or policies, then the **Insured** must advise **Liberty** at the time of making a claim under this **Policy** and provide **Liberty** with details of the other insurance.

4.4 Excess Insurance

This **Policy** is in excess of any **Additional Insurance** specified in the **Schedule**.

4.5 Allocation Clause

In the event the **Insured** is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this **Policy**, the **Insured** and **Liberty** will use their best efforts to agree upon a fair and proper allocation of **Loss, Defence Costs** or any other amount insured under this **Policy** which relate solely to what is covered under this **Policy**.

In the event that an agreement cannot be reached a Senior Counsel (to be mutually agreed upon by **Liberty** and the **Insured**) shall, as an expert not as an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made his or her determination **Liberty** may, in its absolute discretion, pay such **Loss, Defence Costs** or any other amount insured under this **Policy** as it considers appropriate. The cost of such Senior Counsel's determination shall be deemed to be part of **Defence Costs**.

4.6 Insured's Right to Contest a Claim

Liberty shall not require the **Insured**, or be required itself, to contest any **Claim** unless a Senior Counsel (to be mutually agreed upon by **Liberty** and the **Insured**) advises that such **Claim** should be contested. In formulating such advice, Senior Counsel shall take into consideration the economics of the matter (including potential **Loss** and **Defence Costs**) and the prospects of the **Insured** successfully defending the **Claim**. The cost of such Senior Counsel's opinion shall be deemed to be part of **Defence Costs**.

In the event that **Liberty** recommends settlement in respect of any **Claim** and the **Insured** does not agree that such **Claim** should be settled, the **Insured** may elect to contest such **Claim** provided always that the liability of **Liberty** shall not exceed the amount for which the **Claim** could have been settled plus **Defence Costs** incurred with **Liberty's** prior written consent up to the date of such election.

4.7 Subrogation

If **Liberty** grants indemnity under this **Policy** in respect of any **Claim**, then **Liberty** shall be subrogated to all the **Insured's** rights of recovery in respect of such **Claim** whether or not payment has in fact been made and whether or not the **Insured** has been compensated in full for their loss. Each **Insured** must, at its own cost, provide all reasonable assistance to **Liberty** (including, but not limited to giving information, signing documents and giving evidence) to help enforce those rights.

The **Insured** must not do anything that may prejudice **Liberty's** position or its potential or actual rights of recovery against any party. Any amounts recovered by **Liberty** shall be allocated in the following order – recovery costs, uninsured loss, **Limit of Liability** and **Excess**.

5. General Conditions

5.1 Material Change to Risk

The **Insured** must notify **Liberty** in writing within 30 days of any material change to the risk that is the subject of this **Policy**. Such changes include but are not limited to:

- (a) any material change to the **Professional Services** provided by any **Insured**;
- (b) any acquisition of another company or entity, partnership or business by the **Insured** or any merger by the **Insured** with another company or entity, partnership or business;
- (c) the appointment of a trustee or an administrator, receiver or liquidator including provisional liquidator, to any **Insured** or bankruptcy of any **Insured**; or
- (d) cancellation, suspension or imposition of any conditions to the **Insured's** registration with any professional association or licence, relevant to the provision of the **Professional Services**.

5.2 Limit of Liability

The maximum amount payable by **Liberty** under this **Policy** for all **Loss, Defence Costs** and/or other amounts insured under this **Policy** is the **Limit of Liability** specified in the **Schedule**. The **Limit of Liability** is inclusive of any **Defence Costs, Inquiry Costs, Sub-Limits of Liability** and other amounts insured under this **Policy** but does not include costs incurred by **Liberty** in determining whether the **Policy** provides insurance to the **Insured**.

5.3 Excess

Liberty will only pay in respect to each **Loss** (or alleged **Loss**) and associated **Defence Costs** and each claim under the **Policy** for other amounts insured, the amount which is above the **Excess** specified in the **Schedule**. The **Excess** shall be the first amount borne by the **Insured** and shall remain uninsured.

5.4 Governing Law & Exclusive Jurisdiction

This **Policy** is governed by the law in force in New South Wales. All matters arising from or relating to the construction or operation of the provisions of this **Policy** shall be submitted to the exclusive jurisdiction of the courts exercising jurisdiction under the law of New South Wales.

5.5 Policy Interpretation & Construction

The headings in this **Policy** are for descriptive purposes only and do not form part of this **Policy** for the purpose of its construction or operation. Words used in the singular shall include the plural and vice versa. For the meaning of any words in bold refer to the **Schedule** and Section 6 - Definitions.

