

Coversure Amusement Leisure and Entertainment Industry Liability Insurance Policy

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Amusement Leisure and Entertainment Liability Policy V6.2025.05



IMPORTANT INFORMATION

This Policy wording is an important document and should be kept in a safe place. You should read this wording and any attachments We provide to You, so that You understand the insurance provided by this Policy. It is important that You:

- a. read all of the Policy to make sure that it gives You the protection You need;
- b. are aware of the limits on the insurance provided and the amounts We will pay You (including any Excess that applies);
- c. are aware of the definitions in the Policy. You will find definitions throughout the Policy.

You must comply with all provisions of this Policy, otherwise We may be entitled to refuse to pay a claim or reduce the amount You are entitled to receive. The Policy is in force for the Period of Insurance set out in Your Schedule or until cancelled.

There are limits on the insurance provided:

- a. some of these will be stated in the Policy itself (these are Our standard Policy limits); and
- b. the remainder will be stated in the Policy Schedule.

In some circumstances the terms and conditions of this Policy may be amended by endorsement. If Your Policy is endorsed You will receive notification of the endorsement. In issuing this Policy to You, We have relied upon the proposal form You have already completed.

YOUR DUTY OF DISCLOSURE

Before You enter into an insurance contract, You have a duty under the Insurance Contracts Act 1984 to tell Us anything that You know, or could reasonably be expected to know, may affect is relevant to Our decision to insure You and on what the terms.

You have this duty until We agree to insure You.

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

INFORMATION YOU DO NOT NEED TO GIVE

You do not have to tell Us anything that:

- a) reduces the risk we insure You for to Us of insuring You; or
- b) is common knowledge; or
- c) We already know or should know as an insurer; or
- d) we waive your duty to tell Us about.

IF YOU DO NOT TELL US SOMETHING

If You do not tell Us anything You are required to, We may cancel Your the contract or reduce the amount We will pay You if You make a Claim, or

If Your failure to tell Us is fraudulent, We may refuse to pay a Claim and treat the contract as if it never existed

CLAIMS MADE AND NOTIFIED BASIS OF COVER

Section 2: Errors and Omissions, Section 3: Professional Indemnity and Section 4: Statutory Liability and Section 4: WorkCover & Criminal Defence Costs are provided (only if a Limit of Indemnity is recorded in the Policy Schedule) on a "**claims made and notified basis**". These Sections only provide indemnity if:

- a. claim is made against You, by some other person, during the Period of Insurance and You notify Us of the Claim during the same Period of Insurance;

AND

- b. the claim which is notified arises out of an occurrence which takes place after the commencement date of the Period of Insurance or after the Retroactive Date stated in the Schedule, whichever is the earlier.

Section 40 (3) of the Insurance Contracts Act 1984 (Cth) applies to this type of Policy of Insurance. That sub-section provides that if You become aware, during the Period of Insurance, of any occurrence or facts which might give rise to a claim against You by some other person, then provided that You notify the insurer of the matter before the Period of Insurance expires, the insurer may not refuse to indemnify You merely because a claim resulting from the matter is not made against You during the Period of Insurance. If You inadvertently or otherwise, do not notify the relevant occurrence or facts to the insurer before the expiry of the Period of Insurance You will not have the benefit of Section 40(3) and the insurer may refuse to pay any subsequent claim, notwithstanding that the occurrence giving rise to it took place during the Period of Insurance.

PRIVACY

Privacy legislation regulates the way private sector organisations can collect, use, keep secure and disclose personal information. We are bound by the Privacy Act 1988 (Cth) and its principles when collecting and handling personal information. We have developed a privacy policy which explains what sort of personal information We hold about You and what We do with it.

How we collect Your personal information

We will only collect personal information from or about You for the purpose of assessing Your application for insurance and administering Your insurance Policy, including any claims You make.

To whom We disclose Your personal information

We may need to disclose personal information to the Lloyds underwriter located overseas, intermediaries, insurance reference bureaus, credit reference agencies, Our advisers and those involved in the claims handling process (including assessors and investigators), for the purposes of assisting Us and them in providing relevant services and products, or for the purpose of litigation. Coversure is like to disclose Your personal information to some of these entities located overseas, including in the following countries: United Kingdom.

By providing Your personal information to Us, You consent to Us making these disclosures.

Consequences if Your personal information is not collected

Without Your personal information We may not be able to issue insurance cover to You or process Your claim.

From time to time, We may use Your name and contact details to send You or Your firm offers or information regarding Our insurance services or promotions that may be of interest to You. Please let Us know if You no longer wish to receive this information.

Access to and correction of Your personal information

Our privacy policy contains information about how You may access and seek the correction of the personal information about You that We hold.

Complaints

Our privacy policy also contains information about how You may complain about a breach of the Australian Privacy Principles and how We will deal with such a complaint.

Our privacy policy and contact details

A copy of Our privacy policy is available from the office of Coversure Pty Ltd or at WWW.COVERSURE.COM.AU. Coversure can be contacted at insure@coversure.com.au

IF YOU HAVE A DISPUTE

INTERNAL DISPUTE RESOLUTION

Any enquiry or complaint relating to this Insurance should be referred to Coversure in the first instance. Coversure will forward details of your dispute to the Insurer for review by their internal dispute resolution process.

NEED FURTHER INFORMATION

Your Insurance Broker has arranged this insurance for You, on Your behalf. If You have any questions or need further information concerning Your insurances, You should contact them to assist You with Your enquiry.

CONTACTING US

You are represented by an Insurance Broker who deals directly with Us. You should direct all of Your correspondence to Us through this Broker who is Your Agent in arranging this insurance. When We are dealing directly with You, for example with a claim, You may contact Us as shown on Our claim form or as indicated on this Policy wording.

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Our Agreement

This Policy is a legal contract between You and Us. You have paid, or agreed to pay Us, the premium and We provide the cover specified in this Policy and as set out in the Schedule. The terms, conditions, exclusions, and provisions of the insurance We offer You are described in this Policy.

Limit of Liability

We will not pay any more for any claim under this Policy than the lesser of:

- i. The Aggregate Limit of Liability specified in the Policy
- ii. The Policy Section Limit which is specified in the Schedule, or
- iii. Any Policy Extension limit which is specified in the Policy or Schedule.

The applicable Limit of Liability will not be reduced by the amount of any Excess payable by You.

Any payment We make under any Policy Section or Extension will reduce the payment available towards settlement under all other Policy Sections or Extensions.

Excess

The Excess is an uninsured amount which We will not pay and which applies to any Policy Claim, Claim or series of claims arising out of an Occurrence. The Excess You must pay is set out in the Schedule. If a Policy Claims of Claim may be indemnified under more than one clause of this Policy and a different Excess may apply to each clause, then the higher Excess will apply to that claim for indemnity.

1. Section 1 – Public & Products Liability

1.1. Section 1: Public & Products Liability Insuring Clause

- 1.1.1. We will pay to You or on Your behalf all amounts which You will become legally liable to pay for compensation in respect of:
 - i. Personal Injury; and/or
 - ii. Property Damage; and/or
 - iii. Advertising Injury;

which happens during the Period of Insurance, within the Geographical Limits, and is caused by an Occurrence in connection with Your Business or Your Products and/or work performed by You or on Your behalf.

- 1.1.2. We will not pay more than the Limit of Liability stated in the Schedule for Public Liability for all claims or series of claims arising out of any one Occurrence.
- 1.1.3. We will not pay more than the Limit of Liability stated in the Schedule for Products Liability for all claims arising out of all or any of Your Products during any one Period of Insurance.
- 1.1.4. We will not pay more than the Limit of Liability stated in the Schedule for Pollution Liability for all claims arising from Pollution Liability during any one Period of Insurance
- 1.1.5. We will not pay more than the Limit of Liability stated in the Schedule for Advertising Injury for all claims arising from Advertising Injury during any one Period of Insurance.

1.2. Section 1: Defence and Other Costs

In addition to the Limit of Liability stated in the Schedule and subject to indemnity provided by the Policy Insuring Clause, We will pay for the:

- 1.2.1. defence in Your name and on Your behalf any claim or suit against You claiming any amounts for Personal Injury and/or Property Damage and/or Advertising Injury and seeking damages on account thereof, even if such claim or suit is groundless, false or fraudulent;
- 1.2.2. investigation, negotiation and settlement any claim or suit as We deem expedient;
- 1.2.3. charges, expenses and legal costs incurred by Us or You at Our written request or with Our written consent which consent will not be unreasonably withheld or delayed;
- 1.2.4. charges, expenses and legal costs incurred by Us or You at Our written request or with Our written consent which consent will not be unreasonably withheld or delayed; interest accruing after entry of judgment until We have paid, tendered, or deposited in court such part of such judgment as does not exceed Our Limit of Liability thereon;
- 1.2.5. interest accruing after entry of judgment until We have paid, tendered, or deposited in court such part of such judgment as does not exceed Our Limit of Liability thereon;
- 1.2.6. cost to reimburse You for all reasonable charges, expenses and legal costs other than Your loss of earnings, incurred with Our consent (such consent not to be unreasonably withheld or delayed);

- 1.2.7. expenses incurred by You for first-aid or medical treatment to others at the time of any Personal Injury for which You are entitled to compensation (other than any first aid or medical expenses, which we are prevented from paying by any law).
- 1.2.8. expenses incurred by You for temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or unpinning thereof.
- 1.2.9. Cost of purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which You must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority.

1.3. Section 1: Limit of Liability

We will make payments (as referred to in 1.2 (above)) provided that:

- 1.3.1. We will not be obligated to pay any claim or judgment or to defend any suit after Our Limit of Liability has been exhausted by payment of judgments or settlements;
- 1.3.2. If a payment exceeding the Limit of Liability has to be made to dispose of a claim Our liability to pay these additional payments in connection therewith will be limited to such proportion of the additional payments as the Limit of Liability bears to the amount paid to dispose of the claim or suit and;
- 1.3.3. in providing any costs and payments as referred to in 1.2 Defence and Other Costs (above) incurred in connection with claims and/or suits instituted in North America will form part of the Limit of Liability and will not be payable in addition to the Limit of Liability.
- 1.3.4. Our costs and expenses incurred in investigation of a notification of any event that has potential to give rise to a Policy Claim or a claim and Our determination of liability to provide indemnity to You will not reduce or form part of the Limit of Liability

1.4. Section 1: Public & Products Liability Additional Benefit: Claims Preparation

- 1.4.1. In addition to the Limit of Indemnity provided by this Policy we will pay up to \$50,000 in respect of each claim or series of claims arising out of any one Occurrence for reasonable professional fees and such other expenses incurred by You for the preparation of a claim under this Policy.
- 1.4.2. The benefit provided under this Additional Benefit operates in addition to and will not in any way affect the indemnity provided under clause 1.1 of this Policy.
- 1.4.3. Our liability under this clause 1.4 will not exceed \$100,000 in respect of any one claim or series of claims.

1.5. Section 1: Public & Products Liability Exclusions

The following exclusions have application to Section 1 of this policy unless specified otherwise below or by policy endorsement. Additional Exclusions are listed in Section 5 Exclusions.

We will not be liable for claims in respect of:

- 1.5.1. Advertising Injury
 - Advertising Injury arising from
 - i. a statement made at Your direction with knowledge that such statements are false.
 - ii. a failure of performance of contract. However, this exclusion clause will not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract.
 - iii. an infringement of trademark, service mark or trade name.
 - iv. any incorrect description of Your Products or services.
 - v. any mistake in advertised price of Your Products or services.
 - vi. failure of Your Products or services to conform with advertised performance, quality, fitness, or durability.
 - vii. any Insured whose principal occupation or business is advertising, broadcasting, publishing, or telecasting.
 - viii. statements made prior to the commencement date of this Policy.
- 1.5.2. Contracts & Agreements

Liability assumed by You under any contract or agreement except to the extent that such liability would have been implied by law. This exclusion will not apply to:

- i. the written contracts specified in the Schedule;
- ii. liability assumed by You under a warranty of fitness or quality as regards Your Products;
- iii. liability assumed by You under any rental, lease, or hiring agreement of real or personal property but no indemnity is provided by this policy arising from a provision which obliges You to effect insurance in respect of the subject matter of that contract;
- iv. any written contract made or entered into with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities;
- v. any written contract with any railway authority for the loading, unloading and/or transport of Your Products, including contracts relating to the operation of railway sidings.

