

Arena Underwriting  
Encore Liability - Security



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### Encore Liability - Security

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## Important Information

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This Policy is a legal contract between You and Us. You have paid, or agreed to pay, Us the Premium and We provide the cover specified in this Policy and as set out in Your Schedule.

The terms, conditions and provisions of the insurance We offer You are set out in this Policy. It is important that You:

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

You must comply with all provisions of this Policy, otherwise We may be entitled to refuse to pay a claim or reduce the amount You are entitled to receive.

The Policy is in force for the Period of Insurance set out in Your Schedule or until cancelled.

For the limits on the cover provided:

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

In some circumstances the terms and conditions of this Policy may be amended by endorsement. If Your Policy is endorsed You will receive notification of the endorsement.

In issuing this Policy to You, We have relied upon the proposal form You have already completed.

### About Calliden

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Calliden Insurance Limited (Calliden).

ABN 47 004 125 268, AFS Licence No. 234438 is the insurer of this Policy. Calliden specialises in manufacturing general insurance products for individuals, the SME sector and groups across metro and regional Australia. To find out more about Us, visit [www.calliden.com.au](http://www.calliden.com.au)

Level 7, 100 Arthur Street  
North Sydney NSW 2065  
Phone: 02 9551 1111  
Fax: 02 9551 1155

### About Arena

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Arena Underwriting Pty Ltd (ABN 26 125 869 481, AFSL 317617) (Arena) arranges policies for and on behalf of Calliden.

Arena acts under a binding authority given to it by the insurer to administer and issue policies, alterations and renewals. In all aspects of this Policy Arena acts as an agent for the insurer and not for You.

If You have any queries in relation to Your Policy, You can contact Arena in any of the following ways:

Phone: 02 4952 4477

Fax: 02 4915 5376

Postal address: Suite 8, 12 Alma Road, New Lambton NSW 2305

E-mail: [info@arenaunderwriting.com.au](mailto:info@arenaunderwriting.com.au)

### Your Duty of Disclosure

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This Policy is subject to the Insurance Contracts Act 1984. Under that Act You have a Duty of Disclosure.

Before You take out insurance with Us, You have a duty to tell Us of everything that You know, or could reasonably be expected to know, that is relevant to Our decision to insure You and to the terms of that insurance. If You are not sure whether something is relevant You should inform Us anyway.

You have the same duty to inform Us of those matters before You renew, extend, vary, or reinstate Your contract of insurance.

Your duty however does not require disclosure of matters that:

- reduce the risk;
- are common knowledge;
- We know or, in the ordinary course of Our business, ought to know; or
- We have indicated We do not want to know.

If You do not comply with Your duty of disclosure, We may be entitled to:

- reduce Our liability for any claim;
- cancel the contract;
- refuse to pay the claim;
- avoid the contract from its beginning, if Your nondisclosure was fraudulent.

### Taxation Information

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The amount of cover available under this Policy excludes Goods and Services Tax (GST).

If You are not registered for GST, in the event of a claim We will reimburse You the GST component in addition to the amount that We pay.

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

If You are entitled to an input tax credit for the Premium You must inform Us of the extent of that entitlement at or before the time You make a claim under this Policy. We will not indemnify You for any GST liability, fines or penalties that arise from or are attributable to Your failure to notify Us of Your entitlement (or correct entitlement) to an input tax credit on the Premium.

If You are liable to pay an Excess under this Policy, the amount payable will be calculated after deduction of any input tax

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## Important Information (cont'd)

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credit that You are or may be entitled to claim on payment of the Excess.

If You are unsure about the taxation implications of this Policy, You should seek advice from Your accountant or tax professional.

### Privacy

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Calliden respects Your privacy and operates at all times in accordance with its privacy policy. This privacy notification provides a summary of how Calliden treats Your privacy, and it is recommended that You read the policy in conjunction with this notice.

Calliden collects personal information to assess Your request for insurance, to administer Your policy, provide other insurance services as requested by You, and also to notify You about other Calliden services or promotions from time to time. At the time of collecting Your information We will inform You of the purpose for the collection and the consequences if You choose not to provide the information.

In order to provide its insurance services Calliden may need to share Your information with third parties including Your agent or broker and Calliden's reinsurers and claims providers (for a full list see Calliden's privacy policy).

In accordance with Calliden's privacy policy You may obtain access at any time to information that Calliden or its service providers hold on You. If You would like to contact Calliden about privacy, or would like to obtain a copy of the privacy policy You may do so through one of the following means:

- obtain the privacy policy online at [www.calliden.com.au](http://www.calliden.com.au)
- by phone 02 9551 1111
- by email to [privacy@calliden.com.au](mailto:privacy@calliden.com.au)
- by letter to Privacy Officer, PO Box 348, Milsons Point NSW 1565

### General Insurance Code of Practice

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Calliden is a signatory to the General Insurance Code of Practice. The Code aims to raise standards of service between insurers and their customers.

For any information about the Code, including a copy of the Code, contact Calliden (see contact details above) or the Financial Ombudsman Service on 1 300 78 08 08 or visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

### Dispute Resolution Process

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#### How You Can Resolve a Complaint You Have With Us

If You would like to make a complaint, We will do everything We can to try to resolve it as quickly and fairly as possible. The following paragraphs provide details on how You can lodge Your complaint and how Calliden will try to resolve it.

You may contact Us at any time if You are dissatisfied with any matter relating to Your insurance with Calliden, including:

- Our decision on Your claim;
- Our handling of Your claim;
- the service of Our representatives, assessors, loss adjusters or investigators; and
- Your insurance policy.