6. Definitions

In this **Policy**:

- 6.1 Agent** means a natural person or company or other entity who has a contract with a **Named Insured** under which the **Named Insured** engages the natural person or company or other entity to act for or on behalf of the **Named Insured** in the provision of **Professional Services**.
- 6.2 Claim** means any written demand or legal proceedings for compensation first made against the **Insured** during the **Policy Period** and reported to **Liberty** during the **Policy Period** which may result in **Loss, Defence Costs** or any other amounts insured under this **Policy**.

- 6.3 Defence Costs** means costs and expenses incurred by **Liberty**, or by the **Insured** but only with **Liberty's** prior written consent, solely for the benefit of the **Insured** in the investigation, settlement or defence of a **Claim** covered under this **Policy**. **Defence Costs** does not include the **Insured's** salaries, wages, travel or accommodation expenses.
- 6.4 Document** means a document of any nature whether written, printed or reproduced by any method, including computer records or electronic data, in the possession or control of the **Insured** or the property of the **Insured** but does not include **Money**.
- 6.5 GST** means the tax imposed as goods and services tax under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or as amended and any penalty or interest payable in respect of that tax.
- 6.6 Inquiry** means any inquiry or hearing relating to the provision of **Professional Services** by the **Insured** if findings from such inquiry or hearing could lead to a **Claim** being made against the **Insured**, which **Claim** may be covered under this **Policy**.
- 6.7 Inquiry Costs** means legal, assessor's, adjuster's and expert witness costs. **Inquiry Costs** does not include the **Insured's** salaries, wages, travel or accommodation expenses.
- 6.8 Insured** means each of the following:
- (a) the **Named Insured** listed in the **Schedule**;
 - (b) a past, present or future director, partner or principal of the **Named Insured** in the performance of **Professional Services** whilst a director, partner or principal of the **Named Insured**;
 - (c) any past, present or future employee of the **Named Insured** in the performance of **Professional Services** that occurred prior to their last day of employment with the **Named Insured**; and
 - (d) in the event of the death or incapacity of any employee, director, partner or principal of the **Named Insured**, the estate, heirs, legal representatives or assigns of any such employee, director, partner or principal of the **Named Insured**.

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

6.10 Liberty means Liberty International Underwriters which is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605) Incorporated in Massachusetts, U.S.A. (The liability of members is limited).

6.11 Loss means:

- (a) damages or claimant's costs or both payable by the **Insured** pursuant to an award or judgment entered against the **Insured**;
- (b) settlements negotiated by **Liberty** and consented to by the **Insured**; or
- (c) settlements negotiated by the **Insured** but only with the prior written consent of **Liberty**.

Loss does not include amounts uninsurable at law, salaries, wages, travel or accommodation expenses of the **Insured** incurred in assessing, investigating, dealing with or assisting others to deal with the **Claim**.

All **Loss** attributable to one source or originating cause is deemed one **Loss**.

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

6.13 Policy means this policy wording, any endorsements to it, the **Schedule** and the **Proposal**.

6.14 Policy Period means the period of time specified in the **Schedule** unless the **Policy** is cancelled in which event the **Policy Period** will end on the effective date of the cancellation.

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

6.16 Premium means the amount payable by the **Insured** for this **Policy** including any applicable charges advised by **Liberty**.

6.17 Professional Services means one or more of the following horticultural services:

- (a) advice on bushland regeneration and seed collection;
- (b) completion of development application reports;
- (c) the provision of evidence as an expert witness;
- (d) hazard inspections;
- (e) landscape design;
- (f) consulting;
- (g) project management;
- (h) soil assessment reports;
- (i) tree reports; and
- (j) training in respect of (a) to (i) above,

provided such services are performed by or under the direct supervision of:

- (i) an appropriately qualified landscape architect, landscape designer, arborist or horticulturalist; or
- (ii) any other person providing a professional service of a skilful character according to an established discipline,

whether such person is an employee of the **Insured** or working under the control of the **Insured** or its **Agent**.

6.18 Proposal means the proposal form and any other information submitted by the **Insured** in proposing for this insurance.

6.19 Schedule means the schedule attached to this **Policy** and signed by an authorised representative of **Liberty**.

6.20 Terrorism means an act or acts by any person or group of persons or government causing or threatening to cause any harm of any nature for political, religious, ideological, ethnic or similar purpose and/or to intimidate or influence any government or the public or any section of the public.