1.5.3. Employment Practices

Liability for or in respect of Employment Practices.

1.5.4. Fines and Penalties

Any fines, penalties, liquidated damages, aggravated, exemplary, punitive damages or criminal damages.

1.5.5. Loss of Use

Loss of use of tangible property which has not been physically lost destroyed or damaged and results from:

- i. a delay in or lack of performance by You or on Your behalf of any contract or agreement, or
- ii. the failure of Your Products to meet the level of performance, quality fitness or durability expressly or impliedly warranted or represented by You or on Your behalf, but this exclusion 1.5.5 Loss of Use does not apply to loss of use of other tangible property resulting from the sudden or accidental physical loss, destruction of or damage to Your Products or work performed by You or on Your behalf after such Products or work have been put to use by any person or organisation other than You;

1.5.6. Professional Advice

Liability arising from the rendering of or failure to render professional advice or service by the Insured or error or omission connected therewith however this exclusion does not apply to the rendering or failure to render professional medical advice by an Employee of Yours, or as a volunteer of Yours, to provide first aid and other medical services on Your premises or worksite;

1.5.7. Property in Your care custody or control

Property Damage or property in Your physical or legal care, custody or control including precious stones or metals, bullion, works of art bearer bonds or coupons, stamps, bank or currency notes or negotiable instruments.

However, this exclusion will not apply with regard to;

- i. the personal property, tools and effects of any of Your directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects or any of visitors to Your premises;
- ii. premises or part(s) of premises (including their contents) leased or rented to or temporarily occupied by, You for the purpose of the Business, but no indemnity is provided by this policy if You assume responsibility to insure such premises;
- iii. premises (and/or their contents) temporarily occupied by You for the purpose of carrying out work in connection with the Business; or
- iv. any other property temporarily in Your possession for the purpose of being worked upon.

However, no indemnity is granted for

- v. damage to that part of any property upon which you have been working if damage arises solely out of such work.
- vi. any Vehicle (including contents, spare parts and accessories while they are in or on such vehicle) not belonging to or used by You or on Your behalf, whilst any such Vehicle is in a car park for reward, as a principal part of Your business;
- vii. Notwithstanding Exclusion 1.5.2 “Contracts & Agreements” any property (except property that You own) not mentioned in clause 1.5.7.ii and 1.5.7.iii above whilst in Your physical or legal care, custody or control whether or not You have accepted or assumed liability for such property;
- viii. Provided that Our liability under this clause 1.5.7. will not exceed \$100,000 in respect of any one claim or series of claims arising out of any one Occurrence unless some other sub-limit is stated in the Schedule.

1.5.8. Property Damage to Your Products

Property Damage to Your Products if such damage is attributable to any defect in Your Products.

This exclusion will be interpreted to apply with respect to damage to that part and only that part of Your Product to which the damage is directly attributable.

1.6. Section 1: Public & Products Liability General Conditions

1.6.1. Severability

Where any of You:

- i. failed to comply with the duty of disclosure under the provisions of the Insurance Contracts Act 1984 (Cth); or
- ii. made a misrepresentation to Us before this Policy was entered into; or
- iii. fail to comply with any condition of this Policy;
- iv. the rights of any other of You under this Policy will not be prejudiced thereby.
- v. Provided always that this extension shall only apply when:
- vi. such others of You shall be entirely innocent of and have no prior knowledge of any such conduct; and
- vii. such others of You, as soon as is reasonably practicable, upon becoming aware of any such conduct, advises Us in writing of all known facts in relation to such conduct.

Notwithstanding the above, any fact or knowledge possessed by any past or present partner, Business Principal, director, chairman, chief executive officer, chief operating officer, chief financial officer, company secretary, chief legal officer, or the holder of any similar or equivalent positions shall be imputed to You.

1.6.2. Hold Harmless Agreements

- i. You must not enter into an agreement with another person which excludes or reduces Your rights to make a claim against that person at any time without Our prior written consent (such consent not to be unreasonably withheld or delayed). If You do, We may reduce the amount of any claim You make under this Policy by the extent to which Your agreement prevents Us making a claim against that person under Our rights of subrogation,
- ii. However, where You are required by contractual agreement to release any Government or Public or Local Authority or other Statutory Authority, landowner, or landlord from liability in respect of loss, destruction or damage or legal liability insured against under this Policy, such release is allowed without prejudice to this insurance,
- iii. Notwithstanding 1.6 Public & Products Liability General Condition of this Policy, We agree to waive all Our rights of subrogation against any such Authority, landowner or landlord in the event of any Occurrence for which a claim for indemnity may be made under this Policy.

1.7. Section 1: Public & Products Liability Definitions

The following words will have the meaning set out below wherever they appear in Section 1 of this Policy. Additional policy definitions that apply to all sections of this Policy are listed in Section 9 Definitions.

1.7.1. Policy Claim

Means:

- i. any written or verbal demand for compensation made by a third party communicated to You under any circumstances and by whatever means;
- ii. any writ, statement of claim, summons, application or other legal or arbitral proceedings, cross-claim, counterclaim or third or similar party notice issued against or served upon You which seeks compensatory relief made by a third party against You.

Where more than one Policy Claim arises from, is based on, is attributable to, or is in consequence of a single Occurrence, all such Policy Claims will jointly constitute a single Policy Claim for the purposes of this Policy.

1.7.2. Geographical Limits

Means the Geographical Limits noted in the Schedule or if not noted in the Schedule, then anywhere in the World except:

- i. claims made or actions instituted within any country, state or territory (outside Australia) where the laws of that country, state or territory require insurance to be effected or secured with an insurer or organisation licensed in that country, state or territory to grant insurance.
- ii. claims that are made upon You outside the Commonwealth of Australia in any country where You are represented by a branch or company or firm or individual holding Your power of attorney.
- iii. claims made or actions instituted within North America.
- iv. claims and actions to which the laws of North America apply.

Provided that clauses 1.7.2.iii and 1.7.2.iv will not apply to:

- v. claims and actions arising from the presence of any of your directors, officers, partners, proprietors, or employees, who are not undertaking manual work of any kind or
- vi. Products exported to North America without your knowledge.

2. Section 2: -- Errors & Omissions

The indemnity provided is subject to

- 2.1.1. the terms and conditions of this Policy including the Schedule, definitions, exclusions, conditions, and endorsements
- 2.1.2. the inclusion of this Policy Section being specified in the Schedule;
- 2.1.3. the inclusion of this Policy Section will not increase the Aggregate Limit of Liability of this Policy.

2.2. Section 4: Important Notice to You

This Policy Section provides indemnity on a Claims made and notified basis.

The Important Information provided with this Policy (above) contains information for You about the operation of the Insuring Clause in this Policy Section that you should read and consider.

2.3. Section 2: Errors & Omissions Insuring Clause

- 2.3.1. Notwithstanding anything to the contrary in Section 1 Exclusions 1.5.6 Professional Advice We will indemnify You for any Financial Loss in respect of any Claim first made against You and which is notified in writing to Us during the Period of Insurance in connection with Your performance of the Business arising from an act, error or omission first committed, or alleged to have been first committed by You or on Your behalf, subsequent to the Errors & Omissions Retroactive Date.

2.4. Section 2: Errors & Omissions Defence Costs

- 2.4.1. We will pay the Defence Costs incurred by You with Our prior written consent (such consent not to be unreasonably withheld or delayed) provided that Our liability for all Financial Loss and Defence Costs and any other payments in respect of any one Claim will not exceed the Errors & Omissions Limit of Liability specified below in clause 2.5.2 and 2.5.4.

2.5. Section 2: Errors & Omissions Limit of Liability & Excess

- 2.5.1. The Excess will be borne by You at Your own expense and Our liability will only be in excess of this amount
- 2.5.2. The application of the Excess does not erode the Limit of Liability or any sub-limit of liability specified in this Policy Section.
- 2.5.3. The Excess applicable to Section 2: Errors & Omissions will be the Errors & Omissions Excess noted in the Schedule. If no deductible is noted in the Schedule, the Deductible will be \$10,000.
- 2.5.4. The aggregate amount of all payments made by Us pursuant to Section 2: Errors & Omissions will be the Errors & Omissions Limit noted in the Schedule. If no Errors & Omissions Limits is noted in the Schedule Limit will be Nil and indemnity will not be provided.

Section 2 Errors & Omissions Definitions are noted in Section 4 below

Section 2 Errors & Omissions Exclusions are noted in Section 4 below

Section 2 Errors & Omissions Conditions are noted in Section 4 below

3. Section 3 -- Professional Indemnity

The indemnity provided is subject to

- 3.1.1. the terms and conditions of this Policy including the Schedule, definitions, exclusions, conditions, and endorsements
- 3.1.2. the inclusion of this Policy Section being specified in the Schedule;
- 3.1.3. the inclusion of this Policy Section will not increase the Aggregate Limit of Liability of this Policy.

3.2. Section 3: Important Notice to You

This Policy Section provides indemnity on a Claims made and notified basis.

The Important Information provided with this Policy (above) contains information for You about the operation of the Insuring Clause in this Policy Section that you should read and consider.

3.3. Section 3: Professional Indemnity Insuring Clauses

- 3.3.1. Notwithstanding anything to the contrary in Section 1 Exclusions 1.5.6 Professional Advice We will indemnify You against Civil Liability arising from breach of professional duty for Loss incurred by You in respect of any Claim first made against You and which is notified in writing to Us during the Period of Insurance in connection with Your performance of professional services of the Business arising from a breach of duty first committed, or alleged to have been first committed, by You or on Your behalf, subsequent to the Retroactive Date.

3.4. Section 3 Professional Indemnity Defence Costs

- 3.4.1. We will pay the Defence Costs incurred by You with Our prior written consent (such consent not to be unreasonably withheld or delayed).
- 3.4.2. We will pay such Defence Costs referred to in clause 3.4.1 as and when they are incurred and prior to the final resolution of a Claim, provided that We have not denied indemnity for such Claim and provided that Our liability for all Loss and Defence Costs and any other payments in respect of any one Claim will not exceed the Professional Liability Limit specified below in clause 3.5.1 and 3.5.2.
- 3.4.3. We will not refuse to pay Defence Costs by reason only that We consider that any conduct as referred to in clause 3.9.1 Dishonesty or Deliberate Conduct exclusion) has occurred, until such time as there is a formal admission by You or a final adjudication by a judicial or arbitral tribunal which establishes that such conduct has occurred.
- 3.4.4. However, You will repay to Us all payments of Defence Costs incurred on Your behalf if and to the extent that it is established that such Defence Costs are not insured under this Policy, unless We agree in writing to waive recovery of such Defence Costs.

3.5. Section 3: Professional Indemnity Limit of Liability & Excess

- 3.5.1. Our liability for Loss in respect of any one Claim will not exceed the Professional Indemnity Limit specified in the Schedule.
- 3.5.2. Our aggregate liability under this Policy Section for all Loss in respect of all Claims will not exceed the Maximum Aggregate Limit of Liability.
- 3.5.3. We will pay Defence Costs, provided that Our liability for all Loss, Defence Costs and any other payments in respect of any one Claim will not exceed the Limit of Liability and Our liability for all Loss, Defence Costs and any other payments in respect of all Claims will not exceed the Maximum Aggregate Limit of Liability.
- 3.5.4. If a sub-limit of liability is specified in the Schedule for a particular extension to this Section then Our total liability under that extension is limited to the amount of that sub-limit of liability (inclusive of Defence Costs) and not the Limit of Liability.
- 3.5.5. The Excess will be borne by You at Your own expense and Our liability will only be in excess of this amount.
- 3.5.6. The application of the Excess does not erode the Limit of Liability or any sub-limit of liability specified in this Policy.