#### Contact Us

- If You have a complaint regarding Your claim, please contact Your claims consultant.
- If You have a complaint regarding Your insurance policy, please contact Us on 02 9551 1111 and We will try to resolve Your complaint straight away.
- You can write to Us at:
  - Fax: 02 9551 1155
  - Address: PO Box 348, Milsons Point NSW 1565

#### How We Resolve Complaints

- We will address all complaints, except where specific circumstances apply, in accordance with Calliden's Complaints Handling Process. This process is compliant with the Insurance Council of Australia's Code of Practice. Both the Code of Practice and Our Complaints Brochure, which contains a guide to Our process, are available upon request.
- We will handle all complaints without cost to You.
- A complaints consultant will be assigned to the management of Your complaint and will acknowledge Your complaint within 2 business days of receipt. If further information is required to consider the complaint, it will be requested at this time.
- The complaints consultant will aim to resolve Your complaint within a further 13 business days. In certain circumstances a longer period may be required, and We will request a later response date.
- The outcome of the complaint will be advised to You in writing, stating Our reasons and any corrective action that will be undertaken.

#### If Your Complaint is Still Unresolved

If We cannot resolve Your complaint within 15 business days or You are not happy with Our response to Your complaint, You can seek an external review via Our external dispute resolution scheme, administered by the Financial Ombudsman Service (FOS).

This national scheme is for consumers, free of charge and is aimed at resolving disputes between insureds and their insurance companies.

For more information call 1 300 78 08 08 or visit [www.fos.org.au](http://www.fos.org.au)

If the FOS is unable to address Your complaint then Calliden may be able to provide You with details of an alternative external dispute resolution service.

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## General Provisions

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This Policy is divided into three **Parts**. Part A provides cover for general liability, Part B provides cover for professional indemnity and Part C provides cover for management liability. There are also general provisions which apply to all **Parts**.

**Part B** and **Part C** of this Policy operate on a 'claims made and notified' basis. Those **Parts** provide cover for claims made against **You** and notified to **Us** during the **Period of Insurance**.

Where **You** give notice in writing to **Us** of any facts that might give rise to a claim against **You** as soon as **You** become aware of those facts but before the expiry of the **Period of Insurance**, **You** may have rights under section 40(3) of the *Insurance Contracts Act 1984* to be indemnified in respect of any claim subsequently made against **You** arising from those facts notwithstanding that the claim is made after the expiry of the **Period of Insurance**. Any such rights arise under the legislation only.

### General Definitions

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The following definitions apply to all **Parts** of the **Policy**:

#### Act of Terrorism

Includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- a) involves violence against one or more persons;
- b) involves damage to property;
- c) endangers life other than that of the person committing the action;
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

#### Aircraft

Any vessel craft or object designed to travel through air or space or intended to be propelled on a cushion of air over the surface of land or water, other than model aircraft.

#### Business

The business specified in the **Schedule** which includes:

- a) the provision and management of canteen, social, sports, fundraising, welfare and child care facilities by **You** for **Your Employees'** or volunteers' benefit; and
- b) **Your** ownership or occupation of **Your Premises**.

#### Claim

Any:

- a) written demand for compensation or damages or other relief; or
- b) a civil proceeding seeking compensation or damages or other relief; or
- c) any criminal charge brought against **You** alleging a **Wrongful Act**; or
- d) a notice of charge, formal investigation order or notice requiring **You** to attend an inquiry or other proceedings ordered by an **Inquiring Body**.

#### Communicable Disease

An infectious disease that is transmitted through direct contact from one person to another.

#### Conflict

- a) a conflict of interest and duty, where **You** act for a client interest whilst being subjected to a contrary interest, being an interest of another client; or
- b) a conflict of interest and duty, where **You** act for a client whilst being subjected to a contrary interest, being a personal advantage interest.

#### Defence Costs

Reasonable legal costs and other expenses incurred by or on behalf of **You** (with **Our** written consent) or by **Us** in the investigation, defence and/or settlement of an **Occurrence** or **Claim**.

#### Documents

Deeds, wills, agreements, maps, plans, books, letters, certificates, forms, and documents of any nature, whether written, printed or reproduced by any method. **Documents** does not mean money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

#### Electronic Data

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

#### Employee

Any person employed (whether for reward or not) under a contract of service by **You** but does not include:

- a) a director; principal, partner, consultant, contractor; subcontractor; secondee or agent of **You**; or
- b) the respective employees of any principal, partner, consultant, contractor; subcontractor; secondee or agent of **You** (including the employees of labour hire agencies).

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## General Provisions - General Definitions (cont'd)

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### Excess

The amount which **You** have to pay towards the cost of any **Claim** under this **Policy**, excluding costs and expenses incurred by **You** in the investigation, settlement or defence of any **Claim** or **Occurrence**.

### Inquiring Body

A court, tribunal, or legally constituted industry or professional board.

### Inquiry Costs

Necessary and reasonable legal costs and expenses incurred by **You** or **Your Employee** or **Your Officer** with **Our** written consent arising out of any notice requiring **You** or **Your Employee** or **Your Officer** to attend at an inquiry or hearing before an **Inquiring Body**.

### Insolvent/Insolvency

The state of being a body corporate or entity:

- a) that is unable to pay its debts as and when they fall due; or
- b) in respect of which an application for winding up has been made; or
- c) 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
- d) in respect of which an administrator has been appointed or that is under administration; or
- e) that has executed a Deed of Company Arrangement that has not yet terminated.

### Joint Venture

An unincorporated enterprise that **You** carry on jointly with some other party or parties.

### Limit of Indemnity

The amount nominated in the **Schedule** as the limit of indemnity respectively applying for each **Part**.

### Loss

Amounts payable in respect of a **Claim** or an **Occurrence** including damages, **Defence Costs**, settlements and interest. **Loss** does not include penalties, fines or exemplary, punitive or aggravated damages.

