



XL Insurance

Sport & Leisure

Gallagher Sports Insurance

Policy Wording

Combined Liability

Form S&L CLI Policy 07.21



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Important Information

About Us

This insurance is underwritten by Offshore Market Placements (Australia) acting under a binder as an agent of XL Insurance Company SE Australia Branch (XLICSE).

In providing any financial services Offshore Market Placements (Australia) acts as an underwriting agent under Arthur J. Gallagher & Co (Aus) Limited AFS Licence 238312.

All services that are provided to **You** regarding this product are provided by Offshore Market Placements (Australia).

Our contact details are:

Offshore Market Placements (Australia)
80 Pacific Highway
North Sydney, NSW 2060
Australia

About Arthur J Gallagher (Gallagher)

Gallagher is one of Australia's – and the world's – largest insurance broking and risk management companies. We're the broker of choice for more than 100,000 Australian businesses – from micro-SMEs through to multinational corporations and iconic brands.

With 25+ regional and metropolitan branches across Australia, we understand local business communities because we're part of them ourselves.

Globally, the Gallagher network of 600+ offices in over 30 countries, enables us to leverage relationships with international insurance partners to create programs that achieve claims outcomes beyond the scope of many smaller brokers.

Words with a special meaning

Excluding headings, words stated in bold have a special meaning when used in this **Policy**. These words are listed in General Definitions in the **Policy** wording from page 10.

Overview of this insurance

This insurance **Policy** is intended to provide combined liability cover to **You** whilst in the course of **Your** business.

The cover is stated in the insuring clause of each section.

How to apply for this insurance

If **You** are interested in buying this **Policy** or have any questions about it, please contact **Your** insurance broker. **Your** insurance broker will be able to provide **You** with all of the information and assistance **You** need. **Your** insurance broker will then request a quotation from **Us** on **Your** behalf.

Significant features and benefits of the cover

The following is a summary of some of the key features of the **Policy**. Please refer to the terms, conditions and exclusions of this document for full details of the cover:

- (a) Section 1: Public & Products Liability;
- (b) Section 2: Civil Liability; and
- (c) Section 3: Management Liability.



Your individual requirements

When preparing this **Policy**, **We** have not taken into account **Your** individual objectives, requirements or financial position. **We** generally distribute **Our** products through licensed insurance brokers or advisers (intermediaries).

You should discuss with **Your** intermediary the type of risks **You** need to insure against and the appropriate amount of cover that **You** need. Further, if **You** have any questions about the appropriateness of this product for **Your** objectives, requirements or financial position, **You** should seek advice from **Your** intermediary.

If **Your** circumstances change after taking out this insurance, relevant to the risks **We** have agreed to insure, **You** must notify **Your** intermediary or **Us** as soon as possible.

Other issues to consider before taking out this insurance

Like all insurance contracts, the **Policy** contains exclusions, terms and conditions, as well as limits and sub-limits that **You** should be aware of when considering whether to purchase this product.

Exclusions and limitations

The **Policy** has a number of general exclusions that apply to all sections of cover under this **Policy**. For example, **We** will not cover any Known Claims or Circumstance, War or **Terrorism**.

A full list of exclusions are listed in the General Exclusions from page 19.

Please also refer to the Additional Exclusions stated within each Section, where applicable, which set out other circumstances when benefits may not be payable or may be limited in some way.

Amounts payable

There are maximum amounts **We** will pay under this **Policy**. These amounts are shown in the **Schedule**.

Other limits may also be stated within the **Policy**.

General conditions

The **Policy** has a number of general conditions that will apply to the cover. These conditions are listed from page 15.

In some circumstances, a breach of a condition may entitle **Us** to refuse to pay a **Claim** or reduce the amount **We** are liable to pay.

Our contract with You

The terms of cover are contained in this **Policy**, the **Schedule**, any attachments to the **Schedule**, the application for the insurance, and any **Endorsements We** issue.

You should keep all of the **Policy** documents in a safe place.



General Information

The information contained in this part is general information only and does not form part of **Your** contract with **Us**. The **Policy** terms and conditions in the rest of this **Policy** wording contain details of **Your** contract.

Duty of Disclosure – What You must tell Us

Under the Insurance Contracts Act 1984 ("the Act"), **You** have a Duty of Disclosure. **You** are required before you enter into, renew, vary, extend or reinstate **Your** policy, to tell **Us** everything **You** know and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to **Our** decision whether to insure **You**, and anyone else to be insured under the **Policy** and, if so, on what terms.

What You do not have to tell Us

You do not have to tell **Us** about any matter that:

- (a) diminishes the risk;
- (b) is of common knowledge;
- (c) **We** know or should know in the ordinary course of **Our** business as an Insurer; or
- (d) **We** waive **Your** duty to tell **Us** about.

If you do not tell us

If **You** do not comply with your Duty of Disclosure, **We** may reduce or refuse to pay a claim or cancel **Your Policy**. If **Your** non-disclosure is fraudulent, **We** may treat this **Policy** as if it never existed.

Privacy

Privacy legislation regulates the way private sector organizations can collect, use, keep secure and disclose personal information. We are bound by the Privacy Act 1988 (Cth.) when collecting and handling your personal information.

Offshore Market Placements (Australia) have developed a privacy policy that explains the sort of personal information **We** hold about **You** and what **We** do with it.

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. **We** will only disclose and use **Your** personal information for a purpose **You** would reasonably expect.

We may need to disclose personal information to the reinsurers (who may be located overseas), insurance intermediaries, insurance reference bureau, 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 purposes of litigation.

We may disclose personal information to people listed as co-insured on your **Policy** and to family members or agents authorised by **You**.

We may disclose information to organisations that conduct customer service surveys on **Our** behalf. We will request **Your** consent to any other purpose.

By providing **Your** personal information to **Us**, **You** consent to **Us** making these disclosures. Without **Your** personal information, **We** may not be able to issue insurance cover to **You** or process **Your** claim.

You also have the opportunity to find out what personal information **We** hold about **You** and, when necessary, correct any errors in this information. **We** will do this without restriction or charge.

For further information about **Our** privacy policy or to access or correct **Your** personal information, please contact:



The Manager
Offshore Market Placements (Australia)
80 Pacific Highway
North Sydney
New South Wales 2060 Australia
Email: ed.vincent@ajg.com.au
Telephone: +61 2 9424 1754

The General Insurance Code of Practice

We support the General Insurance Code of Practice. The code aims to:

- (a) Promote more informed relations between insurers and their customers; and improve consumer confidence in the general insurance industry;
- (b) Provide better mechanisms for the resolution of complaints and disputes between insurers and their customers;
- (c) Commit insurers and the professionals they rely upon to higher standards of customer service.

For information about the Code **You** may contact Offshore Market Placements (Australia) or the Code of Practice website www.codeofpractice.com.au

Complaints And Dispute Resolution Policy

Offshore Market Placements (Australia) (a division of Arthur J Gallagher & Co (Aus) Ltd (ABN 34 005 543 920)) treats all complaints regarding the products and services that **We** provide seriously. If **You** are dissatisfied in any way, then **You** may lodge a complaint using **Our** complaints process.

If you have a Complaint

Please address **Your** complaint to the Manager:

Offshore Market Placements (Australia)
80 Pacific Highway
North Sydney NSW 2060 Australia
Email: ed.vincent@ajg.com.au
Telephone: +61 2 9424 1754

We will usually require the following information:

- Name, address and telephone number of the policyholder
- The type of insurance policy involved
- Details of the policy concerned, including policy and or claim reference numbers
- Name and address of the broker through whom the policy was obtained
- Details of the reasons for lodging the complaint
- An explanation of what you would like us to do to correct the situation
- Copies of any supporting documentation

Internal Complaints Process

Your complaint will be acknowledged in writing within 1 business days and **We** will respond to **Your** complaint with our decision within 10 business days, provided **We** have all necessary information and have completed any investigation required.

In cases where **We** cannot make a decision and provide our final response within 10 business days, **We** will let **You** know the reasons as soon as reasonably practicable and provide our final response within 30 calendar days.



We will keep **You** informed of the progress of **Our** response to **Your** complaint at least every 10 business days and respond to any request within 10 business days.

Our final response to **Your** complaint will be in writing and will inform **You**:

- **Our** decision in relation to **Your** complaint
- the reasons for **Our** decision
- **Your** right to take **Your** complaint to the next stage as well the contact information and details of how to do so, where **Our** decision does not resolve **Your** complaint to **Your** satisfaction

External Dispute Resolution

Australian Financial Complaints Authority

If **Your** complaint is not resolved to **Your** satisfaction following **Our** complaints process or if **We** do not resolve **Your** complaint within 30 calendar days of receiving it, **You** may refer the matter to the Australian Financial Complaints Authority (AFCA). AFCA is an independent body that operate nationally in Australia and aim to resolve disputes between **You** and **Your** insurer. AFCA provides fair and independent financial services complaint resolution that is free to consumers. **Your** dispute must be referred to AFCA within 2 years of the date of **Our** final response to your complaint. Determinations made by AFCA are binding upon **Us**.

Australian Financial Complaints Authority
GPO Box 3, Melbourne, Vic 3001
Telephone: 1800 931 678
Email: info@afca.org.au
Website: www.afca.org.au

How much will this procedure cost You?

This service is free of charge to policyholders.

Financial Claims Scheme

This Policy may be a protected Policy under Federal Government's Financial Claims Scheme (FCS), which is administered by Australian Prudential Regulation Authority (APRA).

The FCS may apply in the event that a general insurance company becomes insolvent. If the FCS applies a person who is entitled to make a claim under this Policy may be entitled to a payment under the FCS. Access to the FCS is subject to eligibility criteria.

You may obtain further information about the FCS from <http://www.fcs.gov.au> and the APRA hotline on 1300 55 88 49.

Cancellation

Your Right to Cancel

You can cancel this **Policy** by notifying **Us** via **Your** insurance broker or intermediary in writing, by email or by telephone. Any return of premium due to **You** will be calculated at a proportional daily rate depending on how long the **Policy** has been in force unless **You** have made a **Claim** in which case the full annual premium is due.

Our Right to Cancel

We can cancel this **Policy**, if there is a valid reason to do so under the Insurance Contracts Act 1984, including for example:



- (a) any failure by **You** to pay the premium; or
- (b) a change in risk which means **We** can no longer provide **You** with insurance cover; or
- (c) non-cooperation or failure to supply any information or documentation **We** request, such as the detail of a **Claim**;

by giving **You** 14 days' notice in writing. Any return of premium due to **You** will be calculated at a proportional daily rate depending on how long the **Policy** has been in force unless **You** have made a **Claim** in which case the full annual premium is due.

The **Insured Person** has no cancellation rights under this **Policy**.

How to make a Claim

Every **Claim** made against the **Insured** shall be notified to the **Insurer** as soon as practicable and in any event prior to expiry of the **Period of Insurance**, and every letter, demand, writ, summons and legal process pertaining to such **Claim** shall be forwarded to the **Insurer** as soon as practicable after receipt. All **Claim** notifications to the **Insurer** must be sent to:

Arthur J Gallagher
Level 12, 80 Pacific Highway
North Sydney NSW 2060 Australia
Telephone: 1800 931 129
Email: newclaims@ajg.com.au

Electronic Communication

Pursuant to the Insurance Contracts Act 1984 (Cth), a notice or other document may be given by electronic communication in accordance with the Electronic Transactions Act 1999 (Cth) and any regulations made under that Act. Amongst other things, this means that **We** can communicate with **You** by email.