3.6. Section 3: Professional Indemnity Automatic Extensions

The following extensions are included automatically in this Policy Section for nil additional premium. The extensions only apply if this Policy Section has a Limit of Indemnity noted in the Schedule. Each such extension is subject to the terms, conditions, and exclusions of this the Policy and this Policy Section except where explicitly stated to the contrary in an extension.

The inclusion of these extensions does not increase the Limit of Liability of this Policy Section.

3.6.1. Fraud & Dishonesty

We will indemnify You against Civil Liability for any Loss incurred by You in respect of any Claim first made against You and which is notified in writing to the Us during the Period of Insurance in connection with Your performance of the Professional Business and which would otherwise be excluded only by reason of 4.2.4 Dishonesty or Deliberate Conduct exclusion.

We will also pay (in accordance with the applicable provisions of this Policy Section) any Defence Costs that would otherwise be excluded only by reason of 4.2.4 Dishonesty or Deliberate Conduct exclusion.

However, this Extension does not operate to:

- i. indemnify, or pay any Defence Costs on behalf of, any party comprising the Insured engaging in or condoning any conduct that is the subject of 4.2.4 Dishonesty or Deliberate Conduct exclusion; or
- ii. indemnify You for any Loss, settlement or other payment, or pay any Defence Costs, directly or indirectly arising out of, based upon, attributable to or in consequence of any conduct occurring after the date on which You first discovered, or had reasonable cause for suspicion of, any conduct that is the subject of clause 4.2.4 Dishonesty or Deliberate Conduct exclusion.

The aggregate amount of all payments made by Us pursuant to this Extension 3.6.1 will not exceed \$1,000,000.

3.6.2. Continuous Cover

Where You have failed to exercise Your rights pursuant to Section 40(3) of the Insurance Contracts Act 1984 (Cth) in relation to an earlier professional indemnity insurance policy issued to You by Us, then 3.9.3 Known Circumstances exclusion will not apply to the facts, circumstances, acts, errors or omissions to which such unexercised rights apply provided that:

- i. You have been continuously insured, without interruption at the commencement of the Period of Insurance, under a professional indemnity insurance policy issued to You by Us from the earliest time at which You could have reasonably first exercised Your rights pursuant to Section 40(3) of the Insurance Contracts Act 1984 (Cth) in respect of the subject facts, circumstances, acts, errors or omissions; and
- ii. there has been no fraudulent misrepresentation or fraudulent non-disclosure by You in respect of the subject facts, circumstances, acts, errors or omissions; and
- iii. We may reduce our liability to indemnify You or make any payment by reason of this Extension to the extent that We have been prejudiced by Your failure to exercise their rights pursuant to Section 40(3) of the Insurance Contracts Act 1984 (Cth) at the earliest time at which You could have reasonably first exercised such rights in respect of the subject facts, circumstances, acts, errors or omissions; and
- iv. in determining any prejudice referred to in clause 3.6.2(iii) above, We may take into account any factors the We may deem to be material including, but not limited to, the limits of indemnity, sub-limits, terms, conditions and exclusions of any applicable earlier professional indemnity insurance policy.

3.6.3. Loss of Documents

We will indemnify You for any reasonable costs and expenses incurred by You with Our prior written consent (such consent not to be unreasonably withheld or delayed) to replace and/or restore any Documents which have been damaged, destroyed or lost and after diligent search cannot be found, provided that:

- i. such Documents were damaged, destroyed or lost in Your performance of the Professional Business; and
- ii. such Documents were in Your physical possession within the territorial limits of the Commonwealth of Australia or New Zealand; and
- iii. the subject damage, destruction or loss is first discovered by You and notified in writing to Us during the Period of Insurance; and
- iv. notwithstanding anything to the contrary in this extension, We will not indemnify You in respect of any damage, destruction or loss of any Documents directly or indirectly arising from, in whole or in part:
 - a. wear and tear or any other gradual process; or
 - b. any computer virus or other malicious or damaging software; or
 - c. any act, error or omission committed or made, or allegedly committed or made, by any person or entity who at the time of such act, error or omission was not an Insured; and

- v. You provide satisfactory documentary proof of such damage, destruction or loss; and
- vi. the aggregate amount of all payments made by Us pursuant to this extension 3.6.3 will not exceed \$1,000,000 unless otherwise specified in the Schedule.

3.6.4. Severability

Where any party comprising the Insured:

- i. failed to comply with the duty of disclosure under the provisions of the Insurance Contracts Act 1984 (Cth); or
- ii. made a misrepresentation to Us before this Policy or Policy Section was entered into; or
- iii. fail to comply with any condition of this Policy or Policy Section;

the rights of any other party comprising the Insured under this Policy Section will not be prejudiced thereby.

Provided always that this extension will only apply when:

- iv. such other Insured will be entirely innocent of and have no prior knowledge of any such conduct; and
- v. such other Insured as soon as is reasonably practicable upon becoming aware of any such conduct, advises Us in writing of all known facts in relation to such conduct.

Notwithstanding the above, any fact or knowledge possessed by any past or present partner, Business Principal, director, chairman, chief executive officer, chief operating officer, chief financial officer, company secretary, chief legal officer or the holder of any similar or equivalent positions will be imputed to You.

3.6.5. Vicarious Liability for Consultants, Sub Contractors & Agents

The performance of the Professional Business will be deemed to include acts, errors or omissions of any consultant, sub-contractor or agent of Yours while engaged in the provision of the Professional Business and for which You are liable.

We will not be liable under this extension for such consultant's, sub-contractor's or agent's own liability.

3.6.6. Run-off Liability

If, during the Period of Insurance, any of the following events occur:

- i. You merge with or are acquired by another entity not insured under this Policy Section; or
- ii. You are subject to the appointment of a receiver, controller, administrator, or the commencement of a scheme of arrangement or compromise, or a winding up process; or
- iii. You otherwise cease to trade;

then this Policy Section will remain in force until the expiry of the Period of Insurance, but only in respect of a Claim resulting from an act, error or omission occurring or committed prior to such event.

Section 3 Professional Indemnity Definitions are noted in Section 4 below

Section 2 Professional Indemnity Exclusions are noted in Section 4 below

Section 2 Professional Indemnity Conditions are noted in Section 4 below

4. Section 4 – Section 2 & 3 Definitions, Exclusions & Conditions

4.1. Section 2: Errors & Omissions Definitions Section 3: Professional Indemnity Definitions

The following words will have the meaning set out below wherever they appear in Section 2 Errors & Omissions and Section 3 Professional Indemnity of this Policy.

Additional definitions that apply to Section 2 Errors & Omissions and Section 3 Professional Indemnity are listed in Section 8 Definitions.

- 4.1.1. **Civil Liability**
Means legal liability arising from breach of professional duty.
- 4.1.2. **Claim**
Means:
- i. any written or verbal demand for compensation made by a third party communicated to You under any circumstances and by whatever means;
 - ii. any writ, statement of claim, summons, application or other legal or arbitral proceedings, cross-claim, counterclaim or third or similar party notice issued against or served upon You which seeks compensatory relief made by a third party against You.
- Where more than one Claim arises from, is based on, is attributable to, or is in consequence of a single act, error or omission, or a series of acts, errors, or omissions consequent upon or attributable to one source or originating cause, all such Claims will jointly constitute a single Claim for the purposes of this Policy.
- 4.1.3. **Defence Costs** means reasonable legal costs and other expenses resulting solely from the investigation, defence, settlement, or appeal of any Claim in respect of any Loss or Financial Loss that is the subject of indemnity under this Policy but will not include any internal or overhead expenses incurred by You or the costs of Your time.
- 4.1.4. **Documents** means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material. Documents do not include bearer bonds or coupons, stamps, bank or currency notes or negotiable instruments.
- 4.1.5. **Financial Loss** means any loss which is economic in nature and consequent upon Personal Injury or Property Damage not indemnified in Section 1 or Section 3 and arising from an Occurrence after the Errors & Omissions Retroactive Date.
- 4.1.6. **Errors & Omissions Retroactive Date** means the date specified in the Schedule as the Errors and Omissions Retroactive Date. If no date is displayed it will be the date this policy commenced.
- 4.1.7. **Limit of Liability** means the amount so specified in in the Schedule.
- 4.1.8. **Loss** means any loss which is economic in nature and not consequent upon Personal Injury or Property Damage not indemnified in Section 1 or Section 2 and arising from an Occurrence and error in design, specification, advice after the Professional Indemnity Retroactive for
- i. compensatory damages; and/ or
 - ii. claimant's costs, fees and expenses; and/ or
 - iii. post-judgment interest; and/ or
 - iv. settlements agreed with Our prior written consent which consent will not be unreasonably withheld or delayed;
but will not include:
 - v. civil or criminal fines or penalties imposed by law; or
 - vi. punitive, exemplary, multiple or aggravated damages; or
 - vii. any amount uninsurable at law.
- 4.1.9. **Maximum Aggregate Limit of Liability** means the amount so specified in in the Schedule or, if not specified in the Schedule the amount specified as the Limit of Indemnity in the Schedule.
- 4.1.10. **Named Insured** means any person, partnership, company or other legal entity so specified in the Schedule.
- 4.1.11. **Business Principal** means any natural person who;

- i. in the case of a partnership, is appointed as a partner in such partnership; or
 - ii. in the case of a corporation, is appointed as a director of such corporation.
- 4.1.12. Professional Business means the professional business services arising from the Business as specified in the Schedule.
- 4.1.13. Retroactive Date means the date so specified in the Schedule as the Errors & Omissions Retroactive Date and Professional Indemnity Retroactive. If no date is specified in the Schedule the retroactive date will be the inception date of this Policy.
- 4.1.14. You/Your/Insured
Means for Section 1 Errors and Omissions each of the following:
- i. the Named Insured; and
 - ii. any past, present or future Business Principal or Employee of the Named Insured, but only in relation to Business conducted for or on behalf of the Named Insured whilst they are a Business Principal, or Employee of the Named Insured.
- Means for Section 2 Professional Indemnity each of the following:
- iii. the Named Insured; and
 - iv. any past, present or future Business Principal or Employee of the Named Insured, but only in relation to professional Business conducted for or on behalf of the Named Insured whilst they are a Business Principal, or Employee of the Named Insured.

4.2. Section 2 Errors & Omissions Exclusions

Section 3: Professional Indemnity Exclusions

The following exclusions have application to Section 3 of this policy unless specified otherwise below or by policy endorsement. Additional Exclusions are listed in Section 6 Exclusions

We will not be liable to indemnify You for any Loss, settlement, or other payment, or pay any Defence Costs or any other costs or expenses, directly or indirectly arising out of, based upon, attributable to or in consequence of:

The following exclusions apply to Section 2 only

- 4.2.1. Breach of Professional Duty
 - i. the actual or alleged breach of professional duty by You; however this exclusion will apply to Section 2 only.
- 4.2.2. Competition and Consumer Claims
 - i. any breach of any civil provision of the Australian Competition & Consumer Act 2010 (Cth), the Trade Practices Act 1974 (Cth), Corporations Act 2001 (Cth) or any similar legislation enacted by the States or Territories of the Commonwealth of Australia or by the Dominion of New Zealand. however this exclusion will apply to Section 2 only.