### Medical Persons

Any qualified medical practitioners, nurses, dentists or first aid attendants engaged by **You** (whether for reward or not) whilst engaged in the **Business**.

### Not for Profit Organisation

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

### Occurrence

Any:

- a) event or series of events, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** and/or **Property Damage** and/ or **Advertising Injury** and/ or **Product Liability** neither expected nor intended by **You**; or
- b) intentional act, by **You** or at **Your** direction, resulting in **Personal Injury** but only if such **Personal Injury** arises solely from the use of reasonable force for the purpose of protecting persons or property.

### Officer

- a) Any natural person who is a past, present or future director, secretary, principal, partner, or executive officer of **You** engaged in the **Business**.
- b) Any natural person who is deemed by relevant legislation to be a director, secretary, principal, partner, or executive officer of **You** engaged in the **Business**.

**Officer** 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 **You** 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.

### Outside Directorship

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

### Outside Entity

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

### Part

Any of Part A, Part B or Part C of this **Policy**.

### Penalties

Monetary sums **You** are ordered by a court or tribunal to pay to any **Regulatory Authority** but does not include:

- a) any amounts payable as compensation; or
- b) any tax, rates, duty, fees, levies, charges or other revenue; or
- c) any damages, including any exemplary or punitive damages; or
- d) any consequential economic loss; or
- e) any **Defence Costs** and associated expenses; or
- f) any penalty arising from any offence under Sections 182, 183, 601FD, 601FE or 601JD of the Corporations Act or as they may be re-enacted or amended; or

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## General Provisions - General Definitions (cont'd)

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- g) any compliance, remedial, reparation or restitution costs; or
- h) any penalty arising from gross negligence or recklessness; or
- i) 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
- j) any penalty arising from circumstances where the **You** 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
- k) any penalty attributable to the period after which **You** knew or ought reasonably to have known that the behaviour was wrong; or
- l) any penalty for breach of consumer protection legislation.

### Period of Insurance

The period shown in the **Schedule** against '**Period of Insurance**' unless terminated earlier.

### Personal Injury

- a) Bodily injury, sickness or disease, including death, shock, fright, mental anguish, mental injury or disability.
- b) Unlawful arrest, wrongful detention or false imprisonment.
- c) Wrongful entry or eviction or other invasion of privacy.
- d) A publication of a libel or utterance of a slander or other defamatory material.

### Policy

This **Policy** document, its **Schedule** and the endorsements, if any, noted in the **Schedule** or granted by **Us** after inception of the **Policy**, and the information given to **Us** on behalf of **You** in the **Proposal**.

### Pollutant

Any:

- a) solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapour, soot, fumes, acids, alkalis and chemicals; and
- b) waste materials, including materials to be recycled, reconditioned or reclaimed; and
- c) other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emissions.

### Premises

The **Business** premises specified in the **Schedule**.

### Premium

The amount payable by **You** for the insurance provided by **Us** under this **Policy** including all applicable taxes, duties and imposts.

### Product

Any thing or things (including any packaging, containers, directions, markings, instructions, warnings or specifications) manufactured or deemed manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by **You** or on **Your** behalf in the course of **Your Business** after physical possession has been passed to others.

### Product Liability

Liability for **Personal Injury** or **Property Damage** arising out of **Your Product** but only if the **Personal Injury** or **Property Damage** occurs away from **Your Premises** or **Premises** leased or rented to **You** and after physical possession of **Your Product** has been passed to others.

### Property Damage

- a) Physical loss, destruction or damage to tangible property, including loss of use of that property at any time resulting therefrom.
- b) Loss of use of tangible property not physically lost, destroyed or damaged provided that such loss of use is caused by or arises out of an **Occurrence**.

### Proposal

The form completed by **You** giving answers, particulars and statements in respect of the insurance required by **You**.

### Regulatory Authority

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.

### Retroactive Date

The date shown in the **Schedule** against 'Retroactive Date'.

### Schedule

The certificate issued by **Us** which forms part of this **Policy** and shows **Your** policy number, the **Premium**, the insurance cover selected by **You** and any special terms and conditions or endorsements.

### Subsidiary

Any entity:

- a) which is deemed to be **Your** subsidiary at the start of the **Period of Insurance** by Australian law provided the accounts of any **Subsidiary** are incorporated into the **Business** accounts in accordance with the relevant accounting standard; or
- b) in which **Your** control more than 50% of the issued share capital or have more than one half of the maximum voting rights for any vote at a general meeting of the entity.

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## General Provisions - General Conditions

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### Territorial Limit

Anywhere in the world other than the United States of America or Canada or their territories, protectorates or dependencies.

### Vehicle

Any machine on wheels or self-laid tracks, designed to be propelled by other than manual or animal power and any trailer or other attachment designed to be drawn by any such machine but not including an **Aircraft** or **Watercraft**.

### Watercraft

Any vessel, craft, device or thing designed to float on or in water or to travel on or through water.

### We, Us or Our

Calliden Insurance Limited (Calliden) (ABN 47 004 125 268, AFSL No 234438).

### Wrongful Act

Any actual or alleged wrongful act or omission committed by **You**.

### You or Your

- a) Each person, company or other entity specified in the **Schedule** as being insured under this **Policy** as well as all subsidiary companies incorporated within the **Territorial Limit** and notified to **Us**, existing before the inception date of this **Policy** and declared in the **Proposal**.
- b) For the purposes of **Part A** and **Part B** of this **Policy** only, an **Employee** or **Officer** of each person, company or other entity referred to in a) above.
- c) For the purposes of **Part A** of this **Policy** only, an office bearer or member of a canteen, social, sports, welfare or child care facility provided by **Your Business** for employees' benefit; and voluntary worker;
- d) For the purposes of **Part C** of this **Policy**, **You** or **Your** 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 **You** 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.