If **You** are represented by an agent (e.g. **Your** insurance broker) and they provide **Us** with their nominated email address, they and **You** consent to **Us** delivering documents electronically to that email address, unless **You** or they tell **Us** otherwise. Any documents sent by email will be considered to have been received by **You** and **Your** agent 24 hours from the time **We** send them to that email address.

In all other cases, if **You** provide **Us** with **Your** nominated email address **You** consent to **Us** delivering documents electronically to that email address, unless **You** tell **Us** otherwise. Any documents sent by email will be considered to have been received by **You** twenty-four hours from the time **We** send them to that email address.

It is **You** and **Your** agent's obligation to ensure that any email address provided to **Us** is up to date and let **Us** know promptly if it changes.



The Policy Wording

In consideration of the payment of the premium set out in the **Schedule**, and in reliance on the information provided by **You**, the **Insurer** provides indemnity to the **Insured** in accordance with this **Policy**, subject to the limitations, terms and conditions of this **Policy** for the period set out in the **Schedule**.

This **Policy** is limited to the term specified in the **Period of Insurance** in the **Schedule**.

General Definitions

Certain words within this **Policy** have a special meaning. The following definitions apply to the **Policy** as a whole, when stated in bold throughout. In some instances a different definition may apply to a specific Section.

Advertising Injury means:

- (a) unintentional libel, slander or defamation; or
- (b) piracy or any act, error or omission in the use of advertising or merchandising ideas, under an implied contract; or
- (c) infringement of copyright, title or slogan; or
- (d) invasion of the right of privacy,

first published or broadcasted in connection with the **Insured's** advertising activities during the **Period of Insurance**.

Aircraft means:

any vessel, craft or device made or intended to fly or move in or through the atmosphere or space.

Claim means:

any written demand made by a third party upon the **Insured** for compensation.

Civil Liability means:

legal liability arising from any civil cause of action including but not limited to;

- (a) negligence; or
- (b) breach of contract; or
- (c) breach of statute; or
- (d) breach of fiduciary duty; or
- (e) breach of trust; or
- (f) misstatement or misrepresentation; or
- (g) breach of an implied warranty; or
- (h) libel, slander or defamation; or
- (i) infringement of intellectual property rights; or
- (j) breach of confidence or misuse of any information, which is either confidential or subject to restrictions as to its use.



Defence Costs means:

all necessary and reasonable costs and expenses incurred by the **Insurer**, or by the **Insured** with the **Insurer's** prior written consent, in defending, investigating or settling any **Claim**.

Documents means:

the following property owned by a third party and for which the **Insured** becomes responsible during the conduct of their **Insured's Business** and shall include deeds, wills, agreements, maps, plans, records, written or printed books, letters, certificates, written or printed documents or forms of any nature including any electronic or computer record or reproduction of such physical **Documents** but shall not include:

- (a) any shares, bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument; or
- (b) any electronically stored data; or
- (c) any software or computer programme.

Electronic Data means:

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

Employee means:

any natural person employed under a contract of service or apprenticeship by the **Insured** during the **Period of Insurance**. **Employee** includes voluntary workers, contractors and temporary workers whilst employed or engaged by or under the control of the **Insured**. **Employee** does not mean directors, principals or partners of the **Insured**.

Employment Practices Liability means:

any liability arising from any act, error or omission in connection with the recruitment, employment or termination of an **Employee** or applicant for a position as an **Employee** of the **Company** (as defined in Section 3) including but not limited to:

- (a) Sexual or workplace discrimination or harassment; or
- (b) Wrongful dismissal or failure to promote; or
- (c) Invasion of privacy or defamation; or
- (d) Misleading conduct or advertising in relation to the terms and conditions of employment; or
- (e) Failure or allegations of failure to comply with procedural or notification requirements upon termination of employment because of redundancy; or
- (f) Failure or allegations of failure to comply with the express terms of any workplace agreement which is lodged with an industrial tribunal, terms of legislation or terms of an award; or
- (g) Relating to contracts alleged to be harsh, unfair, unconscionable or contrary to public interest; or
- (h) From a breach of an implied or express term of contract of employment requiring the **Insured** to treat an **Employee** in good faith, fairly, with trust and confidence.



Endorsement means:

a written change to the terms and conditions of this **Policy**, agreed by **Us** and notified to **You**, that can restrict or expand cover.

Enquiring Body means:

a court, tribunal or legally constituted industry or professional body.

Excess means:

means the amount shown in the **Schedule** and represents the first amount which is payable by the **Insured** in respect of any one **Claim** made against the **Insured**.

Hovercraft means:

any vessel, craft or device made and intended to float on or in or travel on or through the atmosphere or water.

Insured's Business means:

the business conducted by the **Insured** only as specified in the **Schedule**.

Insured's Products means:

anything manufactured or deemed manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, repaired, serviced, treated, sold, supplied (including services) or distributed by the **Insured** including any container (other than a **Vehicle**) (after it has ceased to be in the physical possession or under the control of the **Insured**).

Insurers/We/Us/Our means:

Offshore Market Placements (Australia) acting under a binder as an agent of XL Insurance Company SE Australia branch (XLICSE) (ABN 36 083 570 441). Offshore Market Placements (Australia) is at all times acting on our behalf and this contract is between Offshore Market Placements (Australia) and **You**.

Limit of Liability means:

(a) **Occurrence**

Where an **Occurrence** Limit of Liability is stated in the **Schedule** to apply the **Insurer's** total liability to pay damages (including claimants' costs, fees and expenses) shall not exceed the sum stated in the **Schedule** in respect of any one **Occurrence**.

(b) **Aggregate**

Where an aggregate Limit of Liability is stated in the **Schedule** to apply, the **Insurer's** total liability to pay damages (including claimants' costs, fees and expenses) in respect to the entire **Period of Insurance** shall not exceed the stated aggregate Limit of Liability regardless of the number or severity of **Occurrences** or **Claims**.

Loss means:

compensatory damages and/ or claimant's costs (whether awarded or by settlement with the prior written consent of the **Insurer**) but shall not include;

- (a) civil or criminal fines or penalties imposed by law; or
- (b) punitive, exemplary, multiple or aggravated damages; or
- (c) any amount uninsurable at law; or



(d) any amount for which the **Insured** is not legally liable or for which there is no legal recourse to any **Insured**.

Medical Persons means:

qualified medical practitioners, medical nurses, dentists and first aid attendants.

Molestation means:

any actual or alleged act of molestation, sexual abuse or sexual assault of any person, including indecent exposure, sexual harassment or sexual intimidation.

North America means:

the United States of America and Canada and their territories and protectorates.

Occurrence means:

- (a) with respect to **Personal Injury** and **Property Damage**, an event, including continuous or repeated exposure to the same general conditions, which results in **Personal Injury** or **Property Damage** neither expected nor intended from the **Insured's** standpoint. All **Occurrences** of a series consequent upon or attributable to one source or original cause shall be deemed one **Occurrence** and the total amount of indemnity payable by **Us** in respect of such **Occurrence** shall be accounted to the **Period of Insurance** in which the first **Personal Injury** and / or **Property Damage** from the one source or originating cause occurred.
- (b) With respect to **Advertising Injury**, the publishing or broadcasting of the injurious material or act which results in **Advertising Injury** neither expected nor intended from the **Insured's** standpoint. All liability involving the same injurious material or act, regardless of the frequency of repetition thereof or the number and kind of media used or the number of claimants, shall be deemed to arise out of one **Occurrence**.

Official Inquiry and Investigation Costs means:

means necessary and reasonable legal costs and expenses incurred by the **Insured** arising out of any notice requiring the **Insured's** attendance at an inquiry or hearing held before an **Enquiring Body**.

Period of Insurance means:

the period commencing on the effective date and ending on the expiry date specified in the **Schedule**.

Personal Injury means:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- (b) false arrest, wrongful detention or imprisonment, malicious prosecution;
- (c) wrongful entry or eviction;
- (d) assault and battery committed by or at the direction of the **Insured** while engaged in the **Insured's Business** and for the purpose of preventing **Personal Injury** and/or **Property Damage** or eliminating danger;
- (e) libel, slander, defamation of character or invasion of right of privacy;

which first occurs during the **Period of Insurance**.



Policy means:

this document, the **Schedule** and any applicable **Endorsements**.

Pollutants means:

- (a) any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned, or reclaimed; or
- (b) other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emissions

Property Damage means:

- (a) Physical damage to or destruction of tangible physical property which first occurs during the **Period of Insurance** including any resultant loss of use; or
- (b) Loss of use of tangible physical property which has not been physically damaged or destroyed provided such loss of use is caused by physical damage to or destruction of other tangible physical property which first occurs during the **Period of Insurance**.

Retroactive Date means:

the date stated in the **Schedule**.

Schedule means:

the document entitled **Schedule** which provides the details of **Your** cover.

Senior Counsel means:

a barrister in active practice appointed as a Queens Counsel or Senior Counsel in Australia.

Territorial Limits means:

as listed in the **Schedule**.

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), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purpose or reason, including the intention to influence any government or to put the public, or any section of the public, in fear.

Use of any Vehicle as a Tool of Trade means:

the use of a Vehicle on a work site, but does not include:

- (a) **Vehicles** whilst in transit to or from or within any work site; or
- (b) **Vehicles** used for transport or haulage.

Vehicle means:

any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.

Watercraft means:

any vessel, craft or device made and intended to float on or in or travel on or through water.



General Conditions

The General Conditions set out below apply to all the Sections of the **Policy**.

Payment of Premium

The **Insured** must pay the agreed premium to the **Insurer** by the due date. The due date is on or before 30 days after the inception date of the **Period of Insurance** as specified in the **Schedule** or such other time the **Insurer** agrees to in writing. If the **Insured** fails to pay the premium by the due date, the **Insurer** is entitled to cancel this **Policy** in accordance with the Insurance Contracts Act 1984 (Cth).

Claims Procedure

- (a) The **Insured** shall not without the **Insurer's** consent make any admission, offer, promise or payment in connection with any **Occurrence**, event, **Claim**, writ, summons, proceedings, impending prosecution and/or inquest.
- (b) The **Insurer** shall be entitled, if it so desires, to take over and conduct in the **Insured's** name the defence or settlement of any **Claim** and the **Insurer** may make such investigation, negotiation and settlement of any **Claim** or suit as it deems expedient.
- (c) The **Insured** shall use its best endeavours to preserve any property, products, appliances, plant and other objects which may be required in connection with the investigation of or the defending of any **Claim** made against the **Insured** and shall not, except to prevent further **Personal Injury** and/or **Property Damage**, without the **Insurer's** consent and until the **Insurer** has had an opportunity of inspection, make any alteration or repair to or dispose of such matter.
- (d) The **Insurer** shall be entitled to prosecute in the **Insured's** name at its expense and for its own benefit any **Claim** for indemnity or contribution towards any loss or damage.
- (e) The **Insurer** shall have full discretion in the conduct of any proceedings in connection with any **Claim** and the **Insured** shall give all information and assistance as the **Insurer** may reasonably require in the prosecution, defence or settlement of any **Claim**.
- (f) In the event of an **Occurrence**, the **Insured** shall promptly take at its own expense all reasonable steps to prevent further **Personal Injury** and/or **Property Damage** from arising out of the same or similar conditions.
- (g) The **Insurer** shall be entitled to attend any inquest in respect of which there may arise liability under this **Policy**.
- (h) In respect of **Claims** for amounts less than the **Excess** the **Insured** shall at all times observe and duly comply with the Claims Procedure referred to in (a) to (g) above.
- (i) Any person or organisation for which the **Insurer** makes a payment under this **Policy** must transfer to the **Insurer** their right to recovery against any other party. After a loss the **Insured** must do everything necessary to secure and do nothing to impair these rights.