The following exclusions apply to both Section 2 and Section 3

- 4.2.3. Contractual or Commercial Liabilities
 - i. any liability assumed by You under a contract, unless such liability would have attached to the Insured in the absence of such contract; or
 - ii. any liability You assume by any express guarantee or express warranty, unless such liability would have attached to You in the absence of such warranty or guarantee; or
 - iii. any duty or obligation assumed by You that is not assumed in the normal conduct of the Business; or
 - iv. any duty or obligation assumed by You that is not assumed in the normal conduct of the Professional Business
 - v. any trading debt incurred, or any guarantee provided in respect of such debt, by You; or
 - vi. any refund or waiver of fees (including any related expenses and disbursements):
- 4.2.4. Dishonesty or Deliberate Conduct

- i. any actual or alleged dishonest, fraudulent, criminal, or malicious conduct of any Insured; or
 - ii. any conduct of any Insured committed or allegedly committed with a reckless disregard for the consequences thereof; or
 - iii. any conduct of any Insured committed or allegedly committed with criminal intent or purpose, or with knowledge that such conduct was in breach of any statute, contract, right or duty:
- 4.2.5. Delay in Performance or Supply
- i. any Claim arising out of delays in the performance of services or the supply, distribution, manufacture, storage, design advice (including financial advice), consultancy, specification, formulae or supervision of manufacture of a product;
- 4.2.6. Directors' & Officers' Liability/ Trustees' Liability
- i. any Insured acting, or allegedly acting, in a capacity as a director or officer of any corporation or other incorporated body or trustee of any trust (including staff superannuation fund)
- 4.2.7. Failure to Maintain Insurance
- i. any Claim which is based on or is attributable to any failure or omission on the part of You to effect or maintain insurance;
- 4.2.8. Insolvency & Debt
- i. any liquidation, bankruptcy, or insolvency of any Insured:
 - ii. any Claim arising from, attributable to or in any way connected with any trading debt incurred by You or any guarantee given by You for any debt.
- 4.2.9. Known Circumstances
- i. any fact, circumstance, act, error or omission which may give rise to a Claim or an Inquiry notified under any previous policy; or
 - ii. any fact, circumstance, act, error or omission which may give rise to a Claim or an Inquiry declared in the Proposal Form or any previous proposal form or application for insurance; or
 - iii. any fact, circumstance, act, error or omission which may give rise to a Claim or an Inquiry of which any Insured was aware, or ought reasonably to have been aware, prior to the Period of Insurance:
- 4.2.10. Motor Vehicles/ Aircraft/ Watercraft
- i. the ownership, use, or operation of any motor vehicle, aircraft, or watercraft of any kind by You
- 4.2.11. Obligations to Employees
- i. bodily or mental injury, sickness, disease, death or emotional distress of any person arising out of, or in the course of, their employment or deemed employment by, or apprenticeship with, You:
 - ii. matters, brought or maintained by or on behalf of:
 - a. any other person or entity who is insured by this Policy; or
 - b. any person or entity who or which is related to or associated with You, unless such person or entity is acting without any prior direct or indirect solicitation, cooperation, or assistance from You: or
 - c. any of Your subsidiaries; or any company of which You have or ever had not less than 20% financial interest, or in which have or had board representation.
- 4.2.12. Occupier's Liability
- i. any occupation, ownership, control, or management of any real property by You:
- 4.2.13. Related Parties
- i. any Claim which is brought by or initiated by or on behalf of;
 - a. any Insured; or
 - b. any person who, at the time of the act, error or omission giving rise to the Claim, was a Family Member of any Business Principal of the Insured; or
 - c. any person or entity with a financial, executive, or managerial interest in any Insured; or
 - d. any entity in which any Insured, or any person who, at the time of the act, error or omission giving rise to the Claim, was a Family Member of any Business Principal of the Insured, has a financial, executive or managerial interest;
- However this exclusion does not apply to any Loss or Financial Loss, Defence Costs, settlement or any other payment arising from any Claim made by an independent third party without the co-operation or solicitation of any Insured:
- 4.2.14. Retroactive Date
- i. any act, error or omission first committed, or alleged to have been first committed, prior to the
 - a. Errors & Omission Retroactive Date for Section 2,

b. Professional Indemnity Retroactive Date for Section 2

4.2.15. Product-Related Liabilities

- i. the replacement of or lack of efficacy of any goods manufactured, constructed, installed, distributed, treated, maintained, serviced, altered, repaired, sold, or supplied by You; or
- ii. any defect in any goods manufactured, constructed, installed, distributed, treated, maintained, serviced, altered, repaired, sold or supplied by You;

except where such Loss, Financial Loss or Defence Costs, settlement or payment arises solely and directly from any advice, design or specification provided by You in the performance of the Professional Business or Business.

4.2.16. Anti-Competitive Conduct

- i. any contravention of;
 - a. any of the provisions of Part IV, Part XI B and Schedule 1 of the Competition and Consumer Act 2010 (Cth) as amended from time to time; or
 - b. any provision of any predecessor or successor legislation with materially similar effect; or
 - c. any provision of any legislation applicable in another jurisdiction with materially similar effect:

4.2.17. Related Parties

- i. any Claim which is brought by or initiated by or on behalf of;
 - a. any Insured; or
 - b. any person who, at the time of the act, error or omission giving rise to the Claim, was a family member of any Business Principal of the Insured; or
 - c. any person or entity with a financial, executive or managerial interest in any Insured; or
 - d. any entity in which any Insured, or any person who, at the time of the act, error or omission giving rise to the Claim, was a family member of any Principal of the Insured, has a financial, executive or managerial interest;

However this exclusion does not apply to any Loss, Defence Costs, settlement or any other payment arising from any Claim made by an independent third party without the co-operation or solicitation of or by You:

4.2.18. Waived or Limited Rights

- i. You in any way waiving, limiting, or reducing their rights of recovery or contribution from any other party.

4.2.19. Medical Persons

- i. any Claim arising from the rendering of or failure to render professional medical advice or service by Medical Persons employed by you.

4.3. Section 2 Errors & Omission Conditions

Section 3: Professional Indemnity Conditions

4.3.1. Conduct of Defence

- i. You will not settle any Claim, incur any Defence Costs or make any admission, offer or payment or otherwise assume any contractual obligation or waive any right with respect to any Claim, or any other matter which may be the subject of indemnity under this Policy, without Our prior written consent (such consent will not be unreasonably withheld or delayed).. We will not be liable for any Loss, Financial Loss, Defence Costs, settlement, or other payment, attributable to or in consequence of any admission, offer, assumed obligation or waiver to which We have not given prior written consent (such consent will not be unreasonably withheld or delayed).
- ii. We will be entitled, at our absolute discretion, to conduct at any time:
 - a. any investigation relevant to any Claim, Inquiry or any other matter which may be the subject of indemnity under this Policy; or
 - b. in Your name, the defence or settlement of any Claim.

Any amount incurred by Us on Your behalf will be deemed to be part of any Loss, Financial Loss or Defence Costs (as applicable) in respect of such Claim. However, any costs and expenses We may incur solely on our own behalf to determine Your right to indemnity under this Policy will not form part of any Loss, Defence Costs.

- iii. You will use due diligence and do and concur in all things reasonably practicable to avoid or diminish any Loss, Defence Costs.
- iv. You will provide to Us with all relevant information, evidence, and documentation, and will provide Us with all assistance and co-operation as We may reasonably require, to enable Us to investigate and to defend any Claim or any other matter which may be the subject of indemnity

under this Policy, to provide representation at any Inquiry and/ or to enable Us to determine its liability under this Policy.

- v. You will meet Your obligations under clause 4.3.1 in a timely fashion and will bear Your own costs incurred in complying with the same.
- vi. Any person seeking indemnity under this Policy will be subject to and will comply with all duties and obligations of an Insured under this Policy.

4.3.2. Insured's Rights in Respect of Defence & Settlement

- i. In the event that We request that the Claim is contested, and You do not agree that such Claim should be contested, We will not require You to contest the Claim unless a Senior Counsel (to be mutually agreed by You and Us) provides advice in writing that such Claim should be contested. In formulating such advice, Senior Counsel will take into consideration the economics of the matter (including potential Loss, Defence Costs, settlement, and any other payment) and Your prospects of successfully defending the Claim. In circumstances where Senior Counsel concludes that a Claim should be contested, the cost of obtaining such Senior Counsel's opinion will form part of the Defence Costs.
- ii. In the event that We recommend settlement in respect of any Claim and You do not agree that such Claim should be settled, You may elect to contest such Claim provided always that Our liability for all subsequent Loss, Defence Costs, settlement or other payment in connection with such Claim will not exceed Our prospective liability for the Claim had it been so settled.

4.3.3. Subrogation

- i. If indemnity is granted under this Policy in respect of any Loss, Defence Costs, settlement, or any other payment, We will be subrogated to all Your rights of recovery, contribution and indemnity in respect of such Loss, Defence Costs, settlement, or payment.
- ii. You must always act to secure and preserve all rights of recovery, contribution, and indemnity, and must provide all necessary assistance and execute all documents to enable Us to enforce those rights referred to in clause 4.3.3(i).

5. Section 5 -- Criminal Defence, Worksafe and Coronial Enquiry Costs

5.1. Section 5: Important Notice to You

This Policy Section provides indemnity on a Claims made and notified basis.

The Important Information provided with this Policy (above) contains information for You about the operation of the Insuring Clause in this Policy Section that you should read and consider.

The indemnity provided is subject to

- i. the terms and conditions of this Policy including the Schedule, definitions, exclusions, conditions, and endorsements
- ii. the inclusion of this Policy Section is specified in the Schedule;
- iii. the inclusion of this Policy Section will not increase the Aggregate Limit of Liability of this Policy.

5.2. Section 5: Criminal Defence, Worksafe or Coronial Enquiry Costs Insuring Clause

5.2.1. Included in the Limits of Liability stated in the Schedule, We will pay for all legal costs incurred by You as a direct result of an Occurrence subject to this policy and with Our consent (such consent not to be unreasonably withheld or delayed) for representation by You at:

- i. any Coronial Inquest or Inquiry
- ii. any Royal Commission or Government Enquiry arising out of any alleged breach of statutory duty, or other similar judicial enquiry into circumstances relating to any Occurrence, claim or potential claim which would be the subject of indemnity under this insurance.
- iii. any investigation, enquiry, prosecution, or hearing of a statutory worksafe authority into a notifiable incident arising from the death, serious injury, or illness, of a person or a potentially dangerous incident at Your worksite,
- iv. any enquiry, prosecution, or hearing of a disciplinary nature held before a legally constituted enquiry board, committee, licensing authority or the like.

Provided that:

- v. You are legally required or compelled to respond to or attend such Inquiry; and
- vi. such Inquiry pertains to Your performance of the Business or matters directly arising therefrom; and
- vii. written notice of such investigation or Inquiry is first received by You during the Policy Period and notified in writing to Us during the Policy Period; and
- viii. We are entitled, at Our sole discretion, to appoint legal or other representation for You in such investigation or at such Inquiry; and
- ix. You shall repay to Us all payments of legal costs incurred on Your behalf if and to the extent that it is established that such legal costs are not insured under this Policy, unless We agree in writing to waive recovery of such legal costs; and

5.2.2. We will indemnify You against in respect of Criminal Legal Expenses incurred in

- i. the defence of criminal proceedings in a court of criminal jurisdiction commenced against You during the Period of Insurance and arising from an Event,
- ii. the appeal, or the defence of any appeal, against judgment, conviction, or sentence in any initial proceedings.

first made against You and which is notified in writing to Us during the Policy Period in connection with an Event committed is Your performance of the Business first committed, or alleged to have been first committed, by You or on Your behalf, subsequent to the Retroactive Date.

5.3. Section 5: Criminal Defence, Worksafe or Coronial Enquiry Costs Limit of Liability & Excess

5.3.1. The Excess will be borne by You at Your own expense and Our liability will only be in excess of this amount

5.3.2. The application of the Excess does not erode the Limit of Liability, or any sub-limit of liability specified in this Policy Section.