## General Conditions

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The following conditions apply to all **Parts** of the **Policy**:

### 1. Cancellation

This **Policy** may be cancelled by:

- a) **You** at any time by notifying **Us** in writing, in which case:
  - i. cancellation takes place when **We** receive the notice; and
  - ii. **We** will retain, or be entitled to, a **Premium** for the period during which this **Policy** has been in force based on **Our** normal short period rates together with any administration expenses and non-refundable taxes and duties;
- b) **Us** on any grounds set out in the *Insurance Contracts Act 1984*, as amended from time to time, by giving **You** notice in writing, in which case **We** will refund the **Premium** paid for the unexpired part of the **Period of Insurance**.

**You** must supply **Us** with such particulars as **We** may require for the adjustment of the **Premium** following any cancellation.

### 2. Claims Procedures

If **You** become aware of:

- a) a situation which could lead to a **Loss** or a **Claim**;
- b) an increase in the quantum of a **Loss** or a **Claim**; or
- c) an **Occurrence**, **You** must, at **Your** own cost:
  - i. notify **Us** as soon as possible and provide **Us** with all reasonable information and assistance that **We** may require to enable **Us** to investigate and defend any **Claim** or **Occurrence**;
  - ii. take all reasonably practical steps to avoid or diminish **Your** liability or **Loss**;
  - iii. not admit liability or settle or attempt to settle any **Claim** without **Our** written consent.

In circumstances that give rise to or may give rise to a claim under this **Policy**, **We** may take over and conduct, in **Your** name, the defence or settlement of any claim and **We** will have full discretion in the conduct of any proceedings in connection with a **Claim**.

### 3. Claims Reporting

**You** must give **Us** immediate notice in writing of any **Claim** or **Occurrence**.

Such notice must be sent to The Claims Manager, Calliden Insurance Limited PO Box 348, Milsons Point, New South Wales 1565.

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## General Provisions - General Conditions (cont'd)

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### 4. Cross-Liability

Where **You** comprise more than one party, each of **You** is considered as a separate legal entity and the expressions '**You**' and '**Your**' apply to each party as if a separate policy had been issued to each of the parties but **Our** aggregate liability is limited to the **Limit of Liability** applicable to each part of this **Policy**.

### 5. Discharge of Liability

If in **Our** opinion the amount required to dispose of any **Claim** may exceed either the available **Limit of Indemnity** or a relevant sub-limit, **We** are entitled to discharge **Our** liability by paying (or agreeing to pay upon settlement of the **Claim**) the available **Limit of Indemnity** to **You** and paying the **Defence Costs** incurred up to the time of election to discharge **Our** liability.

If at the time of making such an election **We** are conducting the defence of the **Claim**, **We** will relinquish conduct and will have no further liability for **Defence Costs** after **We** have given **You** written notice of such election.

If **You** disagree with a settlement that **We** recommend, **You** may elect to contest the **Claim**, however **Our** liability in respect of the **Claim** will not exceed the amount for which the **Claim** could have been so settled plus the **Defence Costs** incurred up to the date of such election, less the **Excess**.

### 6. Excess

In respect of any liability for which **You** are entitled to indemnity under this **Policy**, **You** will bear the amount of the **Excess** and **We** will only be liable to indemnify **You** for that part of any **Loss** or **Claim** which is greater than the **Excess**.

Costs and expenses incurred by **You** in the investigation, settlement or defence of any **Claim** are not included in the **Excess** and shall not be applied to erode the **Excess**.

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**.

### 7. Governing Law

This **Policy** is to be governed in by the laws of Australia and the State or Territory where the **Policy** was issued. The relevant courts of the place where the **Policy** was issued shall have jurisdiction in any dispute concerning or under this **Policy**.

### 8. GST Basis of Settlement

The amount that **We** are liable to pay under this **Policy** will be reduced by the amount of any input tax credit that **You** may be entitled to **Claim** for the supply of goods or services covered by that payment.

### 9. Interpretation

Paragraph headings are included for convenience only and do not form part of this **Policy** for the purposes of interpretation of this **Policy**. Words and expressions in the singular include the plural and vice versa.

Words (except headings) in bold lettering have special meaning and are defined in the **Policy**. Words that are not specifically defined in this **Policy** have the meaning normally attributed to them.

### 10. Material Changes to the Risk

**You** must immediately notify **Us** in writing of any alteration to the facts or circumstances relating to **Your Business** that existed when **We** agreed to insure **You** under this **Policy**. If **We** agree in writing to insure the altered risk, **You** must pay any additional **Premium** requested by **Us**. If **We** do not agree to insure the altered risk or if **You** do not pay the additional **Premium**, **We** will not indemnify **You** for any liability caused by or arising directly or indirectly out of or in connection with such alteration.

### 11. Other Insurance

If for any **Occurrence, Claim, Loss** or **Defence Costs** there is any other insurance or indemnity which may provide either **You** or an **Officer** with a right of indemnity, **You** must tell **Us** and provide **Us** with full details of that other insurance or indemnity together with any further information that **We** may reasonably require.

### 12. Severability

A term or condition of this **Policy** that is illegal or unenforceable may be severed from this **Policy** and the remaining terms and conditions of this **Policy**, or parts thereof, continue in force.

### 13. Subrogation

If **We** make a payment under this **Policy** to **You** or on **Your** behalf then, subject to the *Insurance Contracts Act 1984* as amended from time to time, **We** will be subrogated to all of **Your** rights of recovery against all persons and **You** must, at **Our** request and expense, take all reasonable steps and provide all assistance reasonably necessary to assist **Us** in the exercise of **Our** rights.