Defence Costs

The **Insurer** will pay **Defence Costs** provided that if the total amount of **Loss** required to dispose of the **Claim** or **Claims** exceeds the **Limit of Liability**, the liability of the **Insurer** for such **Defence Costs** shall be only that proportion which the **Limit of Liability** bears to the total amount of **Loss** required to dispose of the **Claim** or **Claims**.

The **Insurer** will pay for **Defence Costs** when they are incurred prior to the final resolution of the **Claim**. However, to the extent that it is established that such **Defence Costs** are not insured under the **Policy**, the **Insured** shall repay to the **Insurer** all payments of such **Defence Costs** within 30 days of receiving a request for return payment from the **Insurer**.



Discharge of Liabilities

The **Insurer** may at any time pay to the **Insured** the applicable **Limit of Liability** (after deducting all amounts already paid by or on behalf of the **Insurer**) or any lesser amount for which a **Claim** or **Claims** may be settled. Upon such payment, the **Insurer** will not be under any further liability to the **Insured** and will be released from all liability, except for expenses including investigation and legal costs incurred by the **Insured** with the **Insurer's** consent prior to the date of such payment.

If the **Insurer** has a right to recover any costs charges and expenses or other money from the **Insured**, then this right is not discharged or altered by this clause.

Inspection of Property

The **Insurer** shall be permitted but not obliged to inspect the **Insured's** property and operations at any time. Neither the **Insurer's** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the **Insured** or others, to determine or warrant that such property or operations are safe.

Jurisdiction/Proper Law

This Insurance contract shall be subject exclusively to the laws of Australia and the states and territories thereof even if it also covers **Insured's** who are domiciled or have their headquarters in other countries or states. Nothing in this clause affects the assessment of an **Insured's** liability towards claimants/injured third parties.

It is agreed that the exclusive place of jurisdiction for disputes arising under this **Policy** of Insurance shall be determined in an Australian court.

Limit of Liability

- (a) The total liability of the **Insurer** for **Loss** in respect of all **Claims** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance** shall not exceed the Limit of Liability or the applicable sub-limit specified in any Extension or in the **Schedule**.
- (b) Nothing in this **Policy** operates to increase the Limit of Liability or any sub-limit specified in any Extension or in the **Schedule**.
- (c) The Limit of Liability is inclusive of any sub-limit specified in any Extension or in the Schedule.
- (d) Any sub-limit specified in any Extension or in the **Schedule** is inclusive of any applicable **Defence Costs**.

Notice of Change to Risk

The **Insured** shall give notice in writing as soon as practicable of any change in facts or circumstances that comes to the **Insured's** knowledge which materially varies the risk, the subject of this Insurance, at any time during the **Period of Insurance** of this **Policy**.

For example:

In respect of Section 2 – Civil Liability:

- (a) the appointment of any type of administrator, receiver or liquidator, or a trustee in bankruptcy, to any **Insured**;
- (b) any material change in the nature of the professional activities of any **Insured** as represented in the applicable proposal form;
- (c) 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 **Insured's Business**.



Where such notice is given, the **Insurer** will be entitled to negotiate with the **Insured** the terms for the continuation of this **Policy**. The **Insurer** will also be entitled to cancel this **Policy** in accordance with the provisions of the Insurance Contracts Act 1984 (Cth).

The **Insurer** shall be entitled to reduce any indemnity or payment which may be available to the **Insured** under this **Policy** in respect of any **Loss, Claim** or settlement or any other payment to the extent of any prejudice suffered by the **Insurer** arising from any failure by the **Insured** to comply with this condition.

Other Insurance

If the **Insured** makes a **Claim** under this **Policy** in respect of which the **Insured** is or may be indemnified in whole or part under any other Insurance(s), then the **Insured** must advise the **Insurer** of the full details of such other Insurance(s) when making the **Claim** under this **Policy**. Subject to the provisions of the Insurance Contracts Act 1984, the **Insurer** reserves its rights to seek contribution from such other insurer(s).

Reasonable Care

The **Insured** shall:

- (a) Exercise reasonable care that only competent workers are employed and take reasonable measures to maintain all premises (including fittings and plant) owned or occupied by it, in sound condition; and
- (b) Take reasonable precautions to:
 - (i) prevent **Personal Injury** and/or **Property Damage**; and
 - (ii) prevent the manufacture, sale or supply of defective products; and
 - (iii) comply and ensure that the Workers, servants and agents of the **Insured** comply with all statutory obligations, by-laws or regulations which provide for the safety of persons and property; and
- (c) At the expense of the **Insured** take reasonable action to trace, recall or modify any products containing any defect or deficiency which defect or deficiency the **Insured** has knowledge of or has reason to suspect.

Subrogation

In the event of a payment under this **Policy** to or on behalf of the **Insured**, the **Insurer** shall, subject to the Insurance Contracts Act 1984 (Cth), be subrogated to all the **Insured's** rights of recovery against all persons and organisations and the **Insured** shall do all that is reasonably necessary to assist the **Insurer** in the exercise of such rights.

Severability and Non-Imputation

Where this **Policy** insures more than one party, any failure on the part of any of the parties to:

- (a) comply with the Duty of Disclosure in terms of the Insurance Contracts Act 1984; or
- (b) comply with any obligation in terms of this **Policy**; or
- (c) refrain from conduct which is dishonest, fraudulent, criminal or malicious,

shall not prejudice the right of the remaining party or parties to indemnity under the terms of this **Policy**, provided that such remaining party or parties shall:

- (1) be entirely innocent of and have had no prior knowledge of any such failure; and
- (2) as soon as practicable after becoming aware of any such failure, advise the **Insurer** in writing of all the relevant circumstances.



Assignment

This **Policy** and any rights hereunder cannot be assigned without the prior written consent of the **Insurer**.

Interpretation

The paragraph headings are for convenience and do not form part of this **Policy** for the purposes of interpretation of this **Policy** except where they are used for identifying the insuring clauses, exclusions or conditions being referred to.

Words and expressions in the singular include the plural and vice versa. Words that are not specifically defined in this **Policy** have their normal meaning.

Cross Liability

Where the **Insured** comprises more than one entity the term **Insured** shall be considered as applying to each entity as if a separate **Policy** had been issued to each entity, provided nothing contained in this clause shall increase the **Insurer's Limit of Liability** specified in the **Schedule**.

Supplementary Payments Claims Worldwide

In relation to **Claims** made or actions instituted against the **Insured** worldwide including **North America**, or **Claims** or actions to which the laws of the **North America** apply, the **Insurer** shall indemnify the **Insured** for expenses, including investigation and legal costs in (a) and (b) below, subject to the **Limit of Liability**:

- (a) all expenses, including investigation and legal costs incurred by the **Insurer** or by the **Insured** with the written consent of the **Insurer**, in the settlement or defence of any **Claim** in respect of which the **Insured** is entitled to indemnity as above or if sustained would be so entitled; and
- (b) all expenses incurred by the **Insured** for first aid to others for **Personal Injury** to which this clause applies (other than medical expenses prohibited by law).

Excess

The **Insurer's** liability under this **Policy** will apply only to that part of the amount, up to the available **Limit of Liability**, required to dispose of a **Claim**, which exceeds the **Excess**. The **Excess** will be paid by the **Insured** and will be uninsured. The **Excess** is inclusive of **Defence Costs**.

The **Excess** applies to each **Claim** covered by this **Policy**. However, where more than one **Claim** arises from or is attributable to the same act, error or omission or a series of related acts, errors or omissions, only one **Excess** is payable under the **Policy**.

Validity

This **Policy** is not valid unless its **Schedule** is attached and has been signed by an authorised officer or agent of the **Insurer**.

GST Basis of Settlement

The amount that the **Insurer** is liable to pay under this **Policy** will be reduced by the amount of any input tax credit that the **Insured** is or may be entitled to claim for the supply of goods or services covered by that payment.

If the **Insured** is entitled to an input tax credit for the premium, the **Insured** must inform the **Insurer** of the extent of that entitlement when the **Insured** makes a **Claim** under this **Policy**. The **Insurer** will not indemnify the **Insured** for any GST liability, fines or penalties arising from or due to the **Insured's** failure to notify the **Insurer** of the **Insured's** entitlement (or correct entitlement) to an input tax credit on the premium.

If the **Insured** is liable to pay an **Excess** under this **Policy**, the amount payable will be calculated after deduction of any input tax credit that the **Insured** is or may be entitled to claim on payment of the **Excess**.



General Exclusions

The following exclusions apply to all Sections of the **Policy** unless specifically stated otherwise.

Child Care

no cover is provided under this **Policy** for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection with the operation of a creche, child minding or child care facility, fee paying or otherwise, unless declared to **Us**, and agreed by **Us**.

Communicable Disease Exclusion

- (a) Notwithstanding any provision to the contrary within this **Policy**, this **Policy** does not cover all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.
- (b) For the purposes of this endorsement, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.
- (c) As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
 - (i) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
 - (ii) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
 - (iii) the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

Computers and Technology

no cover is provided under this **Policy** for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection with:

- (a) any **Property Damage** to **Electronic Data** or technology arising out of or connected directly or indirectly to the total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of **Electronic Data** or any error in creating, amending, entering, deleting or using **Electronic Data** or total or partial inability or failure to receive, send, access or use **Electronic Data** for any time at all or any resulting consequential loss; or
- (b) the use of an intranet or the Internet (including but not limited to the World Wide Web and electronic mail systems) by the **Insured** or on the **Insured's** behalf.

Contractual Liability

no cover is provided under this **Policy** for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection with:

- (a) any liability which the **Insured** has assumed under a contract unless such liability would have attached in the absence of such contract;



- (b) the **Insolvency**, receivership, administration, bankruptcy or liquidation of the **Insured**;
- (c) any trading debt incurred by the **Insured**;
- (d) any guarantee given by the **Insured** for a debt.
- (e) any liability assumed by or on behalf of any **Insured** under any express guarantee or express warranty, unless such liability would have attached to the **Insured** in the absence of such warranty or guarantee.

Provided that this Exclusion does not apply to a **Claim** for **Employment Practices Liability**.

Cyber

no cover is provided under this **Policy** for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection with the use or operation, as a means for inflicting harm, of any computer, computer system, computer software program, malicious code, computer virus or process or any other electronic system.

Electro Transmissions, Radioactive Contamination and Explosive Nuclear Assemblies

no cover is provided under this **Policy** for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection to any loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss or for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection with:

- (a) electromagnetic fields, extremely low frequency electric fields and/or magnetic fields, microwave emissions or radio emissions;
- (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel including any self-sustaining process of nuclear fission; or
- (c) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- (d) nuclear weapons material.

Fines, Penalties and Duties

no cover is provided under this **Policy** for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection with any fines, penalties, tax or duty imposed by law, civil, punitive, exemplary, aggravated and liquidated damages.