5.3.3. The Excess applicable to Section 5: Criminal Defence, Worksafe or Coronial Enquiry Costs will be the Criminal Defence, Worksafe or Coronial Enquiry Costs Excess noted in the Schedule. If no excess is noted in the Schedule, the Criminal Defence, Worksafe or Coronial Enquiry Costs Excess will be \$10,000.

- 5.3.4. The aggregate amount of all payments made by Us pursuant to Section 5: Criminal Defence, Worksafe or Coronial Enquiry Costs will be the Criminal Defence, Worksafe or Coronial Enquiry Costs Limit noted in the Schedule. If no Criminal Defence, Worksafe or Coronial Enquiry Costs Limit is noted in the Schedule Limit will be Nil and indemnity will not be provided.
- 5.3.5. Notwithstanding the Criminal Defence, Worksafe or Coronial Enquiry Costs limit shown in the Schedule the maximum aggregate amount of all payments made by Us pursuant to Section 5: Criminal Defence, Worksafe or Coronial Enquiry Costs will be \$250,000

5.4. Section 5: Criminal Defence, Worksafe or Coronial Enquiry Costs Definitions

For the purpose of this Policy Section only

- 5.4.1. Appointed Solicitor
Means the solicitor appointed by Us to act on your behalf.
- 5.4.2. Event
Means any actual or alleged criminal act or omission committed or alleged to have been committed by You arising from an Occurrence within the Commonwealth of Australia arising out of and in the course of the normal conduct of the Business operations by You.
- 5.4.3. Criminal Legal Expenses
Means reasonable legal costs and other expenses resulting solely from the investigation, defence, settlement or appeal reasonably charged or incurred by the Appointed Solicitor arising from an Event and may be determined by taxation or should We deem it appropriate by a legal costs consultant approved by Us but will not include any internal or overhead expenses incurred by You or the costs of Your time.
- 5.4.4. Worksafe
Means a statutory authority or department of the Commonwealth of Australia, or any state or territory of Australia that investigates workplace incidents and enforces work health and safety laws.
- 5.4.5. Coronial Inquest or Inquiry
Means an inquiry or investigation into the cause of an unexplained, sudden, or violent death held by a coroner within the Commonwealth of Australia

5.5. Section 5: Criminal Defence Costs Exclusions

The following exclusions have application to Section 5 of this policy unless specified otherwise below or by policy endorsement. Additional Exclusions are listed in Section 6 Exclusions

- 5.5.1. We will not provide indemnity for Criminal, Worksafe, Coronial Enquiry Legal Expenses in respect of or arising from or relating to:
- i. any Event which occurred or is alleged to have first occurred prior to the commencement of the Period of Insurance and which You knew or ought reasonably to have known was likely to give rise to legal proceedings against You;
 - ii. Criminal, Worksafe, Coronial Enquiry Legal Expenses incurred prior to the written acceptance of a claim by Us;
 - iii. defamation, libel or slander;
 - iv. a dispute with Us arising from any claim under this Policy;
 - v. the defence of any criminal prosecution under any relevant motor and road traffic legislation; or
 - vi. the defence of any criminal prosecution arising from or out of fraud or overcharging in relation to Commonwealth, Dominion or State legislation.

where You:

- vii. defend legal proceedings without Our written consent (such consent not to be unreasonably withheld or delayed) or contrary to or in a different manner from that advised by the Appointed Solicitor;
 - viii. fail to give proper instructions in due time to the Appointed Solicitor or counsel appointed by You; or
 - ix. are responsible for delay, which is prejudicial to the successful outcome of the claim or legal proceedings.
- 5.5.2. for any legal proceedings in a court or tribunal outside the Commonwealth of Australia.
- 5.5.3. in respect of or arising from or relating to the molestation or interference of any person(s) by You.
- 5.5.4. further We will not have any duty to defend any action, suit or proceedings brought against You (or any other person or body corporate who might otherwise but for the provisions of this clause be

- entitled to indemnity under this section) which either directly or vicariously seeks compensation in respect of such molestation or interference as above or any Personal Injury resultant therefrom.
- 5.5.5. in respect of or arising from or relating to the defence of any criminal prosecution where a criminal conviction is subsequently recorded. In respect of any Event whereby indemnity is provided by Us under this Policy Section and a criminal conviction is subsequently recorded against You relating to the same Event, You will return to Us all Criminal Legal Expenses paid by Us as soon as is reasonably practicable.
 - 5.5.6. relating to the defence of any criminal prosecution not arising from or relating directly to the Business as defined in the Policy Schedule.
 - 5.5.7. in respect of or arising from or relating to any Occurrence which would otherwise be excluded under this Policy.

5.6. Section 5: Criminal, Worksafe, Coronial Enquiry Costs Claims Conditions

In addition to the Policy Claims Conditions the following Claims Conditions apply to this Policy Section:

5.6.1. Presentation of Claim

You must advise Us as soon as is reasonably practicable in writing of the full circumstances of any Event or any actual or likely legal proceedings which give rise or is likely to give rise to a claim under this Policy Section and provide such proof, supporting evidence, and other information as We may request.

5.6.2. Claims Consent

- i. We will provide indemnity with respect to a claim where You are able to satisfy Us that:
 - a. there are reasonable grounds for defending the legal proceedings; and
 - b. it is reasonable for Criminal, Worksafe, Coronial Enquiry Expenses to be provided in the particular case.

You must obtain and forward to Us upon Our request, and at Your expense, a written opinion from Your solicitor and should We deem necessary, counsel, on the merit of the claim or legal proceedings. If the claim is subsequently admitted by Us, the costs incurred by You in obtaining these opinions will be paid as part of Criminal, Worksafe, Coronial Enquiry Legal Expenses by this Policy Section, provided that such costs are included within the Limit of Liability applicable to this Policy Section.

- ii. If We either refuse to accept, or do not continue to support a claim We will inform You in writing of the reasons for doing so.

5.6.3. Representation

- i. Upon making a claim We may nominate a solicitor to act for You.
- ii. The Appointed Solicitor who We agree will be nominated to act for You will be appointed by Us in Your name and on Your behalf.

5.6.4. Control of Claim

- i. We will have direct access to the Appointed Solicitor at all times and You will cooperate fully with Us in all respects and will keep Us fully and continually informed of all material developments in the legal representation or proceedings. At Our request You will produce as soon as is reasonably practicable, any documents, information or advice in relation to the conduct of the claim as We may require.
- ii. We will not be liable for the costs or fees of counsel, accountants or any expert witness unless We have given Our prior written approval to the appointment of such person and agreed the proposed costs or fees.
- iii. Unless Our written consent (such consent will not be unreasonably withheld or delayed) is first obtained We will not be liable for any costs or expenses that may be payable as a result of any agreement, undertaking or promise made or given by You to a solicitor or to any witness, expert or other person relevant to the proceedings.
- iv. If in any legal proceedings You are not successful in the claim or defence put forward by You, We will not be liable for any appeal or further proceedings unless We are notified in writing of the intention to appeal no later than six (6) clear days before the time for making an appeal expires and there are reasonable prospects of such appeal succeeding and it is reasonable for Criminal, Worksafe, Coronial Enquiry Expenses to be provided in the particular case.
- v. If for any reason the Appointed Solicitor refuses to continue acting for You or if You withdraw Your instruction from them, Our liability will cease forthwith unless, taking into account the

relevant circumstances, We agree to the appointment of another solicitor to continue with the claim.

- vi. Where You are awarded costs, You must take steps to recover Legal Costs and Expenses which would be the subject of payment under this section. Such Criminal, Worksafe, Coronial Enquiry Expenses actually recovered will be taken into account by Us when calculating Our liability under this section.

5.6.5. Payment of Costs

- i. All accounts for Criminal, Worksafe, Coronial Enquiry Legal Expenses payable under this section will be submitted to Us as soon as is reasonably practicable upon Your receipt of such accounts.

6. Section 6 -- Policy Exclusions

The following Policy Exclusions will have the application wherever they apply in this Policy, including all Policy Sections, unless otherwise specified.

We will not provide indemnity or make any payment under this Policy or any Policy Section arising directly or indirectly:

6.1. Aircraft Hovercraft & Watercraft

6.1.1. from or caused by or arising out of:

- a. the ownership, maintenance, legal possession, legal control or use by You or the use on Your behalf of any;
 - b. Aircraft; or
 - c. Hovercraft; or
 - d. Watercraft, other than manually propelled Watercraft not exceeding 8 metres in length, or mechanically propelled Watercraft that do not require registration and/or that do not require the operator to be licensed not exceeding 3 metres in length.
- ii. the selling or manufacturing of Aircraft or the manufacture, assembly and/or supply of any products for maintaining an Aircraft in flight or moving upon the ground or used in the construction of an Aircraft hull or machinery which to Your knowledge are incorporated in an Aircraft.
 - iii. the leasing, hiring, or chartering of Aircraft to or from You; or
 - iv. the repair, service or maintenance of Aircraft or Aircraft products or the installation of any products into Aircraft.

6.2. Asbestos

6.2.1. from or caused by or arising out of or in connection with:

- i. any mining, handling, processing, manufacturing, sale, transportation, distribution, storage or use of asbestos, asbestos products or asbestos contained in any products,
- ii. any process of decontamination, treatment, handling, sale, installation, removal, disposal or control of asbestos or materials containing asbestos.

6.3. Communicable Disease

6.3.1. arising out of, originating from, caused by, contributed to, resulting from, or otherwise in connection with communicable disease which can be transmitted by means of any substance or agent from any organism to another organism where the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

6.4. Criminal Assault

6.4.1. out of, or attributed to, assault by You, condoned by You or conducted on Your behalf, which ultimately results in a criminal conviction.

6.5. Cyber

6.5.1. arising directly or indirectly from or caused by or arising out of or in connection with:

- i. data breach or unauthorised access to information;
- ii. transmission, publication, release, loss, entry, modification, creation, handling or maintenance of any data or information; or
- iii. breach of access (including but not limited to unauthorised access) to;
- iv. interruption of
- v. degradation (including degradation in service) of;
- vi. failure of; or
- vii. operation or maintenance of

any electronic, wireless, web or similar system (including but not limited to all hardware, software, programmes and data) used to transmit, connect, process or store data or information in an analogue, digital, electronic, wireless or similar format (including but not limited to all computers, servers, associated input and output devices, data storage devices, networking equipment, wired or wireless peripherals, electronic back-up facilities and media libraries).

6.6. Due Care

6.6.1. out of the deliberate, conscious, and intentional disregard by You of the need to take reasonable steps to prevent claims.

- 6.6.2. out of or in connection with damage to material property and/or the ground and/or underground services where such damage is an inevitable result of an event and/or activities arranged or operated by You.

6.7. Efficacy

- 6.7.1. out of the failure of Your Product, or any part thereof, to fulfil the purpose for which it was intended or to perform as specified, warranted or guaranteed, unless such failure is due to an unintentional and unexpected error or defect in the, manufacture, assembly, preparation or installation of Your Product, or any part of it.

6.8. Electronic data

- 6.8.1. or caused by the total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data or any error in creating, amending, entering, deleting Electronic Data or a total or partial inability or failure to receive, send, access or use Electronic Data for any time at all or any consequential loss resulting therefrom other than as provided in Section 3 Professional Indemnity 3. Automatic Extension, 3.6.3 Loss of Documents if Section 3 is insured and specified in the Schedule.

6.9. Employers Liability

- 6.9.1. from Personal Injury to any Worker, however if You:
- i. are required by law to insure or otherwise fund, whether through self-insurance statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) for such Personal Injury; or
 - ii. are not required to so insure or otherwise fund such liability by reason only that the Personal Injury is to a person who is not a Worker or employee within the meaning of the relevant Workers' Compensation Law or the Personal Injury is not a Personal Injury which is subject to such law;

then this Policy will respond to the extent that Your liability would not be covered under any such fund, scheme, policy of insurance or self-insurance arrangement had You complied with Your obligations pursuant to such law.