### 14. Waiver, Surrender of Rights, Contribution or Indemnity

**We** will not compensate **You** for any **Loss** or damage that is covered by this **Policy** where;

- a) another person or party would be liable to compensate **You**, or hold **You** harmless, for part of or all of that **Loss** or damage; and
- b) **You** have agreed with that person or party, either before or after the inception of this **Policy**, that **You** will not seek recovery from them.

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## General Provisions - General Exclusions

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### General Exclusions

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The following exclusions apply to all **Parts** of the **Policy**. This insurance does not apply to, and **We** will not indemnify **You** for, any actual or alleged liability:

#### 1. Aircraft and Watercraft

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

- a) the ownership, possession, use, existence, working, navigation, operation, repair, maintenance, servicing, construction or installation by **You** or on **Your** behalf of any **Aircraft**; or
- b) the ownership, possession, use, existence, working, navigation, operation, repair, maintenance, servicing, construction or installation by **You** or on **Your** behalf of any **Watercraft** exceeding 8 metres in length, except where such **Watercraft** are owned or operated by others and used by **You** for business entertainment; or
- c) the use of **Your Product** with **Your** knowledge in the construction, operation, maintenance, servicing or repair of any **Aircraft**; or
- d) the use of **Your Product** with **Your** knowledge in the construction, operation, maintenance, servicing or repair of any **Watercraft** exceeding 8 metres in length.

#### 2. Asbestos

whatsoever for any **Claim** or **Occurrence** in respect of **Personal Injury** or **Property Damage** directly or indirectly arising out of, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

#### 3. Computers and Technology

- a) for **Property Damage** to **Electronic Data** or caused by or arising directly or indirectly out of 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 consequential **Loss** resulting therefrom;
- b) caused by or arising directly or indirectly out of or in connection with the use of an intranet or the Internet (including but not limited to the World Wide Web and electronic mail systems) by **You**, by **Your Employee** or **Officer**, or on **Your** behalf; or
- c) caused by or arising directly or indirectly out of or in connection with computer hardware or software that does not meet Year 2000 Conformity, within the meaning of that term in Miscellaneous Paper SAA/SNZ MP77:1998 "A Definition of Year 2000" published by Standards Australia and as amended or substituted from time to time.

#### 4. Contractual Liabilities

arising from, attributable to or in any way connected with any duty, obligation or liability assumed by **You** through contract, warranty, guarantee or indemnity, unless the duty, obligation or liability would have existed if **You** had not assumed it. This **Exclusion** does not apply to a **Claim** for **Employment Practices Liability**.

#### 5. Demolition

caused by or arising directly or indirectly out of or in connection with demolition of property the highest part of which, immediately before demolition works commence, exceeds 10 metres from ground level.

#### 6. Design

caused by or arising directly or indirectly out of or in connection with the design, plan, formula or specification of **Your Product** or any instructions, warnings, advice or information on the characteristics, use, storage or application of **Your Product**.

#### 7. Employer's Liability

- a) for **Personal Injury** to any **Employee** in respect of which **You** are or would be entitled to indemnity under any policy of insurance, fund, scheme or self insurance pursuant to or required by any legislation relating to Workers' Compensation or Accident Compensation whether or not such policy, fund, scheme or self insurance has been effected. Provided that this **Policy** will respond to the extent that **Your** liability would not be covered under any such policy, fund, scheme or self insurance arrangement had **You** complied with its obligations pursuant to such law.
- b) imposed by:
  - i. the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement;
  - ii. any law relating to Employment Practices.

For the purpose of this Exclusion, the term 'Worker' means any person deemed to be employed by **You** pursuant to any Workers' Compensation Law. Voluntary workers, secondees and work experience students (if any) will not be deemed to be **Your Employees**.

#### 8. Fraudulent and Intentional Conduct

arising from, attributable to or in any way connected with:

- a) any dishonest, fraudulent, criminal or malicious act or omission of any of **You** or **Your Officers** or **Employees**; or
- b) any of **You** or **Your Officers** or **Employees** having received any personal gain or advantage or remuneration to which that **Officer** or **You** was not legally entitled;

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## General Provisions - General Exclusions (cont'd)

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- c) **You** or **Your Officers** or **Employees** benefiting from securities transactions as a result of information that was not generally available to other sellers or purchasers of those securities; or
- d) conduct intended to cause **Personal Injury** or **Property Damage** (or conduct with reckless disregard for **Personal Injury** or **Property Damage**) by **You** or **Your Officers** or **Employees** or anyone acting on **Your** behalf or with **Your** knowledge or connivance.

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

### 9. Liquidated Damages

arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that such liability would have attached in the absence of such clauses or warranties.

### 10. Loss of Use

for **Loss** of use of tangible property (not physically lost, destroyed or damaged) caused by or arising directly or indirectly out of:

- a) delay or lack of performance by **You** or on **Your** behalf under any contract or agreement; or
- b) the failure of **Your Product** to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by **You**, except for loss of use of other tangible property resulting from the sudden and accidental physical loss, destruction or damage to **Your Product** after **Your Product** has been put to use by any person or organisation other than **You**.

### 11. Molestation

caused by or arising directly or indirectly out of or in connection with the molestation of, or physical or psychological interference with, any person.

### 12. Money and Securities

for **Loss** or damage to cash, securities, bullion, gold or negotiable instruments owned either by **You** or any of **Your Officers** or **Employees**, or for which **You** have assumed a responsibility.