Molestation

no cover is provided under this **Policy** for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection with:

- (a) **Molestation**, mental or physical abuse or assault of persons; or
- (b) any act of indecency; or
- (c) the failure to detect, act upon or prevent the **Molestation** mental or physical abuse of or harassment, intimidation or assault of persons or acts of indecency, by:
 - (i) the **Insured**; or
 - (ii) any agent of the **Insured**; or
 - (iii) any person performing any volunteer service for or on behalf of the **Insured**.



The **Insurer** shall not defend any **Claim** against the **Insured** directly or indirectly arising from or in respect of **Molestation**, interference, mental abuse, physical abuse, assault, harassment, intimidation or any act of indecency or a failure to detect, act upon or prevent **Molestation**, interference, mental abuse, physical abuse, assault, harassment, intimidation or act(s) of indecency.

North America

no cover is provided under this **Policy** for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection with:

- (a) any **Civil Liability** resulting from the conduct of the **Insured's Business** within **North America**; or
- (b) the provision of **Insured's Business** to persons in **North America**; or
- (c) any **Claim** brought against the **Insured** in any court of law, arbitration, tribunal, forum or other body entitled to impose enforceable orders in **North America**; or
- (d) any **Claim** arising from the enforcement of any judgment, order or award in respect of any action brought in any court of law, arbitration, tribunal or other judicial body in **North America**.

Pollution

no cover is provided under this **Policy** for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection with:

- (a) the actual, alleged or threatened discharge, dispersal, release, escape, seepage or migration of **Pollutants**; or
- (b) any:
 - (i) governmental direction or request that the **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**; or
 - (ii) **Claim** or action instituted against the **Insured** by or on behalf of any governmental authority or others for any damages, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising **Pollutants**;

Prior Claims or Known Circumstances

no cover is provided under this **Policy** for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection with:

- (a) any **Claim** first made against the **Insured** prior to the **Period of Insurance**; or
- (b) any circumstances, acts, errors or omissions which were:
 - (i) known to the **Insured** prior to the **Period of Insurance** and the **Insured** ought reasonably have expected to give rise to a **Claim** or **Official Inquiry and Investigation Costs**; or
 - (ii) notified under any insurance that was in force prior to the **Period of Insurance**.

Sanctions

We shall not be deemed to provide cover and **We** shall not be liable to pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.



Toxic Substances

no cover is provided under this **Policy** for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection with:

- (a) asbestos or refractory ceramic fibres, or any materials containing asbestos or refractory ceramic fibres in whatever form or quantity; or
- (b) any polychlorinated biphenyls (PCBs).

War/Terrorism

no cover is provided under this **Policy** for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection with:

- (a) any 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; or
- (b) any act of **Terrorism**, piracy or hijack; or
- (c) any other civil disturbance or civil unrest, including strike, protest and civil commotion.



Section 1 - Public and Products Liability

Additional Definitions

In addition to the General Definitions the following definitions also apply to this Section.

Insured/You/Your means:

- (a) the named individual(s), legal entity or entities specified in the **Schedule** and their subsidiary companies; and
- (b) any principal in respect of the liability of such principal arising out of the performance by a company referred to in (a) above of any contract or agreement for the performance of work for such principal, but limited always to the extent of cover and the **Limit of Liability** provided in this **Policy**.
- (c) any member, player, coach, official, voluntary worker, director, executive officer, **Employee** or partner of a company referred to in (a) above, but only whilst acting within the scope of their duties in such capacity.
- (d) any office bearer or member of a social and/or sporting club formed with the consent of the **Insured**, in respect of **Claims** covered by this **Policy** arising from or connected with the activities of any such club.

Insuring Clause

The **Insurer** will indemnify the **Insured** up to the **Limit of Liability** and subject to all terms, conditions and exclusions of this **Policy** for:

- (a) all amounts which the **Insured** becomes legally liable to pay as compensation (excluding punitive, exemplary, aggravated and liquidated damages) for **Personal Injury, Property Damage or Advertising Injury** occurring within the **Territorial Limits** as a result of an **Occurrence** occurring within the **Period of Insurance** in connection with the **Insured's Business**;
- (b) all **Defence Costs** against the **Insured** arising out of **Personal Injury, Property Damage or Advertising Injury** for which indemnity is available under clause (a) above; and
- (c) all interest accruing after entry of judgment against the **Insured** arising out of **Personal Injury, Property Damage or Advertising Injury** for which indemnity is available under clause (a) above until the **Insurer** has paid, tendered or deposited in court such part of such judgment as does not exceed the **Limit of Liability**.

The total indemnity available under this clause in respect of the combined amounts in (a), (b) and (c) is restricted to the **Limit of Liability**.

Additional Exclusions

In addition to the General Exclusions the following also apply to this Section.

No cover is provided under this **Policy** for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection with:

- (a) **Advertising Liability**
Advertising Injury resulting from:
 - (i) failure of performance of contract or breach of contract; or
 - (ii) infringement of trade-mark or trade name; or
 - (iii) incorrect description of any article or commodity; or
 - (iv) mistake in advertised price;



first committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of the **Insured's** advertising activity.

(b) **Aircraft, Hovercraft, Watercraft and Registered Vehicles**

the ownership, possession, maintenance, operation, use or legal control by or on behalf of the **Insured** of any:

- (i) **Aircraft**, (also any liability arising out of or connected directly or indirectly with any of the **Insured's Products** that are used with the **Insured's** knowledge in **Aircraft** or aerial devices); or
- (ii) **Hovercraft**; or
- (iii) **Watercraft** or vessels exceeding 8 metres in length. This shall not apply where the **Watercraft** or vessel is:
 - (1) let out on hire or on charter to the **Insured** and is wholly crewed/manned by a professional crew; and
 - (2) the **Insured** is not in the business of letting for hire or charter any **Watercraft** or vessels; and
 - (3) the hiring or chartering of the **Watercraft** or vessel by the **Insured** is not undertaken in the normal course of the **Insured's Business**.
- (iv) **Vehicle** which is registered or is required under any legislation to be registered; or
- (v) **Vehicle** in respect of which compulsory insurance is required to be effected by virtue of any legislation.

However, exclusion (b) (iv) and (v) do not apply to **Personal Injury** and/or **Property Damage** arising out of or connected directly or indirectly with:

- (1) the delivery or collection of goods to or from any **Vehicle** where such **Personal Injury** and/or **Property Damage** occurs beyond the limits of any carriageway or thoroughfare; or
- (2) the loading or unloading of any **Vehicle**; or
- (3) the **Use of any Vehicle as a Tool of Trade**.

(c) **Alterations/Additions, Construction of Buildings**

the erection, construction, demolition, alteration of, or addition to a building by or on behalf of the **Insured**, except alteration of or addition not exceeding in cost the sum of \$250,000 to a building owned or occupied by the **Insured**.

(d) **Employer's Liability**

- (i) **Personal Injury** to any person arising out of or connected directly or indirectly with the employment of such person in the service of the **Insured**;
- (ii) **Personal Injury** to any person who is deemed to be the **Employee** of the **Insured** pursuant to any legislation relating to worker's compensation;
- (iii) **Personal Injury** for which the **Insured** is entitled to seek indemnity under any statutory fund, statutory scheme, self-insurance or any policy of Insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not the **Insured** is a party to such contract of insurance



(iv) **Claims** made against the **Insured** under the provisions of any workers' compensation legislation, any industrial award, agreement of determination;

(v) any **Claim** by any person for **Employment Practices Liability**.

(e) **Libel, Slander and Defamation**

the publication of any defamatory material:

(i) made prior to the commencement of the **Period of Insurance**; or

(ii) made at the **Insured's** direction or with the **Insured's** authority or with knowledge of its falsity.

(f) **Loss of Use**

loss of use of tangible property which has not been physically damaged or destroyed arising out of or connected directly or indirectly from:

(i) a delay in or lack of performance by or on behalf of the **Insured** in relation to any contract or agreement; or

(ii) the failure of the **Insured's Products** to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the **Insured**.

However, this Exclusion does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the **Insured's Products** after such products have been put to use by any person or organisation other than the **Insured**.

(g) **Product Defect/Faulty Workmanship**

(i) **Property Damage** to the **Insured's Products** if such damage is attributable to any defect therein or the harmful nature thereof or unsuitability for the purpose for which they were intended; or

(ii) Performing, completing, repairing, replacing, correcting or improving any work or service undertaken or provided by or on behalf of the **Insured**.

(h) **Product Recall**

the withdrawal, recall, inspection, repair, replacement or loss of use of the **Insured's Products** or any property of which such products form a part.

(i) **Professional Liability**

the rendering of or failure to render professional advice or service by the **Insured** or any error or omission connected therewith.

This exclusion does not apply to:

(i) the rendering or failure to render medical advice at the **Insured's** Premises by **Medical Persons** employed by the **Insured** to provide first aid and ancillary medical services; or

(ii) advice which is given by the **Insured** for no fee; or

(iii) advice given by the **Insured** in respect of the use or storage of the **Insured's Products**.

(j) **Property in Physical or Legal Control**

Property Damage to:

(i) property owned by or leased or rented to the **Insured**; or



(ii) property in the physical or legal control of the **Insured**.

However, this Exclusion shall not apply to liability for **Property Damage** to:

- (i) real property, including buildings which are leased or rented to the **Insured**; or
- (ii) real property including contents, not owned, leased or rented to the **Insured** but temporarily occupied by the **Insured** for the purpose of carrying out work in connection with the **Insured's Business**, but no indemnity is granted for damage to that part of the property on which the **Insured** is or has been working or which arises out of such work; or
- (iii) **Vehicles** (not belonging to or used by or on the behalf of the **Insured**) in the physical or legal control of the **Insured** where such **Property Damage** occurs whilst any such **Vehicles** are in a car park owned or operated by the **Insured** but not where the **Insured** as part of its business is a car park owner or operator for reward; or
- (iv) property belonging to visitors or **Insured's Employees**; or
- (v) property in the physical or legal control of the **Insured** (except whilst undergoing any process or being worked upon) for which the **Insured** has not assumed any responsibility to obtain Insurance. However, for such **Claims** the **Insurer** will indemnify the **Insured** against such **Claims**, subject to the terms of this **Policy** to a maximum of \$500,000 in the aggregate during the **Period of Insurance**, subject to payment by the **Insured** of the **Excess** specified in the **Schedule**.

(k) **Tobacco/Tobacco Products**

the death or the contraction, aggravation or exacerbation of any disease, sickness, injury, or disorder of the human body or mind arising out of or connected directly or indirectly with the use or consumption (including passive smoking) of tobacco or tobacco products.

(l) **Participant to Participant – Contact Sports**

any **Personal Injury** suffered by one participant caused by another participant in any sport, game, match, practice, trial or activity forming part of the **Insured's Business** insured under this **Policy** where physical contact of any participant to participant is permissible within the rules of the sport, game, match, practice, trial or activity (including for example association football/soccer, Australian rules football, American football, boxing, camogie, floorball, Gaelic football, handball, hockey, hurling, ice hockey, lacrosse, martial arts, rugby league, rugby union and water polo).

(m) **Liability from Contractors/Subcontractors**

the direct liabilities of contractors or subcontractors unless they are designated as an **Insured**. However, the **Insurer** indemnifies the **Insured** for their vicarious liability arising from or caused by contractors or subcontractors.



Section 2- Civil Liability

Additional Definitions

In addition to the General Definitions, the following definition also applies to this Section.