- 6.9.2. from any liability imposed by any Workers' Compensation Law.

- 6.9.3. from any liability imposed by the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination or contract.

For the purpose of this Exclusion only:

- 6.9.4. 'Worker' means any person employed by You or deemed to be employed by You pursuant to any workers' compensation law.
- 6.9.5. Furthermore, Your Workers will not include Voluntary workers, secondees and work experience students who is not a Worker or employee within the meaning of the relevant Workers' Compensation Law or the Personal Injury is not a Personal Injury which is subject to such law,
- 6.9.6. 'Workers' Compensation Law means any law relating to compensation for Personal Injury to Workers or employees.
- 6.9.7. Notwithstanding Section 1 Exclusion clause 1.5.2 Contracts & Agreements, Exclusions 6.9.1 and 6.9.3 will not apply to this exclusion with respect to liability of others assumed by the Named Insured under a written contract or agreement.

6.10. Erection & Alteration to Buildings

- 6.10.1. in respect to the erection, demolition of and/or alteration or addition to buildings or structures by You or on Your behalf.

however this exclusion will not apply to Policy Section 1 if the completion value of such work does not require a building permit and does not exceed \$200,000 in value unless some other sub-limit is stated in the Schedule.

6.11. Faulty Workmanship

- 6.11.1. from the cost of performing, completing, correcting, or improving any work undertaken by You.

6.12. Fines, Penalties, Punitive, Exemplary or Aggravated Damages

- 6.12.1. Liability for any fines, penalties, punitive damages, exemplary damages, aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

6.13. Information Technology, Hazards, Computer Data, Programme and Storage Media

- 6.13.1. Property Damage arising, directly or indirectly, out of, or in any way involving Your Internet Operations, or

- 6.13.2. Property Damage to computer data or programmes and their storage media arising directly or indirectly out of or caused by, through or in connection with:
- i. the use of any computer hardware or software.
 - ii. the provision of computer or telecommunication services by You or on Your behalf.
 - iii. the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

But this exclusion does not apply to:

- 6.13.3. Personal Injury or Property Damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site, or
- 6.13.4. liability which arises irrespective of the involvement of Your Internet Operations.
- 6.13.5. indemnity as provided in Section 6 Professional Indemnity if it is provided and specified in the Schedule.

Nothing in this exclusion will be construed to extend coverage under this Policy to any liability which would not have been covered in the absence of this exclusion.

6.14. Insolvency

- 6.14.1. any liquidation, bankruptcy, or insolvency of You.
- 6.14.2. Licensing
- 6.14.3. out of or in connection with You or anyone employed or engaged on Your behalf who is not trained in accordance with, or licensed as required by the relevant Acts, Regulations or Authorities governing the provision of the Business services.

6.15. Molestation

arising directly or indirectly from or in respect of:

- 6.15.1. the molestation of, interference with, mental or physical abuse of, or assault of persons,
- 6.15.2. any act(s) of indecency; or
- 6.15.3. the failure to detect, act upon or prevent the molestation of, interference with, mental or physical abuse of or assault of persons or acts of indecency,

by:

- 6.15.4. You;
- 6.15.5. any agent of You; or
- 6.15.6. any person performing any volunteer service for or on behalf of You.

We will not defend any claim made against You directly or indirectly arising from or in respect of alleged molestation, interference, mental abuse, physical abuse, assault or act(s) of indecency or a failure to detect, act upon or prevent molestation, interference, mental abuse, physical abuse, assault or act(s) of indecency.

6.16. Mould / Fungi

- 6.16.1. out of or resulting from or in any manner related to Fungi.
- 6.16.2. for the purpose of the exclusion "Fungi" means any fungus or mycota or any by product or type of infestation produced by such fungus or mycota, including but not limited to mould, mildew, mycotoxins, spores or any biogenic aerosols.

6.17. Nuclear Fuel/Weapons

- 6.17.1. out of, or resulting from:
- i. ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion, combustion will include any self-sustaining process of nuclear fission;
 - ii. nuclear weapons material.

6.18. Pollution

- 6.18.1. out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any watercourse or body of water.
- 6.18.2. for any costs and expenses incurred in the prevention, testing, monitoring, cleanup, removal, containment, treatment, detoxifying or neutralising of such Pollutants.

Provided always that 6.19.1 and 6.19.2 will not apply if such discharge, dispersal, release or escape is caused by a sudden, identifiable, unexpected and unintended event from your standpoint which takes place in its entirety at a specific time and place.

6.18.3. from the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants in North America or in any country or territory in which the laws of North America apply.

Our liability under 6.19.1 and 6.19.2 in respect of any one discharge, dispersal, release or escape of Pollutants which is caused by a sudden, identifiable, unexpected, and unintended happening and takes place in its entirety at a specific time and respect of all such discharges, dispersals, releases or escapes of Pollutants during any one Period of Insurance will not exceed the Pollution Limit of Liability stated in the Schedule. If no Pollution Limit of Liability is stated in the Schedule, the Pollution Limit of Liability will be Nil and indemnity is no provided

6.19. Product Guarantee

6.19.1. out of any Product warranty or guarantee given by You or on Your behalf,

6.19.2. however, this exclusion will not apply to the requirements of any legislation as to product safety and information.

6.20. Product Recall

6.20.1. from damages, costs or expenses claimed for the withdrawal, recall, inspection, repair, replacement or loss of use of Your Products or of any property of which such Products form a part if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.

6.21. Terrorism

6.21.1. caused by, resulting from or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This exclusion also applies to claims in respect of any claim directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

If We allege that by reason of this exclusion, any claim is not covered by this insurance the burden of proving the contrary will be upon You.

For the purpose of this exclusion 6.22 an Act of Terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

6.22. Tobacco

6.22.1. any injury caused directly or indirectly by the inhalation or ingestion of or exposure to tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco.

6.23. Vehicle

6.23.1. Personal Injury or Property Damage arising out of the ownership, possession or use by You of any Vehicle;

- i. which is registered or which is required under any legislation to be registered, or
- ii. in respect of which compulsory liability insurance or statutory indemnity is required by virtue of legislation (whether or not that insurance is effected).

But Exclusions 6.23.1 shall not apply to:

6.23.2. Personal Injury where:

- i. that compulsory liability insurance or statutory indemnity does not provide indemnity, and
- ii. the reason or reasons why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles.

6.23.3. Property Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any Vehicle.

6.23.4. Property Damage caused by or arising from the operation or use of any Vehicle which is designed primarily for lifting, lowering, loading, unloading, while being operated or used by You or on Your behalf within the confines of Your Worksite.

6.23.5. Property Damage caused by or arising out of the use of:

- i. a Vehicle in Your physical and direct control whilst being used as a tool, or
- ii. plant forming part of Your Vehicle being used as a tool operating at any Worksite;

6.23.6. but excluding Property Damage caused by or arising whilst the Vehicle is transporting or carting goods Property Damage to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any Vehicle or of the load carried thereon.

- 6.23.7. Personal Injury or Property Damage arising from the delivery or collection of goods to or from any Vehicle.
- 6.23.8. Personal Injury or Property Damage arising from the loading or unloading of any Vehicle.
- 6.23.9. Property Damage to any Vehicle (not owned, leased, or hired by, under hire purchase, on loan or rented to You) temporarily in Your custody or control for the purpose of parking and directly arising out of such parking.

6.24. War

- 6.24.1. or occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

6.25. Geographical Limits

- 6.25.1. from any event, act, error or omission committed, attempted or alleged to have been committed or attempted in the United States of America, Canada, their territories, protectorates or dependencies or outside the Geographical Limits noted in the Schedule.

6.26. Intellectual Property Rights

- 6.26.1. any intentional infringement of Intellectual Property Rights; or
- 6.26.2. any infringement of Intellectual Property Rights arising from any promotional, marketing or advertising material circulated, broadcast, or utilised in any way by You:

6.27. Jurisdictional Limits;

- 6.27.1. from or brought in a court of law or before a judicial, administrative, arbitral, investigative, or disciplinary panel of any description in; or
- 6.27.2. out of, based upon, attributable to or in consequence of the enforcement of any judgment, order or award obtained within or pursuant to the laws of;
 - the United States of America, Canada, their territories, protectorates, or dependencies or of any jurisdiction outside the Jurisdictional Limits noted in the Schedule.

6.28. Licensing

- 6.28.1. from any act, error or omission committed, attempted, or alleged to have been committed or attempted by You in the conduct of any activity for which You are not properly licensed, registered or authorised in accordance with any relevant legislation or regulation.

7. Section 7 -- Policy Claims Conditions

The following Policy Claims Conditions will have the application specified below wherever they apply in this Policy or any Policy Section unless otherwise stated.

7.1. Claims Procedure

- 7.1.1. When an event, act error, omission or loss occurs, or You first become aware of something which could give rise to a claim You must:
 - i. as soon as reasonably possible notify Us of the event, act error, omission or loss or matter;
 - ii. in respect to "claims made" Section 2 & Section 3 of this policy You must notify us during the Period of Insurance.
 - iii. within 30 days of notifying Us, give Us a statement in writing with as much detail as You can about the event, act error, omission, loss, matter, Occurrence or claim.
 - iv. forward details and copies of any allegation, claim or legal proceedings including any prosecutions by any party brought against You to Us as soon as reasonable possible after receipt;
 - v. preserve any property which may be needed as evidence in any claim against You and make it available for inspection by Us and Our representatives at our reasonable request.
- 7.1.2. You must not make admissions, settle, or attempt to settle or defend any claim against You without Our written consent (such consent not to be unreasonably withheld or delayed).
- 7.1.3. We may take over the defence of any claim or legal proceedings brought against You. When We do so, We may settle or defend the claim or proceedings as We see fit, taking into account any views expressed by you as to the approach. You must give Us any reasonable assistance and information that We require in the defence or settlement of any such claim.

- 7.1.4. We may at any time pay to You the Limit of Liability (after deduction of any sum or sums already paid) in respect of any claim(s) made against You or any lesser sum for which the claims(s) can be settled. Upon such payment, We will have no further liability under this Policy in connection with that claim(s) except for costs, charges and expenses recoverable from You in respect of the period prior to the date of the payment, whether or not pursuant to an order made subsequently; and incurred by Us or by You with Our consent (such consent not to be unreasonably withheld or delayed) prior to the date of such payment.

7.2. Goods and Service Tax (GST)

- 7.2.1. The amount of the payments or indemnity made as a result of Our agreements in this Policy excludes Goods and Services Tax (GST).
- 7.2.2. If You are not registered for GST, in the event of a claim We will reimburse You the GST component in addition to the amount that We pay.
- 7.2.3. The amount that We are liable to pay under this Policy will be reduced by the amount of any input tax credit that You are or may be entitled to claim for the supply of goods or services covered by that payment.
- 7.2.4. If You are entitled to an input tax credit for the premium You must inform Us of the extent of that entitlement at or before the time You make a claim under this Policy. We will not indemnify You for any GST liability, fines or penalties that arise from or are attributable to Your failure to notify Us of Your entitlement (or correct entitlement) to an input tax credit on the premium.
- 7.2.5. If You are liable to pay an Excess under this Policy, the amount payable will be calculated after deduction of any input tax credit that You are or may be entitled to claim on payment of the Excess.
- 7.2.6. If You are unsure about the taxation implications of this Policy, You should seek advice from Your accountant or tax professional.