### 13. Pollution

for:

- a) **Personal Injury** or **Property Damage** or financial **Loss** or **Loss** of, damage to, or **Loss** of use of property directly or indirectly arising out of the actual, alleged or threatened discharge, dispersal, release, seepage, migration, emission or escape of **Pollutants**; or
- b) the cost of testing, monitoring, containing, removing, nullifying or cleaning up **Pollutants** except liability otherwise excluded under paragraph a) or b) that:

- i. arises from a sudden identifiable, unintended and unexpected happening, which takes place in its entirety at a specific time and place; and
- ii. is indemnified in not more than one annual **Period of Insurance**.

### 14. Prior Circumstances, Occurrences and Claims

arising from, attributable to or in any way connected with any:

- a) facts, circumstances or occurrences noted on the **Proposal** for the current **Period of Insurance** or on any previous proposal to any insurer or of which notice had been given to any insurer under any previous policy, however expressed; or
- b) facts, circumstances or **Occurrences** of which **You** were aware prior to the commencement of the **Period of Insurance** and which **You** knew (or ought reasonably to have realised) may give rise to a **Claim**; or
- c) **Claims** first made against **You** prior to the start of the **Period of Insurance**; or
- d) fault, defect, **Occurrence**, **Personal Injury** or **Property Damage** known, or deemed by law to be known, by **You** prior to the **Period of Insurance**.

### 15. Product Defect, Product Recall and Faulty Work

- a) for **Property Damage** to **Your Product** caused by or arising directly or indirectly out of or in connection with any defect or lack of quality in **Your Product**, the harmful nature of **Your Product** or unsuitability or ineffectiveness of **Your Product**;
- b) caused by or arising directly or indirectly out of or in connection with the withdrawal, inspection, removal, reinstallation, repair, replacement or **Loss** of use of **Your Product**, or of any property of which **Your Product** forms a part, if **Your Product** is recalled from the market or from use because of any known or suspected defect or deficiency in it; or
- c) for the cost of repairing, correcting, performing or improving any work or service undertaken or provided by **You** or on **Your** behalf, provided that this exclusion does not apply to **Personal Injury** or **Property Damage** resulting from such work or service undertaken or provided by **You** or on **Your** behalf.

### 16. Territorial Limit

- a) arising out of **Claims** made or actions brought in the United States of America, Canada or their territories, protectorates, or dependencies coming within the jurisdiction of the courts of the United States of America, Canada or their territories, protectorates or dependencies.
- b) arising out of **Claims** and actions to which the laws of the United States of America, Canada or their territories, protectorates, or dependencies apply.

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## General Provisions - General Exclusions (cont'd)

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However for the purposes of **Part A** of this **Policy** subsections a) and b) above do not apply to **Personal Injury** or **Property Damage** occurring during business visits to the United States of America, Canada or their territories, protectorates, or dependencies by directors or employees, who are normally resident in Australia and who are not undertaking manual work or supervision of work of any kind while in the United States of America, Canada or their territories, protectorates or dependencies.

The **Limit of Liability** in respect of coverage provided under subsection **General Provisions - Exclusion I 6 - Territorial Limit** is inclusive of all costs, expenses and interest as set out in subsection **Limit of Indemnity for Part A** and subsection **Automatic Extensions for Part A** of this policy.

### 17. Tobacco and Smoking

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

### 18. War, Terrorism and Nuclear Material

- a) caused by or arising directly or indirectly out of or in connection with war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion, coup, military rising, insurrection, military or usurped power, rebellion, revolution, confiscation, nationalisation, requisition or looting, sacking or pillage, destruction of or damage to property by or under the order of any government or local authority.
- b) for death, injury, illness, **Loss**, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the **Loss**.
- c) for death, injury, illness, **Loss**, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any **Act of Terrorism**.
- d) caused by or arising directly or indirectly out of or in connection with nuclear weapons material or ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste or from the combustion of nuclear fuel or from any other self-sustaining process of nuclear fission.

### 19. Communicable Diseases Exclusion

caused by or arising directly or indirectly out of or in connection with the contraction of any **Communicable Disease**.

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## Part A: General Liability

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### Insuring Clause for Part A

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#### I. The Cover

**We** insure **You** against all sums which **You** become legally liable to pay as compensation in respect of:

- a) **Personal Injury**;
- b) **Property Damage**;

first occurring during the **Period of Insurance** within the **Territorial Limit** as the result of an **Occurrence** in connection with **Your Business**.

**We** will not indemnify **You** for the matters excluded under the **General Exclusions** or the **Additional Exclusions** for this **Part** of the **Policy**.

**You** must comply with the **General Conditions** and the **Additional Conditions** for this **Part** of the **Policy**.

Any indemnity provided by **Us** to **You** is provided in consideration of payment of the **Premium** by **You** and is subject to the terms and conditions of this **Policy** including the **Limit of Indemnity** for **Part A** and the **Excess**.

#### Limit of Indemnity for Part A

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Except as provided in sub-paragraph a) below, **Our** total liability under this **Part** of the **Policy** to indemnify **You**:

- a) in respect of any one **Occurrence** will not exceed the **Limit of Indemnity** for **Part A**; and
- b) for all **Claims** in respect of **Products Liability** during the **Period of Insurance** is limited in the aggregate to the **Limit of Indemnity** for **Part A**;
  - i. Subject to paragraph b), **We** will indemnify **You** for up to twenty five percent (25%) of the **Limit of Indemnity** for **Part A** in addition to the **Limit of Indemnity** for **Part A** for amounts that **We** pay to **You** or on **Your** behalf under Automatic Extension I;
- c) in respect of any one **Occurrence**; and
- d) shall be limited in aggregate for all **Claims** in respect of **Products Liability** during the **Period of Insurance**;
  - i. If a judgment or an amount required to settle a **Claim** exceeds the **Limit of Indemnity** for **Part A**, **Our** liability to pay **Costs** and **Expenses** under Automatic Extension I is limited to the proportion the **Limit of Indemnity** for **Part A** bears to the amount required to be paid to dispose of the **Claim** and in all cases will not exceed the amount specified in sub-paragraph a) above;
  - ii. All **Personal Injury** and **Property Damage** consequent upon or attributable to one source or originating cause shall be deemed one **Occurrence**. Any entitlement to indemnity under this **Policy** for such an **Occurrence** will be determined by reference to the date on which the **Personal Injury** or **Property Damage** from the one source or originating cause first occurred.