Insured/You/Your means:

- (a) the named individual(s), legal entity or entities specified in the **Schedule** and their subsidiary companies; and
- (b) any past, present or future director, executive officer, **Employee** or partner of the legal entity or entities specified in the **Schedule**, but only in their capacity as such; and
- (c) any coach or official of a company referred to in (a) above, but only whilst acting within the scope of their duties in such capacity; and
- (d) any office bearer or member of a social and/or sporting club formed with the consent of the **Insured**, in respect of **Claims** covered by this **Policy** arising from or connected with the activities of any such club; and
- (e) the estate, heirs, legal representatives or legal assigns of any natural person **Insured** under this **Policy** in the event of the death or legal incapacity of such person.

Insuring Clause

This Section of the **Policy** is written on a claims made and notified basis.

The **Insurer** agrees to indemnify the **Insured** in accordance with the terms and conditions of this **Policy**. The **Insurer** agrees to pay the **Insured** for any **Loss** covered by this **Policy** which arises out of a **Claim** first made against the **Insured** during the **Period of Insurance** and reported to the **Insurer** during the **Period of Insurance** resulting from the conduct of the **Insured's Business** by the **Insured**. If a **Retroactive Date** is specified in the **Schedule**, indemnity is only available against **Civil Liability** committed after the **Retroactive Date**.

Including:

(a) **Breach of Confidentiality**

The **Insurer** agrees to indemnify the **Insured** against **Civil Liability** the **Insured** incurs in respect of a **Claim** alleging breach of confidentiality by the **Insured** resulting from the conduct of the **Insured's Business**.

(b) **Consumer Protection Legislation**

Claims resulting from breach of a statutory duty under the Competition and Consumer Act 2010 (Cth), Corporations Act 2001 (Cth), National Consumer Credit Protection Act 2009 (Cth) or similar legislation enacted for the protection of consumers, within any Australian jurisdiction including any amendment, consolidation or re-enactment of such legislation, provided that the **Insurer** will not indemnify the **Insured** for **Claims** made where such **Claim** arises:

- (i) under the penal or criminal provisions of the above Acts, or any similar legislation; or
- (ii) from conduct of the **Insured** which is fraudulent or intended to mislead or deceive.

However, the **Insurer** will only exclude such **Claims** where it is established by admission or final adjudication that the **Insured** breached the penal or criminal provisions of the Acts, or where the conduct was established by admission or final adjudication to be fraudulent or intended to mislead or deceive.

(c) **Contractual Liability**

Notwithstanding General Exclusions, Contractual Liability;



the **Insurer** will indemnify the **Insured** against **Civil Liability** the **Insured** incurs in respect of a **Claim** under an indemnity or hold harmless term of a written contract between any **Insured** and a third party for the performance of the **Insured's Business** by or on behalf of the **Insured** to the extent that such **Civil Liability** arises directly from an act, error or omission in the performance of such **Insured's Business** by or on behalf of the **Insured**.

(d) **Infringement of Intellectual Property**

Infringement of rights of intellectual property, provided that:

- (i) the infringement is committed by the **Insured** in the course of carrying on their **Insured's Business**; and
- (ii) the **Insured** did not intend to commit such infringement.

(e) **Libel, Slander or Defamation**

Libel, slander or defamation, provided that:

- (i) the libel, slander or defamation is committed by the **Insured** in the course of the **Insured's Business**; and
- (ii) the **Insured** did not intend to commit the libel, slander or defamation.

(f) **Implied Warranties**

a breach of an implied warranty in relation to merchantable quality, due care and skill or fitness for purpose implied in a contract, at common law or the terms of the Competition and Consumer Act 2010 (Cth) or any or similar legislation enacted for the protection of consumers, within any Australian jurisdiction including any amendment, consolidation or re-enactment of such legislation.

g) **Privacy**

a breach of, or unlawful interference with, privacy.

h) **Fiduciary Duty**

a breach of fiduciary duty.

Conditions

Aggregation of Claims

All **Claims** arising out of, based upon, attributable to or in respect of a single act, error or omission or series of acts, errors or omissions consequent upon or attributable to one source or original cause shall be considered to be a single **Claim** and shall attract one **Excess**.

For the purposes of Automatic Extensions **Official Inquiry and Investigation Costs**, all notices arising out of, based upon, attributable to or in respect of any one inquiry or hearing shall be considered to be a single notice and shall attract one **Excess**.

Automatic Extensions

These Automatic Extensions to this Section are subject to all the terms of the **Policy**, unless otherwise stated. The total of all payments made under any of the Automatic Extensions, will be part of and not in addition to the **Limit of Liability**, unless otherwise stated.



Automatic Reinstatement

- (a) If the **Limit of Liability** set out in the **Schedule** under Section 2 is exhausted or partially exhausted due the payment by the **Insurer** of any **Loss** under this **Policy**, the **Insurer** agrees to reinstate the **Limit of Liability** by the amount by which it is exhausted provided that:
 - (i) The reinstatement will not apply to **Claims** made prior to the effective date of the reinstatement; and
 - (ii) The aggregate of the amounts reinstated during the **Period of Insurance** will be limited to an amount equal to the **Limit of Liability** applicable at the start of the **Period of Insurance**; and
 - (iii) The **Limit of Liability** reinstated will represent the total liability of the **Insurer** for all **Claims** made during the time from the effective date of the reinstatement until the expiry of the **Period of Insurance**.
- (b) **Claims Preparation Costs**
 - (i) The **Insurer** will indemnify the **Insured** for any reasonable costs and expenses incurred by the **Insured** with the prior written consent of the **Insurer** specifically for the preparation of the defence or investigation of any **Claim** that is indemnified under this **Policy**.
 - (ii) The aggregate amount of all payments made by the **Insurer** pursuant to this Extension will not exceed \$25,000.
- (c) **Continuous Cover**

If the **Insured**:

- (i) First became aware of facts or circumstances that might give rise to a **Claim**, prior to the **Period of Insurance**; and
 - (ii) Had not notified the **Insurer** of these facts or circumstances prior to the **Period of Insurance**, then the General Exclusions clause Prior Claims and Circumstances will not apply to any notification during the **Period of Insurance** of any **Claim** later resulting from such facts or circumstances, provided that:
 - (1) There has been no fraudulent non-compliance with the **Insured's** Duty of Disclosure and no fraudulent misrepresentation by the **Insured** in respect of these facts or circumstances; and
 - (2) The **Insured** has been continuously insured, without interruption at the time of the notification of the **Claim** to the **Insurer**, under a professional indemnity insurance policy issued by the **Insurer** and was **Insured** by the **Insurer** at the time when the **Insured** first became aware of the facts or circumstances giving rise to the **Claim**; and
 - (3) The **Insurer** can reduce its liability under the **Policy** to the extent of any prejudice it may suffer as a result of the **Insured's** failure to notify the facts or circumstances giving rise to a **Claim** prior to the **Period of Insurance**.
- (d) **Court Attendance Costs**

For any person who was or is an **Employee**, principal, partner or director of the **Insured** who attends court as a witness in connection with a **Claim** notified to **Us** and is the subject of indemnity under this **Policy**, it is agreed that **Official Inquiry and Investigation Costs** will include \$250 per day for each person on which attendance in court has been required.

The **Excess** shall not apply to this Automatic Extension.



(e) **Dishonesty of Employees**

Notwithstanding Additional Exclusion clause Dishonest, Fraudulent or Criminal Acts, the **Insurer** will indemnify the **Insured** against **Civil Liability** for **Loss** in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance** resulting from any dishonest, fraudulent, criminal or malicious act or omission by any **Employee** of the **Insured** occurring or committed in connection with the **Insured's Business**.

Nothing in this Automatic Extension shall require the **Insurer** to indemnify any **Employee** who has perpetrated any such dishonest, fraudulent, criminal or malicious act or omission or who has by act or omission condoned any such act or omission.

(f) **Joint Venture Liability**

The **Insurer** will indemnify the **Insured** against **Civil Liability** for **Loss** in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance** resulting from the **Insured's** participation in a **Joint Venture** in connection with the **Insured's Business**. Provided that any indemnity given shall relate only to the **Insured's** proportion of any liability incurred by such **Joint Venture**.

(g) **Lost Documents**

The **Insurer** will, in the event of **Loss** of or damage to **Documents** occurring in connection with the **Insured's** conduct of the **Insured's Business**, indemnify the **Insured** against costs and expenses reasonably incurred by the **Insured** in replacing or restoring such **Documents**.

Provided that:

- (i) such **Loss** or damage is sustained during the **Period of Insurance** while the **Documents** are either in transit to or in the custody of the **Insured** or of any person to whom the **Insured** has entrusted them in the course of the normal conduct of the **Insured's Business**; and
- (ii) the amount of any **Claim** for such costs and expenses shall be supported by bills and accounts which shall be subject to approval by a solicitor to be nominated by the **Insurer** with the consent of the **Insured** or if such consent is withheld, by the President of the Law Society in whichever State the **Policy** was issued; and
- (iii) the **Insurer** shall not be liable in respect of **Loss** or damage directly or indirectly arising from, in whole or in part:
 - (1) wear and tear or any other gradual process; or
 - (2) any computer virus or other malicious or damaging software; or
 - (3) any, act, error or omission committed or made, by any person or entity who at the time of such act, error or omission was not an **Insured**.

The total liability of the **Insurer** for all **Claims** under this Automatic Extension shall not exceed \$250,000 in the aggregate.

(h) **Official Inquiry and Investigation Costs**

The **Insurer** will indemnify the **Insured** for **Official Inquiry and Investigation Costs** of attending the proceedings of an **Enquiring Body**.

Provided that:

- (i) the **Insured** is legally required or compelled to attend such inquiry; and
- (ii) the notice requiring the **Insured's** attendance at the inquiry or hearing is first received by the **Insured** and notified to the **Insurer** during the **Period of Insurance**; and



- (iii) such attendance results directly from an act, error or omission committed or allegedly committed by or on behalf of the **Insured** in the conduct of the **Insured's Business**; and
- (iv) such indemnity is subject to the written consent of the **Insurer** prior to incurring **Official Inquiry and Investigation Costs**, and does not include any regular or overtime wages, salaries or fees of the **Insured**; and
- (v) the **Insurer** is entitled, at their sole discretion, to appoint legal or other representation for the **Insured** at such inquiry; and
- (vi) the total liability of the **Insurer** for all **Claims** under this Automatic Extension shall not exceed \$250,000 in the aggregate.

(i) **Public Relations Expenses**

The **Insurer** will indemnify the **Insured** for the reasonable and necessary costs and expenses directly incurred by the **Insured** with the prior written consent of the **Insurer** in seeking advice from a reputable public relations consultant solely for the purpose of protecting the professional reputation of the **Insured** that has been brought into question as a direct result of a **Claim** that is the subject of indemnity under this **Policy**.

Such indemnity will be subject to:

- (i) the **Insured** providing written notice to the **Insurer** within 30 days of first becoming aware of the professional reputation of the **Insured** being brought into question; and
- (ii) the **Insured** providing prior written notice to the **Insurer** within 30 days of the subject **Claim** being finalised of the intention to incur such costs and expenses.
- (iii) the onus of, and any costs and expenses incurred in, proving entitlement to indemnity under this extension shall rest solely with the **Insured**.
- (iv) the total liability of the **Insurer** for all **Claims** under this Automatic Extension shall not exceed \$25,000 in the aggregate.