7.3. Notification of Events or Circumstances

- 7.3.1. Notice of any event that has potential to give rise to a claim or a claim shall be given in writing to Us and delivered to:
- Clyde & Co
Level 15
333 George St Sydney
Attention Mr D Lee (Partner)
Email: ClydeClaims@clydeco.com

7.4. Governing Law and Jurisdiction:

- 7.4.1. This Policy is governed by the laws of the State of NSW in the Commonwealth of Australia including in particular, the provisions of the Insurance Contracts Act 1984 (Cth) (or as replaced or amended).

7.5. Payment of Excess

- 7.5.1. You agree that You will promptly pay the Excess specified in the Schedule when requested by Us.
- 7.5.2. If at the time that a claim is indemnified by this policy the Insured is wound up, in liquidation or insolvent then an uninsured loss charge equal to, and in addition to the excess will apply to the claim.
- 7.5.3. We will not provide indemnity for the amount of the Excess in the Schedule noted as the Worker-to-Worker Excess for any Occurrence (inclusive of Defence Costs and other costs and expenses) in respect of liability in any way arising out of Personal Injury to Workers while such Workers are acting in such capacity.
- 7.5.4. For the purpose of this provision the term 'workers' shall mean any person who is engaged in working on the same worksite as You in, on, about, or adjacent to, any worksite or job site at which You are undertaking work, or any contractor or subcontractor of Yours or employee of any contractor or subcontractor of yours, or any labour hire personnel whilst such contractor or subcontractor, employee of any contractor or subcontractor, labour hire personnel is working in such capacity.
- 7.5.5. If no Worker-to-Worker Excess is shown in the Schedule the Worker to Worker Excess shall be \$100,000.

7.6. Sanctions Limitation

- 7.6.1. Neither We or any reinsurer shall be deemed to provide indemnity and neither We or any reinsurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of

such indemnity, payment of such claim or provision of any benefit would expose Us or any reinsurer to any sanction prohibited or restricted under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America or Commonwealth of Australia.

8. Section 8 -- Policy General Conditions

The following Policy General Conditions will have the application wherever they apply in this Policy or Policy Sections unless otherwise specified

8.1. Material Change to Risk

- 8.1.1. You shall notify Us as soon as is reasonably practicable of any material change in the risk that is the subject of this Policy during the Period of Insurance, including but not limited to:
- i. any merger with, or acquisition of or by, another company, entity, partnership or business or the establishment of a subsidiary company or branch office;
 - ii. the appointment of any type of administrator, receiver or liquidator, or a trustee in bankruptcy, to any Insured;
 - iii. any material change in the nature of Your Business activities as represented to us before the Period of Insurance or specified in the Proposal Form;
 - iv. the cancellation, suspension or loss of, or the imposition of any restriction or limitation on, any license, registration or authorisation under any legislation or regulation applicable to any aspect of the Business.
 - v. The initiation of any worksafe or occupational safety investigation by an regulator or authority.
- 8.1.2. Where such notice is given, We shall be entitled to negotiate with You the terms for the continuation of this Policy. We shall also be entitled to cancel this Policy in accordance with the provisions of the Insurance Contracts Act 1984.
- 8.1.3. To the extent permitted by law, we shall be entitled to reduce any indemnity or payment which may be available to You under this Policy to the extent of any prejudice suffered by Us arises from any failure by You to comply with this condition.

8.2. Allocation

- 8.2.1. In the event You are a party to a claim that is only subject to partial indemnity under this Policy, then, You and Us will use our best efforts to agree upon a fair and proper allocation between indemnity or payments that are the subject of indemnity under this Policy and such amounts that are not the subject of indemnity under this Policy.
- 8.2.2. In the event that an agreement cannot be reached on proper allocation, a Senior Counsel (to be mutually agreed upon by You and Us) will, as an expert and not an arbitrator, determine a fair and proper allocation.
- 8.2.3. The cost of obtaining such Senior Counsel's determination will form part of the Section 1.2 Defence and Other Costs.

8.3. Other Insurance

- 8.3.1. You must tell Us in writing and supply copies to Us as soon as possible about any other insurance current at the time of any Occurrence, and/or Personal Injury and/or Property Damage and/or Advertising Injury which covers the benefits or liabilities insured by this Policy. Valid and collectable insurance includes any self-insurance plan which would be applicable to the loss.
- 8.3.2. This Policy will apply only in excess over:
- i. any other insurance specified in the Proposal Form;
 - ii. any other insurance declared to Us under clause 8.3.1;
 - iii. and any renewal or substitute for such insurances.

8.4. Notice & Authority

The insured first specified in the Schedule will act on behalf of all parties comprising You with respect to:

- 8.4.1. the receipt and acknowledgement of all notices required by law; and
- 8.4.2. the giving and receiving of any notice under this Policy; and
- 8.4.3. the payment of premiums and other charges that may become due under this Policy; and
- 8.4.4. the receipt and acceptance of any endorsements issued to form a part of this Policy.

8.5. Assignment

- 8.5.1. This Policy and any rights hereunder cannot be assigned, other than assignment and irrevocable power of attorney providing the right of cancellation to a premium funding company, without Our prior written consent (such consent will not be unreasonably withheld or delayed)..

8.6. Governing Law

- 8.6.1. Any interpretation of this Policy relating to its construction, validity or operation will be made in accordance with the laws of the Commonwealth of Australia and the state of New South Wales and the parties agree to submit to the exclusive jurisdiction of the courts of that state or territory.

8.7. Plurals & Titles

- 8.7.1. The titles of the clauses and paragraphs in this Policy are for convenience only and do not lend any meaning to this contract except for reference purposes.
- 8.7.2. The singular terms used in this Policy include the plural and vice versa, except where the context requires otherwise.
- 8.7.3. In this Policy some words starting with capital letters (except for titles of clauses and paragraphs) have special meaning and are defined.

8.8. Currency

- 8.8.1. All premiums, limits, retentions, and other amounts under this Policy are expressed and payable in Australian currency.

8.9. Foreign Currency

- 8.9.1. All amounts referred to in this Policy are in Australian Dollars. If You incur liability to settle any claim for an amount stated in the local currency of any country or territory outside Australia, where an award is made or a settlement is agreed upon, the following rules will apply. The amount payable by Us will be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the free rate of exchange published by Bloomberg on the date on which We pay to You (or some other person or party as directed by You) the indemnity in respect of such award or settlement, subject always to the applicable Limit of Liability.

8.10. Validity

- 8.10.1. This Policy is not valid unless the Schedule is issued by Us or others we have authorised.

8.11. Cancellation by You

- 8.11.1. You may cancel this Policy at any time. To do so You must tell Us in writing that You want to cancel the Policy and the future date from which the cancellation is to apply.

8.12. Cancellation Premium

- 8.12.1. In the event we receive a written request from you for cancellation of this Policy by You. We will be entitled to retain premium for the pro-rata "time on risk" period. We will also retain a reasonable proportion of the premium on the day the Policy commences for expenses associated with arranging this policy.
- 8.12.2. If cancellation is due to non-payment of premium the Policy is cancelled with effect from inception and you will not be entitled to any refund of premium.
- 8.12.3. If the premium is subject to adjustment, cancellation will not affect Your obligation to supply to Us such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

8.13. Cancellation by Premium Funding Company

- 8.13.1. If the premium has been paid to us on Your behalf by a premium funding company which holds a legal right over this Policy by virtue of a notice of assignment and irrevocable power of attorney, then subject to Section 60 of the Insurance Contracts Act 1984, We may cancel this Policy at the written request of the premium funding company however they must tell Us in writing that they want to cancel the Policy and the future date from which the cancellation is to apply. After substantiation of the debt and default in payment by You has been made and proven to Us and by giving You not less than seven (7) business days written notice to that effect, following which a refund will be made to the premium funding company subject to clause 8.12..

8.14. Cancellation by Us

- 8.14.1. As permitted by law We may cancel this Policy by giving written notice to You if:

- i. You failed to comply with the duty of utmost good faith, or
- ii. You failed to comply with a provision of this Policy, including a provision with respect to the payment of premium; or
- iii. before this Policy was entered into You failed to comply with the duty of disclosure or made a misrepresentation to Us; or
- iv. You have made a fraudulent claim under this or any other Policy of insurance with Us or any other insurer; or
- v. You did not tell Us about anything which this Policy required You to tell Us.

8.14.2. Cancellation by Us will take effect as set out in the Insurance Contracts Act 1984.

8.15. Cross Liability

- 8.15.1. Where You are comprised of more than one person or entity, each will be considered as a separate legal entity. The words You and Your will apply to each person or entity as if a separate Certificate had been issued to each. This Condition does not increase the Limit of Liability under this Policy in respect of any Occurrence or Period of Insurance.
- 8.15.2. Any information supplied to or withheld from Us in relation to entering into, renewing or extending this Certificate or any claim under the Certificate will be deemed to have been supplied or withheld by all persons or entities insured by this Certificate; but
- 8.15.3. An action or omission of one which increases the risk of a will not prejudice the rights of the others, provided that, as soon as is reasonably practicable, on becoming aware of the increase in the risk of Personal Injury, Property Damage or Advertising Injury, or other sources of claims the others give Us written notice and pay any reasonable additional premium charged by Us.

8.16. Hold Harmless Agreements

- 8.16.1. You must not enter into an agreement with another person which excludes or reduces Your rights to make a claim against that person at any time without Our prior written consent (such consent will not be unreasonably withheld or delayed). If You do, We may reduce the amount of any claim You make on this Policy by the extent to which Your agreement prevents Us making a claim against that person under Our rights of subrogation.
- 8.16.2. You must not enter into an agreement with another person which agrees You will indemnify them for their own liabilities or actions without Our prior written consent (such consent will not be unreasonably withheld or delayed). If You do, We may reduce the amount of any claim You make on this Certificate by the extent to which Your agreement exceeds the liability that would have been attributable to You had not mad the agreement.

8.17. Our Rights of Inspection

- 8.17.1. We will be permitted, but not obligated, to inspect Your premises and operations at any reasonable time. Neither Our right to make inspections, nor Our failure to make inspections, nor the making of inspections, nor any report of an inspection will constitute an undertaking, on behalf of or for the benefit of You or others, to determine or warrant that such premises or operations are safe or healthful or are in compliance with any law, rule or regulation.
- 8.17.2. We may examine and audit Your books and records at any time during the currency of this Policy and within three (3) years after the final termination of this Policy but only with regard to matters which are relevant to this Policy.

8.18. Premium Adjustment

- 8.18.1. If the first premium or any renewal premium for this Policy or any part thereof will have been calculated on estimates provided by You, You will keep an accurate record containing all particulars relative thereto and will at all reasonable times allow Us to inspect such record.
- 8.18.2. You will, where requested by Us after the expiry of each Period of Insurance, provide to Us such particulars and information as We may require as soon as reasonably practicable. The premium for such Period will thereupon be adjusted and any difference paid by or allowed to You, as the case may be, subject to retention by Us of any minimum premium that may have been agreed upon between Us and You at inception or the last renewal date of this Policy.

8.19. Reasonable Precautions

- 8.19.1. You must take all reasonable precautions to:
 - i. prevent Personal Injury or Property Damage or Advertising Injury;
 - ii. prevent the manufacture, sale, or supply of defective Products.
- 8.19.2. You must at Your own expense, trace or recall or modify any of Your Products which contain any defect or deficiency of which You are aware or have reason to suspect.

- 8.19.3. You and Your employees, servants and agents must comply with the requirements of any statutory authority for the safety of persons and property.
- 8.19.4. You must exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings, plant, and equipment in sound condition.

8.20. Sub-Contractor Conditions

- 8.20.1. It is a condition precedent to indemnity being provided that that any contractor or their sub-contractors undertaking work for or on behalf of You will maintain their own current Public Liability insurance with a Limit of Liability which is not less than the Limit of Liability applicable to Section 1 of this Policy and applies for the duration they provide or should provide services to, or for, You including during periods required before and after operations used for setting up, breaking down, rehearsals, sound checks and any other preparation.
- 8.20.2. You will make enquiry and require evidence that the contractors and sub-contractors' insurance is current and valid as is required above.