### Automatic Extensions for Part A

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**We** agree to provide cover under these extensions, for no additional premium, provided that:

- a) the indemnity provided is subject to the exclusions, conditions, **Excess** and all other terms of this **Policy**; and
- b) the inclusion of any extension shall not increase the **Limit of Indemnity** for **Part A**.

#### 1. Costs and Expenses

- a) Costs and expenses incurred by **Us**, or by **You** with **Our** prior written consent, in the investigation, settlement or defence of any claim for compensation for which **You** are entitled to indemnity under this **Policy**.
- b) Legal costs taxed or assessed against **You** in any claim referred to in paragraph (a) and all interest accruing from the entry of judgment against **You** until **We** have paid, tendered or deposited in court such part of the judgment as does not exceed the **Limit of Liability**.

#### 2. New Subsidiaries

The cover provided by this **Part** of the **Policy** will extend to any subsidiary company incorporated within the **Territorial Limit** that is incorporated or acquired by **You** during the **Period of Insurance** and relating to **Your Business** but only in respect of liability for **Advertising Injury**, **Personal Injury** or **Property Damage** occurring in the period commencing on the date of incorporation or acquisition by **You** and ending:

- a) 14 days from the date of incorporation or acquisition by **You**; or
- b) if **You** have notified **Us** in writing of the incorporation or acquisition within 60 days and **You** have provided all information that **We** require and **You** have agreed to any additional terms and conditions and **Premium** that **We** may require, on such date as **We** may in **Our** absolute discretion determine, but in any event no cover is provided by this subsection beyond the end of the **Period of Insurance**.

#### 3. Principals

**We** insure **You** for liability to indemnify any principal with whom **You** have entered into a contract or agreement for the performance of work if the terms of the contract or agreement require that **You** must indemnify the principal but only:

- a) in relation to work carried out by **You**;
- b) if the liability would have been implied by law in the absence of the contract or agreement; and
- c) in respect of **Occurrences** for which **You** would be entitled to indemnity under this **Policy** if it was made against **You**.

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## Part A: General Liability (cont'd)

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### Additional Exclusions for Part A

This **Part** of the **Policy** does not apply to, and **We** will not indemnify **You** for, any actual or alleged liability:

#### 1. Alteration, Additions and Construction

caused by or arising directly or indirectly out of or in connection with the construction, erection, demolition, underpinning, weakening or removal of support, alteration or installation work by **You** or on **Your** behalf except to a building owned or occupied by **You** for the purpose of **Your Business** where the total cost of all work is less than \$100,000.

#### 2. Defamation

caused by or arising directly or indirectly out of or in connection with publication of a libel, utterance of a slander or defamation:

- a) first made prior to the **Period of Insurance**;
- b) made by **You** or with **Your** authority, with knowledge of its falsity or defamatory character; or
- c) in any way related to advertising, broadcasting, publishing or telecasting activities conducted by **You** or on **Your** behalf, including but not limited to the publication of material on the Internet.

#### 3. Fines, Penalties and Damages

for fines, penalties, liquidated, aggravated, exemplary or punitive damages.

#### 4. Maintenance of Product Records

**You** must keep and maintain, for at least 10 years after the date upon which they are brought into existence or come into **Your** possession or control, documents and records:

- a) relating to research and development, specification, design and manufacturing of **Your Product**;
- b) showing the source and quality of components of **Your Product**;
- c) identifying persons and entities comprising the distribution chain for **Your Product**;
- d) comprising sales records, including batch number and destination of **Your Product**; and
- e) detailing quality control, inspection, testing, repairs, replacements and recalls of **Your Product**.

#### 5. Professional Liability

caused by or arising directly or indirectly out of or in connection with the rendering of or failure to render professional advice or service by **You** or on **Your** behalf or an error or omission in connection therewith, but this exclusion does not apply to:

- a) the rendering of or failure to render assistance by **Medical Persons**;
- b) **Personal Injury** or **Property Damage** arising from the rendering of or failure to render professional advice or service, provided such professional advice or service is not given for a fee;

- c) advice given in respect of the use or storage of **Your Products**.

#### 6. Property in Your Physical or Legal Control

for:

- a) **Property Damage** to property owned by, leased, hired by, under hire purchase, or on loan to **You**;
- b) **Property Damage** to property not belonging to **You** but in **Your** physical or legal care, custody or control, other than:
  - i. premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by **You** for the purpose of **Your Business**, but no cover is provided by this **Policy** if **You** have assumed the responsibility to insure such premises;
  - ii. a) premises and/or their contents temporarily occupied by **You** for the purpose of carrying out work in connection with **Your Business**; or  
b) any other property temporarily in **Your** possession for the purpose of being worked upon; however **We** will not indemnify **You** for damage to that part of such property on which **You** are working or have been working if the damage arises out of such work;
  - iii. the personal property, tools and effects of any of **Your** directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects of any of **Your** visitors;
  - iv. **Vehicles** (not owned or used by **You** or on **Your** behalf or liability for **Vehicles** not otherwise excluded by this **Policy**) whilst in a car park owned or operated by **You** other than for reward;
  - v. any property (not owned by **You**) not mentioned in paragraphs i. to iv. of this exclusion whilst in **Your** physical or legal care, custody or control where **You** have accepted or assumed legal liability for such property. Provided that **Our** liability under this paragraph v. shall not exceed \$20,000 in respect of any one claim or series of claims arising out of any one **Occurrence**.