(j) **Run Off Cover Insured Entity or Subsidiary with Additional Thirty Day Reporting Period**

The **Insurer** agrees that the coverage provided under this **Policy** shall continue until the 30th day after the expiry date of the **Period of Insurance**.

Provided always that such coverage shall only apply in respect of **Claims** arising from any act, error or omission occurring prior to the earlier of either:

- (i) the expiry date of the **Period of Insurance**; or
- (ii) the effective date that an **Insured** entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity.

A notification to the **Insurer** during the 30 days after the expiry date of the **Period of Insurance** will be deemed to have been first notified to the **Insurer** during the **Period of Insurance**.

(k) **Statutory Liability**

The **Insurer** will, notwithstanding General Exclusions clause **Fines, Penalties and Duties**, indemnify the **Insured** against breach of a statutory duty resulting from the conduct of the **Insured's Business** involving:

- (i) any civil offence; or
- (ii) breach of occupational health and safety law or regulation; or



- (iii) any strict liability offence in connection with the discharge, dispersal, release or escape of **Pollutants**,

but provided always that the **Insurer** is not legally prohibited from providing such indemnity.

Nothing in this Automatic Extension shall require the **Insurer** to indemnify the **Insured** in connection with any breach of a statutory duty directly or indirectly based on, arising out of or attributable to the reckless or grossly negligent conduct of the **Insured**, or any intentional breach or violation of law by the **Insured**.

The total liability of the **Insurer** for all **Claims** under this automatic extension shall not exceed \$250,000 in the aggregate for all **Claims** inclusive of **Defence Costs**.

(l) **Sub-contractors, Consultants and Agents**

The **Insurer** agrees to indemnify the **Insured** against **Civil Liability** the **Insured** incurs in respect of a **Claim** resulting from any acts, error or omission of subcontractors, consultants and agents of the **Insured**, provided that the **Insurer** will only indemnify the **Insured** for its **Civil Liability** in connection with the **Insured's Business** provided by the subcontractor, consultant or agent whilst working on behalf of the **Insured** and for whom the **Insured** is responsible.

Indemnity will not extend to the sub-contractor, consultant or agent who committed the act, error or omission.

Additional Exclusions

In addition to the General Exclusions the following also apply to this Section.

No cover is provided under this **Policy** for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection with:

(a) **Controlling or Financial Interests**

work undertaken for or on behalf of any company related to any **Insured**, which for the purposes of this **Policy** includes:

- (i) any other **Insured**; or
- (ii) any subsidiary of an **Insured**; or
- (iii) any company of which an **Insured** holds or has held a 20% or greater financial interest and has had or has board representation at that company.

(b) **Directors' and Officers' Liability**

the **Insured's** functions and duties as a director or officer of the **Insured** or any legal entity, corporation or other incorporated body.

(c) **Dishonest, Fraudulent or Criminal Acts**

any dishonest, fraudulent, criminal or malicious act or omission by the **Insured**.

(d) **Employer's Liability**

- (i) **Personal Injury** to any person arising out of or connected directly or indirectly with the employment of such person in the service of the **Insured**;
- (ii) **Personal Injury** to any person who is deemed to be the **Employee** of the **Insured** pursuant to any legislation relating to worker's compensation;



- (iii) **Personal Injury** for which the **Insured** is entitled to seek indemnity under any statutory fund, statutory scheme, self-insurance or any **Policy** of Insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not the **Insured** is a party to such contract of insurance
 - (iv) **Claims** made against the **Insured** under the provisions of any workers' compensation legislation, any industrial award, agreement of determination;
 - (v) any **Claim** by any person for **Employment Practices Liability**.
- (e) **Liquidated Damages**
- liquidated damages imposed upon the **Insured** by contract or agreement, except to the extent that the **Insured** would have been liable for that damage in the absence of any such contract or agreement.
- (f) **Product Liability**
- the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by the **Insured**.
- (g) **Professional Fees**
- the return or refund of any professional fees, charges, commissions or other remuneration or whatsoever nature received by, paid or payable to the **Insured** in connection with the **Insured's Business**.
- (h) **Subrogation Waiver**
- any liability which is incurred or affected by reason of the **Insured** entering into a deed or agreement excluding, limiting or delaying the **Insured's** legal rights of recovery against another.
- (i) **Trading Debts**
- any trading debt incurred, or any guarantee in respect of such debt given, by the **Insured**.
- (j) **Occupier's Liability**
- any occupation, ownership, control or management of any real property by the **Insured** or any agent.
- (k) **Motor Vehicles/ Aircraft/ Watercraft**
- the ownership, use, operation, or maintenance of any motor **Vehicle, Aircraft** or **Watercraft** of any kind by the **Insured** or any agent.
- This shall not apply where the **Watercraft** is:
- (i) 8 metres or under in length; or
 - (ii) let out on hire or on charter to the **Insured** and is wholly crewed/staffed by a professional crew; and
 - (iii) the **Insured** is not in the business of letting for hire or charter **Watercraft** or vessels; and
 - (iv) the hiring or chartering of the **Watercraft** or vessel by the **Insured** is not undertaken in the normal course of the **Insured's Business**.
- (l) **Financial Investment Advice / Performance**
- any financial advice or the failure of a financial product or investment product to perform.



(m) **Mergers & Acquisitions Advice**

the provision of advice in respect of mergers or acquisitions.



Section 3 - Management Liability

Additional Definitions

In addition to the General Definitions the following definitions also apply to this Section.

(a) **Claim** means:

any:

- (i) Written complaint containing a demand for compensation or damages alleging a **Wrongful Act** or **Employment Practices Liability** or **Superannuation Trustees Liability**; or
- (ii) A civil proceeding brought by a third party for recovery of compensation or damages in relation to a **Wrongful Act** or **Superannuation Trustees Liability**; or
- (iii) Any criminal charge brought against an **Insured Person** alleging a **Wrongful Act**; or
- (iv) In relation to the Inquiry Expenses Extension, a notice commenced by the filing of a notice of charge, formal investigation order or notice requiring an **Insured Person** to attend an inquiry or other proceedings ordered by an official body or institution.

(b) **Company** means:

the organisation named as the Policyholder in the **Schedule** and any **Subsidiary**.

(c) **Crisis Event** means:

the occurrence of any of the following unforeseen events, which, in the reasonable opinion of the chief executive officer or managing director of the **Insured**, has the potential to make a material and imminent impact on the **Insured's** consolidated annual revenue of at least 25% reduction if left unmanaged:-

- (i) The sudden and unexpected death or disability of a director or officer; or
- (ii) The loss of the **Insured's** intellectual property rights, including patents, trademarks and copyrights; or
- (iii) **Employee** workplace violence that causes death or injury to an **Insured Person** or causes emotional distress to an **Insured Person** or third parties from witnessing such an act.

A **Crisis Event** does not include an event of any nature that generally effects the **Insured's** Industry rather than the **Insured** specifically.

(d) **Inquiry Representation Expenses** means:

Necessary and reasonable legal costs and expenses incurred Representation by the **Insured** with the **Insurer's** consent arising out of any notice requiring the **Insured Person's** attendance at an inquiry or proceeding before an official body or institution. **Inquiry Representation Expenses** does not include regular or overtime wages, salaries, fees of **Insured Persons** or benefits from the **Company**.

(e) **Insolvent/Insolvency** means:

The state of being a body corporate or entity:

- (i) that is unable to pay its debts as and when they fall due; or
- (ii) In respect of which an application for winding up has been made; or



- (iii) In respect of which a Liquidator, Provisional Liquidator, Receiver, Receiver and Manager, or Official Manager has been appointed (whether or not by a Court); or
- (iv) In respect of which an administrator has been appointed or that is under administration; or
- (v) That has executed a Deed of Company Arrangement that has not yet terminated; or
- (vi) That has entered into a compromise or arrangement with another person.

(f) **Insured** means:

The **Company** and any **Insured Person**.

(g) **Insured Person** means:

- (i) Any natural person who is a past, present or future director, secretary, principal, partner, executive officer or **Employee** of the **Company**; or
- (ii) Any natural person who is deemed by relevant legislation to be a director, secretary, principal, partner, executive officer or **Employee** of the **Company**.

Insured Person does not include a liquidator, external auditor, receiver, receiver and manager, official manager, administrator, trustee or person administering a compromise or scheme of arrangement of the **Company** or any **Employee** of such person; or any **Company**, entity or other body corporate or trustee, directors, officers, or **Employees** of superannuation or pension organisations.

(h) **Joint Venture** means:

An unincorporated enterprise that the **Company** carries on jointly with some other party or parties.

(i) **Not for Profit Organisation** means:

Any entity, body, **Company**, club, association, committee or other organisation enterprise that is exempt from payment of income tax under state or federal law but does not include a **Subsidiary**.

(j) **Outside Directorship** means:

The position of director, officer, trustee or secretary held by an **Insured Person** in a **Not for Profit Organisation** or **Outside Entity** with the consent and at the request of the **Company**.

(k) **Outside Entity** means:

Any entity, body, company, club, association, committee or other enterprise that is not a **Subsidiary**.

(l) **Fines and Penalties** means:

Monetary sums an **Insured Person** is ordered by a court or tribunal to pay to any **Regulatory Authority** but not:

- (i) Any amounts payable as compensation; or
- (ii) Any tax, rates, duty, fees, levies, charges or other revenue; or
- (iii) Any damages, including any exemplary or punitive damages; or
- (iv) Any consequential economic loss; or
- (v) Any **Defence Costs** and associated expenses; or
- (vi) Any penalty arising from any offence under Sections 182, 183, 601FD, 601FE or 601JD of the Corporations Law or as they may be re-enacted or amended; or



- (vii) Any compliance, remedial, reparation or restitution costs; or
 - (viii) Any penalty arising from gross negligence or recklessness; or
 - (ix) Any penalty resulting from any wilful, intentional, dishonest or deliberate breach or failure to comply with any legal demand, direction, proceeding or notice issued under any act or regulation enacted by the federal or a state parliament within the Commonwealth of Australia; or
 - (x) Any penalty arising from circumstances where the **Insured Person** knew or ought reasonably have known prior to the **Period of Insurance** that the behaviour leading to the order of the penalty was wrong; or
 - (xi) Any penalty attributable to the period after which the **Insured Person** knew or ought reasonably to have known that the behaviour was wrong; or
 - (xii) Any penalty for breach of consumer protection legislation.
- (m) **Regulatory Authority** means:
- A person or entity appointed, constituted or acting under a delegated authority pursuant to any Act or regulation enacted by the federal or a state parliament within the Commonwealth of Australia and relating to events taking place within the Commonwealth of Australia.
- (n) **Subsidiary** means:
- Any entity:
- (i) Which is deemed to be a **Subsidiary** of the **Company** at the start of the **Period of Insurance** by Australian law provided the accounts of any **Subsidiary** are incorporated into the accounts of the **Company** in accordance with the relevant accounting standard; or
 - (ii) In which the **Company** controls more than 50% of the issued share capital or has more than one half of the maximum voting rights for any vote at a general meeting of the body corporate or entity.
- (o) **Superannuation Trustees Liability** means:
- Any liability from a **Claim** in relation to any act, error or omission in connection with an **Insured** acting as a trustee for the superannuation or pension fund provided for the benefit of **Employees** of the **Insured**.
- (p) **Wrongful Act** means:
- Any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement or misleading statement committed by:
- (i) An **Insured Person** in his or her capacity as an **Insured Person** in the course of his or her duties to the **Company**; or
 - (ii) The **Company**.