8.21. Subrogation

- 8.21.1. Subject to clause 8.21, We are entitled to pursue any claim to recover any amount paid to You or on Your behalf under this Policy in Your name at Our expense and for Our benefit.
- 8.21.2. You must give Us all the reasonable assistance and information that We require in pursuing any such claim.

8.22. Subrogation Waiver

We will not pursue any claim to recover any amount paid to You or on Your behalf under this Policy against:

- 8.22.1. any entity (and its directors, officers, employees or servants) which is Your subsidiary, which You own or control or which co-owns any property insured by this Policy;
- 8.22.2. any Insured (and its partner director, executive, officer or employee) named or described in this Policy.
- 8.22.3. any corporation, organisation, or person which or who owns or controls the majority of the issued shares or capital stock of any corporation or organisation to which or to whom indemnity is afforded under this Policy. Where such corporation, organisation or person is indemnified from liability insured against hereunder by any other policy of indemnity or insurance then Our right of subrogation is not waived to the extent up to the amount of such other policy.

9. Section 9 -- Policy Definitions

The following words will have the meaning specified below wherever they appear in this Policy and any Policy Section unless otherwise stated.

9.1. Act of Terrorism

Means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological, or similar purposes including the intention to influence any government.

9.2. Advertisement

Means any manner of communication given to the public including by way of any form of print media, publication, telecommunication, radio or television broadcast, electronic mail, internet, World Wide Web or exhibit.

9.3. Advertising Injury

Means injury arising out of one or more of the following:

- 9.3.1. defamation, or
- 9.3.2. infringement of copyright or passing off of title or slogan, or
- 9.3.3. unfair competition, piracy, misappropriation of advertising ideas or style of doing business; or
- 9.3.4. invasion of privacy; or
- 9.3.5. any breach of the misleading or deceptive conduct provisions of the Trade Practices Act 1974 (Commonwealth), Competition and Consumer Act 2010 (The Australian Consumer Law) (ACL or any Fair Trading or similar legislation of any country, state or territory;

committed or alleged to have been committed in any Advertisement and arising out of any advertising activities conducted by You or on Your behalf in the course of carrying out Your Business.

9.4. Aircraft

Means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space, other than model aircraft or tethered unmanned inflatable balloons or unmanned drone.

9.5. Business

Means the business as described in the Schedule (and, where applicable, as further described by Us at the time when this insurance was negotiated), and will also include:

- 9.5.1. the ownership, occupation, and maintenance of Your premises.
- 9.5.2. the tenancy of premises by You.
- 9.5.3. provision of tours for visitors to Your premises
- 9.5.4. the provision and management of any galas, sponsorships, and charities by You or on Your behalf.
- 9.5.5. participation in any exhibition or trade show by You or on Your behalf.
- 9.5.6. the hire or loan of plant and/or equipment to other parties.
- 9.5.7. the provision and management of first aid, medical, ambulance, fire, or safety services by You or on Your behalf.
- 9.5.8. the provision and management of canteens, social, sports, educational or welfare organisations and childcare facilities by You or on Your behalf for the benefit of Your employees.

9.6. Business Principal

Means any natural person who;

- i. in the case of a partnership, is appointed as a partner in such partnership: or
- ii. in the case of a corporation, is appointed as a director of such corporation.

9.7. Damage

Means any physical destruction of or damage to the property or any physical loss of the property.

9.8. Compensation

Means monies paid or agreed to be paid by judgment, award, or settlement in respect of Personal Injury and/or Property Damage and/or Advertising Injury.

Provided that such Compensation is only payable in respect of an Occurrence to which this insurance applies.

9.9. Contract Principal

Means a legal entity other than You with who you have entered into a written contract or agreement for the provision of Business services.

9.10. Defence Costs

Means reasonable legal costs and other expenses resulting solely from the investigation, defence, settlement, or appeal of any Claim in respect of any Loss that is the subject of indemnity under this Policy but shall not include any internal or overhead expenses incurred by You or the costs of Your time.

9.11. Documents

Means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material. Documents do not include bearer bonds or coupons, stamps, bank or currency notes or negotiable instruments.

9.12. Defamation

Means libel, slander, defamation of character or invasion of right of privacy unless arising out of Advertising Injury but not

- 9.12.1. resulting from statements made prior to the commencement of the Period of Insurance; or
- 9.12.2. resulting from statements made at Your direction with knowledge that such statements are false; or
- 9.12.3. incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

9.13. Electronic Data

Means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instruction for such equipment.

9.14. Employment Practices

Means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment, or discrimination in respect of Your past, present or prospective Employees.

9.15. Employee

Means any natural person employed under a contract of service or apprenticeship and includes any part-time, casual, trainee, volunteer, or work experience personnel.

9.16. Excess

Means the uninsured amount specified in the Schedule that applies to the Policy and each Policy Section which You must first pay towards any claim or series of claims under this Policy which if unpaid by You will be deducted by Us from any amount paid by Us to You or paid on Your behalf in settlement of the claim.

9.17. Hovercraft

Means any vessel or craft or thing made or intended to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

9.18. Insured

Means the legal entity specified the Schedule as the Insured.

9.19. Internet Operations

Means:

- 9.19.1. transfer of computer data or programmes by use of electronic mail systems by You or Your employees, including part-time and temporary staff, contractors and others within Your organisation whether or not such data or programmes contain any malicious or damaging code, including but not limited to computer virus, worm, logic bomb, or Trojan horse,
- 9.19.2. access through Your network to the world wide web or a public internet site by Your employees, including part-time and temporary staff, contractors and others within Your organisation;
- 9.19.3. access to Your intranet (meaning internal company information and computing resources) which is made available through the world wide web for Your customers or others outside Your organisation.

9.20. Joint venture

Means any enterprise undertaken jointly by You with a third party or parties.

9.21. Limit of Liability

Means the amounts shown in the Schedule for which You have chosen to insure for this Policy and each Policy Section.

9.22. Medical Persons

Means, but is not limited to qualified medical practitioners, dentists, nurses, and first-aid attendants.

9.23. North America

Means the United States of America, the Dominion of Canada and their territories and protectorates, and any other territory coming within the jurisdiction of the courts of the United States of America or the Dominion of Canada.

9.24. Occurrence

Means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage and/or Advertising Injury neither expected nor intended from Your standpoint except for the matters referred to in clause 9.26.6.

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

All Advertising Injury arising out of the same injurious material or act regardless of the frequency or repetition of the number or kind of media used, or whether a claim is made by one or more persons, will be deemed to arise out of one Occurrence.

9.25. Period of Insurance

Means the period of insurance shown in the current Schedule.

9.26. Personal Injury:

Means:

- 9.26.1. bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and mental injury including loss of consortium or services resulting directly therefrom;
- 9.26.2. In the event of any claims, for Personal Injury arising from latent injury, latent disease, latent sickness, latent illness or latent disability such injury, disease, sickness, illness or disability in respect of each claim will be deemed to have first happened on the day such injury, disease or sickness was first medically diagnosed;

- 9.26.3. false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution and humiliation;
- 9.26.4. wrongful entry or wrongful eviction or other invasion of right to private occupancy of property;
- 9.26.5. Defamation; and
- 9.26.6. assault and battery not committed by You or at Your direction unless committed for the purpose of preventing or eliminating danger to persons or property.

9.27. Policy

Means this wording, the Proposal Form, the Schedule, and any endorsements to the wording.

9.28. Pollutants

Means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals, and waste.

Waste includes material to be recycled, reconditioned, or reclaimed.

9.29. Pollution Liability

Means Personal Injury or Property Damage arising from pollution or contamination of the atmosphere or of any water, land or other tangible property.

9.30. Products Liability

Means liability for Personal Injury or Property Damage caused by or arising out of Your Products or the reliance upon a representation or warranty made at any time with respect to such products but only if the Personal Injury or Property Damage occurs away from Your premises or premises leased or rented to You and after physical possession of Your Products has been passed to others.

9.31. Property Damage

Means:

- 9.31.1. physical loss, destruction of or damage to tangible property including the loss of use thereof at any time resulting therefrom; or
- 9.31.2. loss of use of tangible property which has not been physically lost, destroyed or damaged; provided such loss of use is caused by or arises out of an Occurrence.

9.32. Proposal Form

Means the proposal form or application for insurance made by You to Us in respect of this Policy and:

- 9.32.1. any additional documentation attached to such proposal form or application; and
- 9.32.2. any documentation, representation or other information provided to Us as part of any submission made by You or on Your behalf in respect of this insurance.

9.33. Schedule

Means the schedule attaching to and forming part of this Policy

9.34. Senior Counsel

Means a barrister in active practice who is entitled to use the post-nominals KC or SC in any one or more superior court in the Commonwealth of Australia or the Dominion of New Zealand.

9.35. Subsidiary

Means:

- i. any entity which by virtue of any applicable legislation or law is deemed to be Your subsidiary (where You are a company), or
- ii. any entity over which You (where You are a company) are in a position to exercise effective direction or control.

9.36. Territorial Limits

Means the Territorial Limits specified in the Definitions for each Policy Section or the Schedule, If not specified the Territorial Limits will be the Commonwealth of Australia.

9.37. Vehicle

Means any type of machine on wheels or on self-laid tracks which is made or intended to be propelled by other than manual or animal power. Vehicle includes any trailer or caravan, or other implement made or intended to be drawn by or utilised in conjunction with any such machine.

9.38. Watercraft

Means any vessel or craft made or intended to float on or in or travel on or through water other than model boats.

9.39. We/ Our/ Us

Means the underwriters specified as insurer(s) in the Schedule.

9.40. Worksite

Means any premises or site where any work is performed for and/or in connection with the Business together with all areas surrounding such premises or site and/or all areas in between such premises or site that You will use in connection with such work.

9.41. You/Your/Insured

Means each of the following:

9.41.1. the Named Insured; and

9.41.2. any past, present or future shareholder, proprietor, partner director, executive, officer or employee of the Named Insured, but only in relation to but only whilst acting in the scope of their duties in such capacity.

Means each of the following, to the extent set forth below;

9.41.3. the Insured specified in the Schedule;

9.41.4. any past, present or future stockholder or shareholder, proprietor, partner director, executive, officer or employee of the Insured specified in the Schedule but only whilst acting in the scope of their duties in such capacity

9.41.5. any spouse or any family member of any such person designated in 9.41.4 but only while accompanying such person on any commercial trip or function in connection with the Business;

9.41.6. any Contract Principal in respect of the liability of such principal arising out of the performance by the Insured specified in the Schedule of any written contract or agreement for the performance of work for such Contact Principal only to the extent required by such written contract or agreement but limited to the other terms and conditions of this Policy;

9.41.7. any office bearer, member, employee or voluntary helper including volunteer helper of any canteen, social or sporting clubs, first aid, medical, ambulance or firefighting services, welfare organisations or child care facilities formed with the consent of the Insured specified in the Schedule in respect of claims arising from duties connected with activities of any such club, service, organisation or facility.

9.41.8. any work experience student or volunteer whilst engaged for or on behalf of the Insured specified in the Schedule.

9.41.9. the estates, legal representatives, heirs or assigns of any person entitled to indemnity under this Policy in circumstances giving rise to indemnity under this Policy.

9.42. Your Product

Means anything or things (including the design, plan, formula or specifications and any packaging, containers, directions, markings, instructions, specifications and advice or warnings given or omitted to be given) manufactured or deemed manufactured, (whether by law or otherwise), bottled, canned, labelled, grown, extracted, produced, processed, assembled, constructed, erected, installed, altered, repaired, serviced, treated, imported, exported, sold, supplied, handled, resupplied or distributed by You or on Your behalf in the course of Your Business including discontinued products after physical possession has been passed to others.