Insuring Clause

This Section of the **Policy** is written on a claims made and notified basis.

The **Insurer** agrees to indemnify the **Insured** in accordance with the terms and conditions of this **Policy**. The **Insurer** agrees to pay the **Insured** for any **Loss** covered by this **Policy** which arises out of a **Claim** first made against the **Insured** during the **Period of Insurance** and reported to the **Insurer** during the **Period of Insurance**. If a **Retroactive Date** is specified in the **Schedule**, indemnity is only available in respect to **Wrongful Acts** committed after the **Retroactive Date**.

Including:

(a) **Management Liability**

The **Insurer** agrees to pay the **Loss** of each **Insured Person** resulting from any **Claim** in respect of a **Wrongful Act** for which the **Company** is not permitted or required to indemnify the **Insured Person(s)**.

(b) **Company Reimbursement**

The **Insurer** agrees to pay the **Loss** of the **Company** that the **Company** is legally permitted to pay and has paid by reason of any **Wrongful Act** committed by an **Insured Person** in their capacity as an **Insured Person**.

(c) **Company Liability**

The **Insurer** agrees to pay the **Company** for a **Loss** due to a **Claim** made against the **Company** for a **Wrongful Act**.

(d) **Employment Practices Liability**

The **Insurer** agrees to pay on behalf of an **Insured** any **Loss** which the **Company** must pay by reason of a **Claim** for **Employment Practices Liability**.

The aggregate liability of the **Insurer** under this Insuring Clause will not exceed \$500,000. This sub-limit is part of and not in addition to the **Limit of Liability**.

(e) **Superannuation Trustees Liability**

The **Insurer** agrees to pay on behalf of an **Insured** any **Loss** which the **Company** must pay by reason of any **Claim** for **Superannuation Trustees Liability**.

(f) **Fines and Penalties**

The **Insurer** will indemnify an **Insured Person** for **Fines and Penalties** arising out of any **Claim** or **Loss** indemnified by the **Insurer** under Insuring Clauses:-

- (i) Management Liability; and/or
- (ii) Company Reimbursement.

The aggregate liability of the **Insurer** under this Insuring Clause will not exceed \$250,000. This sub-limit is part of and not in addition to the **Limit of Liability**.

The General Exclusion Fines, Penalties and Duties will not apply to this cover.

(g) **Crisis Management**

The **Insurer** agrees to pay on behalf of the **Company**, the reasonable fees, costs and expenses of an independent public relations consultancy which the **Company** engages with the **Insurer's** prior written consent to assist in managing a **Crisis Event** which first occurs during the **Period of Insurance**.



The aggregate liability of the **Insurer** under this Insuring Clause will not exceed \$25,000. This sub-limit is part of and not in addition to the **Limit of Liability**.

Automatic Extensions

These Automatic Extensions are subject to all the terms of the **Policy**, unless otherwise stated. The total of all payments made under any of the Automatic Extensions, will be part of and not in addition to the **Limit of Liability**, unless otherwise stated.

(a) **Continuous Cover**

If the **Insured**:

- (i) First became aware of facts or circumstances that might give rise to a **Claim**, prior to the **Period of Insurance**; and
- (ii) Had not notified the **Insurer** of these facts or circumstances prior to the **Period of Insurance**, then the General Exclusions clause Prior Claims and Circumstances will not apply to any notification during the **Period of Insurance** of any **Claim** later resulting from such facts or circumstances, provided that:
 - (1) There has been no fraudulent non-compliance with the **Insured's** Duty of Disclosure and no fraudulent misrepresentation by the **Insured** in respect of these facts or circumstances; and
 - (2) The **Insured** has been continuously **Insured**, without interruption at the time of the notification of the **Claim** to the **Insurer**, under a Directors and Officers or Management Liability insurance **Policy** issued by the **Insurer** and was **Insured** by the **Insurer** at the time when the **Insured** first became aware of the facts or circumstances giving rise to the **Claim**; and
 - (3) The **Insurer** can reduce its liability under the **Policy** to the extent of any prejudice it may suffer as a result of the **Insured's** failure to notify the facts or circumstances giving rise to a **Claim** prior to the **Period of Insurance**; and
 - (4) This extension does not apply to any indemnity provided by the Optional Extension - Fidelity Cover or the Extension – Automatic Reinstatement.

(b) **Estates**

The **Insurer** agrees to provide cover for the estate, heirs, legal representatives or assigns of any deceased, incompetent or **Insolvent Insured Person** with respect to **Loss** arising from a **Wrongful Act** of such **Insured Person**.

(c) **Extended Reporting Period**

If the **Insurer** refuses to offer renewal terms at the end of the **Period of Insurance** for any reason other than failure to pay the premium, the **Company** together with any **Insured Person** can pay 100% of the expiring annual premium and then be entitled to one extension of the **Policy** for a further 12 months starting upon expiry of the **Period of Insurance**.

This Extension only provides cover for **Wrongful Acts** actually or allegedly attempted or committed prior to expiry of the **Period of Insurance**. The **Insured** must give notice to the **Insurer** that it requires this Extended Reporting Period prior to expiry of the **Period of Insurance**.



(d) **Inquiry Representation Expenses**

The **Insurer** will pay on behalf of the **Insured**, **Inquiry Representation Expenses** incurred in representing any **Insured Person** at any official inquiry or other proceedings ordered by an official body or institution which:

- (i) The **Insured Person** are legally compelled to attend; and
- (ii) Is in relation to the affairs of the **Company** and the performance of the **Insured Person** duties in the business or conduct of the **Company**.

Any notice requiring an **Insured Person** to attend the inquiry must be first received by the **Insured Person** during the **Period of Insurance**.

The total liability of the **Insurer** under this Extension shall not exceed \$100,000 in the aggregate.

(e) **Joint Ventures**

The **Insurer** agrees to provide cover for liability arising from any **Claim** in respect of any **Joint Venture** but not for any **Claim** brought by or on behalf of any partners in the **Joint Venture** or any entity established to manage or conduct the **Joint Venture**.

(f) **Libel, Slander and Defamation**

The **Insurer** agrees to provide cover for libel, slander and defamation by the **Insured** that is unintentional and is committed in the course of the conduct of the **Company** business.

(g) **New Subsidiaries**

If the **Company** creates or acquires a **Subsidiary** during the **Period of Insurance**, the **Insurer** will provide indemnity to the **Subsidiary** for **Wrongful Acts** committed after the time that the entity became a **Subsidiary**.

If the **Subsidiary** has a consolidated asset value at the time of creation or acquisition of 20% or more of the total consolidated asset value of the **Company**, the cover provided by this Extension will cease at 4 pm 60 days after the creation or acquisition of the **Subsidiary** unless:

- (i) The **Insurer** is given notice of the **Subsidiary** within 60 days of its creation or acquisition; and
- (ii) The **Insurer** agrees to indemnify the **Subsidiary**; and
- (iii) The **Insured** agrees to any additional terms or payment of premium that the **Insurer** may request.

(h) **Not for Profit Organisation Outside Directorships**

The **Insurer** will provide cover under Insuring Clause (a) Management Liability for **Outside Directorships** in **Not for Profit Organisations** held by an **Insured Person** at the start of or during the **Period of Insurance**. This cover will only extend to directors and officers of the **Not for Profit Organisation** who are also **Insured Persons**. This cover will only apply in excess of any insurance indemnifying the **Insured Person** available to the **Not for Profit Organisation**.

(i) **Work Health and Safety**

The **Insurer** will pay on behalf of any **Insured Person** the **Defence Costs** incurred in defending **Claims** against any **Insured Person(s)** first made and notified to the **Insured** during the **Period of Insurance** in connection with any work health and safety laws of the Commonwealth of Australia. The **Claims** must be brought within the jurisdiction of the laws of the Commonwealth of Australia. The Additional Exclusion Bodily Injury and Property Damage does not apply to this Extension.



The total liability of the **Insurer** under this Extension shall not exceed \$100,000 in the aggregate. If the **Insured** is entitled to payment under this Extension there is no entitlement to cover under the Extension **Inquiry Representation Expenses**.

(j) **Automatic Reinstatement**

If the **Limit of Liability** set out in the **Schedule** under Section 3 is exhausted or partially exhausted due the payment by the **Insurer** of any **Loss** under this **Policy**, the **Insurer** agrees to reinstate the **Limit of Liability** by the amount by which it is exhausted provided that:

- (i) The reinstatement will not apply to **Claims** made prior to the effective date of the reinstatement; and
- (ii) The aggregate of the amounts reinstated during the **Period of Insurance** will be limited to an amount equal to the **Limit of Liability** applicable at the start of the **Period of Insurance**; and
- (iii) The **Limit of Liability** reinstated will represent the total liability of the **Insurer** for all **Claims** made during the time from the effective date of the reinstatement until the expiry of the **Period of Insurance**; and
- (iv) If an **Insured Person** has insurance that operates in excess of this **Policy**, a reinstatement will not apply until the amounts payable under that insurance are exhausted.

(k) **Retirement Cover**

Any **Insured Person** who has retired from all employment and holding any office prior to the expiry of the **Period of Insurance** will be entitled to cover under this **Policy** until expiry of the **Period of Insurance** but only in respect of **Wrongful Acts** actually or allegedly attempted or committed prior to retirement.

(l) **Run off for Outside Directorship**

The **Insurer** agrees to provide indemnity for **Outside Directorships** which an **Insured Person** held in an **Outside Entity** or **Not for Profit Organisation** if the **Insured Person**:

- (i) Ceased to hold the **Outside Directorship** during the **Period of Insurance**; and
- (ii) The **Wrongful Act** giving rise to the **Claim** occurred before the **Insured Person** ceased to hold the **Outside Directorship**; and
- (iii) The **Outside Directorship** had been or is covered by the **Insurer** under this **Policy** or previous policies,

until the expiry of the **Period of Insurance** of this **Policy**.

The provisions of Extension Not for Profit Organisation Outside Directorships apply to this Extension.

(m) **Severability**

The **Insurer** agrees that any conduct of an **Insured Person**, where the **Insured Person** breached the Duty of Disclosure or made a misrepresentation to the **Insurer** before this contract was entered into, will not prejudice the right of any other party who is an **Insured** to indemnity under the **Policy**. Provided that the other **Insured**:

- (i) Is innocent of and has no prior knowledge of this conduct; and
- (ii) Immediately upon becoming aware of this conduct advises the **Insurer** in writing of all known facts in relation to this conduct.

This Extension does not relieve any **Insured** from the Duty of Disclosure owed to the **Insurer**.



(n) **Subsidiary Run Off Cover**

If an entity ceases to be a **Subsidiary** prior to or during the **Period of Insurance**, the **Insurer** will provide indemnity for an **Insured Person** of that **Subsidiary** for **Wrongful Acts** committed prior to the time that the entity ceased to be a **Subsidiary** until expiry of the **Period of Insurance** of this **Policy**.

Optional Extensions

The **Insurer** agrees to provide cover under these Optional Extensions, provided that:

- (i) It is shown on the **Schedule** that indemnity is provided under an Extension; and
- (ii) All terms and conditions of this **Policy** apply; and
- (iii) The inclusion of any Extension does not increase the **Limit of Liability**; and
- (iv) If a limit for an Extension is shown in the **Schedule** then this amount represents the total liability of the **Insurer** for that Extension.

(a) **Fidelity Cover**

The **Insurer** will reimburse the **Company** for any loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the **Company** or for which the **Company** is legally liable due to any dishonest or fraudulent act or omission of an **Insured Person** which is first discovered by the **Company** during the **Period of Insurance** and notified to the **Insurer** during the **Period of Insurance**.

The aggregate liability of the **Insurer** under this Optional Extension will not exceed the amount shown in the **Schedule** and this Sub-Limit is part of and not in addition to the **Limit of Liability**.

The **Company** will be responsible for the costs of proving loss has occurred under this extension.

The **Insurer** will not cover any loss:

- (i) Discovered before the start of the **Period of Insurance**;
- (ii) Arising outside of Australia or arising out of, based upon or attributable to or in any way connected with a loss occurring outside of Australia;
- (iii) If the loss can only be proven by profit and loss accounts or inventory calculations or stock takes;
- (iv) Of income direct, indirect or consequential regardless of whether it is realised or not realised by the **Company**;
- (v) In relation to the costs of rewriting or reinstalling computer programs or systems;
- (vi) Caused by or contributed to by an **Insured Person** who did not hold that office or was not employed by the **Company** at the time the loss occurred;
- (vii) Incurred by or on behalf of any **Insured Person** who committed or condoned any dishonest, fraudulent, criminal or malicious acts or omissions;
- (viii) Any consequential loss arising from any dishonest, fraudulent, criminal or malicious acts or omissions of any **Insured Person**;
- (ix) Any dishonest, fraudulent, criminal or malicious acts or omissions which an **Insured Person** had knowledge of and then failed to take action to stop or prevent these or any loss arising from these acts or omissions;
- (x) Arising from default of a loan or credit offered by or to the **Company**;



- (xi) Arising from or as a result of the voluntary giving of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes unless as a result of a dishonest, fraudulent, criminal or malicious acts or omission of an **Insured Person**;
- (xii) Arising from or as a result of any kidnap, ransom or extortion;
- (xiii) Arising from or as a result of the distribution or accessing of any confidential information including but not limited to customer information, trade secrets, computer information, patents or trademarks.

(b) **Current Outside Directorships**

The **Insurer** will provide cover under Insuring Clause (a) Management Liability for **Outside Directorships** held by an **Insured Person** at the commencement of the **Period of Insurance** in any **Outside Entity** specified in the **Schedule**. This cover will only extend to directors and officers of the **Outside Entity** who are also **Insured Persons** and will apply in excess of any insurance indemnifying the **Insured Person** available to the specified **Outside Entity**.

(c) **Pollution Defence Costs**

The **Insurer** will pay **Defence Costs** or **Inquiry Representation Expenses** for any **Claim** brought against an **Insured Person** for a **Claim** arising directly or indirectly from the actual or alleged dispersal, discharge, release or escape of **Pollutants**. The General Exclusion clause Pollution does not apply to this Extension.

Additional Exclusions

In addition to the General Exclusions the following also apply to this Section.

No cover is provided under this **Policy** for any **Claim**, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by or resulting from, or in connection with:

(a) **Anti-competitive Practices**

any **Claim** against the **Company** for any actual or alleged violation of any law, whether statutory, regulatory or common law, with respect to any of the following activities: competition, consumer, unfair trade practices or tortious interference in another's business or contractual relationships.

(b) **Pollution**

the actual, alleged or threatened dispersal, release or escape of **Pollutants** into or upon real or personal property, the atmosphere, any water course or body of water, including but not limited to any enforcement action or proceeding in connection with the containment, clean up, removal, treatment or monitoring of such **Pollutants**, or seepage, pollution or contamination however it occurs.

(c) **Bodily Injury and**

bodily injury, sickness, disease or death of any person (but not emotional distress or mental anguish).

(d) **Property Damage**

destruction of or **Property Damage** to tangible property including loss of use of the tangible property.

(e) **Breach of Professional Duty**

- (i) The rendering or failure to render **Insured's Business** or professional advice; or
- (ii) A breach or alleged breach of any contract for the provision of **Insured's Business** or professional advice.



(f) **Capital Raising and Prospectus Liability**

any offer for the raising of capital by debt or equity, including but not limited to the initial public offering of securities of the **Company**.

(g) **Dishonesty and Improper Advantage**

- (i) Any dishonest, fraudulent, criminal or malicious act or omission of the **Insured** or other person or party employed by the **Insured**; or
- (ii) Any **Insured Person** having received any personal gain or advantage or remuneration to which that **Insured Person** was not legally entitled; or
- (iii) any **Insured Person** benefiting from securities transactions as a result of information that was not generally available to other sellers or purchasers of those securities.

However this exclusion shall only apply to the extent that the subject conduct has been established by an admission, court judgement or other final adjudication.

(h) **Insolvency and Financial Impairment**

the **Insolvency** of the **Insured** or inability of the **Insured** to pay debts as and when they fall due, regardless of whether the **Insured** was **Insolvent** or not at the time of the acts giving rise to a **Claim**. For the purpose of this exclusion, 'debts' includes but is not limited to the payments of entitlements on behalf of and to **Employees**.

(i) **Insured v Insured**

a **Claim** made, brought or maintained by or on behalf of any other person or entity who is an **Insured** except for:

- (i) A **Claim** resulting from **Employment Practices Liability**; or
- (ii) **Defence Costs**; or
- (iii) A shareholder derivative action brought or maintained on behalf of the **Company** without the solicitation, co-operation or assistance of any **Insured Person** and provided the shareholder was not an **Insured Person** at the time the **Wrongful Act** occurred; or
- (iv) Any **Claim** brought or maintained by a liquidator, receiver or administrative receiver derivatively on behalf of the **Company** without the solicitation, co-operation or assistance of any **Insured Person**; or
- (v) Any **Claim** brought or maintained by an **Insured** for contribution or indemnity if the **Claim** is directly resulting from another **Claim** covered by this **Policy**; or
- (vi) A **Claim** by the **Company** pursuant to Section 50 of the Australian Securities and Investments Commission Act 2001 (Cth).

(j) **Intellectual Property Rights**

any **Claim** against the **Company** for actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights.

(k) **Major Shareholder Actions**

a **Claim** brought by any shareholder having direct or indirect control of 15% or more of the **Company** or has representation on the board of directors.



(l) **Trading Losses**

any trading losses or trading liabilities incurred by the **Insured** or any business managed by or carried on by the **Insured** or any guarantee given by the **Insured** for a debt.

(m) **Employment Practices Liability**

- (i) any failure or allegations of failure to comply with workers' compensation or occupational health and safety laws however this does not apply to the Extension Occupational Health and Safety; or
- (ii) any costs of changing premises or equipment or work practices; or
- (iii) any strike, lock out, picket, go slow, work to rule or any other industrial action.
- (iv) any matters involving **Insolvency**, the appointment of a receiver, administrator, official manager or trustee appointed to manage a scheme of arrangement.

For bodily injury, sickness, disease or death of any person however this Exclusion will not apply to mental injury, mental anguish, nervous shock or emotional distress otherwise covered under this **Policy**.

Additional Conditions

In addition to the General Conditions the following also apply to this Section.

(a) **Senior Counsel**

If a dispute arises between the **Insurer** and **Insured** as to whether or not to contest any legal proceedings, the **Insurer** and the **Insured** will not be required to contest these legal proceedings unless a **Senior Counsel** advises that these proceedings should be contested. The **Senior Counsel** appointed to advise will be agreed upon by the **Insurer** and the **Insured** but if they cannot agree, will be appointed by the President of the Law Society or equivalent body in the State where the **Claim** is being heard or defended. **Senior Counsel** will advise having regard to the economics of the matter, the damages and costs which are likely to be recovered against the **Insured** and the likely **Defence Costs** that will be incurred in defending the **Claim**. The costs of **Senior Counsel** giving this advice will be part of **Defence Costs**.

(b) **Conduct of Defence**

The **Insurer** will be entitled at any time to take over and conduct the investigation, defence or settlement of any **Claim** in the name of the **Insured**.

Any amounts incurred by the **Insurer** or the **Insured** with the written consent of the **Insurer** in the conduct of the defence of the **Claim** will be part of **Defence Costs**.

If the conduct of the defence of a **Claim** is assumed by the **Insurer**, or the **Insured** is permitted by the **Insurer** to expend costs and expenses in the defence of the **Claim**, without prejudice to the question of indemnity until sufficient facts and information are available to make a decision on the question of indemnity, this does not indicate an **Insured** is entitled to indemnity under the **Policy** or waive or prejudice the **Insurer's** rights under the **Policy**.

(c) **Discharge of Liability**

If the **Insurer** is of the opinion that the amount required to resolve any **Claim** may exceed the available **Limit of Liability**, the **Insurer** is entitled to discharge its liability by electing to pay (or agreeing to pay upon settlement of the **Claim**) the available **Limit of Liability** to the **Insured** or on the **Insured's** behalf (including the **Defence Costs** incurred up to the time it makes this election).



If the **Insurer** is conducting the defence of the **Claim** at the time it makes this election, the **Insurer** will stop conducting the defence. The **Insurer** will have no further liability for **Defence Costs** after written notice of the election has been given to the **Insured**.

If the **Insured** disagrees with a **Claim** settlement recommended by the **Insurer**, the **Insured** may elect to contest a **Claim**. However, the liability of the **Insurer** in respect of the **Claim** will not exceed the amount for which the **Claim** could have been settled including the **Defence Costs** incurred up to the date of this election, less the **Excess**.

(d) **Representation Issues**

The lawyers instructed by the **Insurer** to act on the **Insured's** behalf can disclose to the **Insurer** any information they receive in that capacity. By claiming under this **Policy** the **Insured** authorises these lawyers to disclose this information to the **Insurer** and waives any **Claims** for legal professional or client privilege against the **Insurer**.

If there is a dispute between the **Insured** and the **Insurer**, the lawyers appointed by the **Insurer** to conduct the defence of the **Claim** will also continue to advise the **Insurer** on all issues, including but not limited to the right of the **Insured** to indemnity under the **Policy**. It is agreed that this will not prevent those lawyers from acting on the defence of the **Claim** on the instructions of the **Insurer**.

If any actual or potential conflict arises between the interests of the **Insured** and the **Insurer**, the lawyers appointed by the **Insurer** to investigate and defend the **Claim** may stop acting on behalf of the **Insured** and continue to advise the **Insurer** in any dispute about the entitlement of the **Insured** to indemnity under the **Policy**.

All communications between the **Insurer** and the lawyers appointed by the **Insurer** to investigate, defend or settle a **Claim** are privileged as between the **Insurer** and the lawyers and that the **Insured** is not entitled to demand, access or obtain these communications or information about their contents.

(e) **Loss Allocation**

If a **Claim**:

- (i) Includes matters covered and matters not covered by this **Policy**; or
- (ii) Is made against a person or organisation other than an **Insured**; the **Insurer** will determine a fair and proper allocation of the proportion of the **Loss** covered by the **Policy** having regard to the comparative legal and financial responsibility for the **Loss**.

If the allocation of the **Loss** cannot be agreed, then a **Senior Counsel** will make a final and binding determination as to the allocation of the **Loss**. The **Senior Counsel** appointed to advise will be mutually agreed upon by the **Insurer** and the **Insured** but if they cannot agree will be appointed by the President of the Law Society or equivalent body in the State where the **Claim** is being heard or defended. The costs of **Senior Counsel** making this determination will be **Defence Costs**.