**Our Limit of Liability** under subsection 6 b)ii. is the amount shown in the **Schedule**, for any one **Occurrence** and for all claims during the **Period of Insurance** in the aggregate inclusive of all costs, expenses and interest.

#### 7. Underground Services

caused by or arising directly or indirectly out of or in connection with **Property Damage** to any underground services except where **You** have contacted the appropriate authorities to verify the existence and location of underground services and have obtained from them a plan detailing the location of such services prior to commencement of work.

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## Part A: General Liability (cont'd)

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### 8. Vehicles

caused by or arising directly or indirectly out of or in connection with the ownership, possession, maintenance, use or control of any **Vehicle**:

- a) which is registered or required to be registered by any legislation or competent authority, except where such liability is caused by:
  - i. the loading or unloading of any **Vehicle** or the delivery or collection of goods to or from any **Vehicle**, where such **Personal Injury** or **Property Damage** occurs beyond the limits of any carriageway or thoroughfare declared as a designated road; or
  - ii. the use of any mechanical tool or plant attached to or forming part of any **Vehicle**, whilst the **Vehicle** is being used at **Your Premises** or another work site for the purpose of **Your Business** but not whilst the **Vehicle** is in transit or is being used for transport or haulage; or
- b) where such liability is insured or required to be insured by any legislation or competent authority.

### 9. Welding and Allied Processes

caused by or arising directly or indirectly out of or in connection with non-compliance by **You** or by others working on **Your** behalf with all applicable laws and standards relating to welding and allied processes including, but not limited to, AS 1674.1-1997 'Safety in welding and allied processes – Fire precautions' published by Standards Australia and as amended or substituted from time to time.

### 10. Airport Security

caused by or arising directly or indirectly out of or in connection with the provision of any form of security at any airport or aircraft landing area.

### 11. Correctional Facilities, Detention Centres etc.

caused by or arising directly or indirectly out of or in connection with the provision of any form of security work:

- a) at any type of:
  - i. correctional facility;
  - ii. detention centre; or
  - iii. criminal and/or migrant holding facility;
- b) in connection with transfers to or from any type of:
  - i. correctional facility;
  - ii. detention centre; or
  - iii. criminal and/or migrant holding facility.

### 12. Ownership and/or Use of Dogs

caused by or arising directly or indirectly out of or in connection with the ownership, use or provision of any dogs however this exclusion shall not apply provided that **You** have:

- a) complied with all the statutory obligations, by-laws and/or regulations imposed by all relevant public authorities for the ownership and/or use of dogs; and
- b) the dogs are kept in securely locked and/or fenced premises when not in use or when being used as guard dogs on unoccupied premises; or
- c) the dogs are kept on a lead when in use (other than as guard dogs on unoccupied premises).

Provided that, always subject to **General Exclusion 8 – Fraudulent and Intentional Conduct**, subsection 12 shall not apply in situations where the use of a dog off a lead was necessary due to imminent or actual threat to persons and/or property provided that the use of the dog off a lead was reasonable in the circumstances.

### 13. Firearms

caused by or arising directly or indirectly out of or in connection with the ownership, provision and/or use of any firearm however this exclusion shall not apply provided that:

- a) **You** have complied with all the statutory obligations, by-laws and/or regulations imposed by all relevant public authorities for their ownership, use and/or storage of firearms; and
- b) the firearms are used and/or stored in connection with **Your Business**.

### 14. Efficacy

caused by or arising directly or indirectly out of or in connection with any failure of **Your Products** and/or work completed by **You** or on **Your** behalf to perform their intended function or functions.

### 15. Loss of Keys

caused by or arising directly or indirectly out of or in connection with the loss of keys however this exclusion shall not apply provided that:

- a) the keys were in **Your** custody; and
- b) were lost as a result of **Your** negligence.

The **Limit of Liability** in respect of coverage provided under subsection 15 is \$30,000 for any one **Occurrence** and for all **Claims** during the **Period of Insurance** in the aggregate inclusive of all costs, expenses and interest as set out in **Automatic Extension for Part A - Costs and Expenses** of this **Policy**.

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## Part A: General Liability (cont'd)

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### 16. Contractor Liability

caused by or arising directly or indirectly out of or in connection with the activities of:

- a) any contractor or sub-contractor; or
- b) any person in the direct service or employ of a contractor or sub-contractor; employed or engaged by **You** or on **Your** behalf.

### 17. Licensing

caused by or arising directly or indirectly out of or in connection with **You** or anyone employed or engaged on **Your** behalf who is not:

- a) licensed; and
- b) trained;

as required by the relevant Acts, Regulations or Authorities governing the Security Industry in the State or Territory in which **you** operate **your Business**.

### Additional Conditions for Part A

The following conditions apply to this **Part** of the **Policy**:

#### 1. Inspection

If required by **Us**, **You** must allow **Us** and **Our** agents and representatives:

- a) to inspect **Your Premises** and operations at any time during normal business hours; and
- b) to examine and audit **Your** books and records at any time during the **Period of Insurance** and within three years of the final termination of cover under this **Policy** but **We** make no representation or warranty that either **Your Premises** or **Your Business** complies with any law or meets any standard.

#### 2. Reasonable Care

**You** must:

- a) take all reasonable precautions to prevent or minimise **Loss**, damage or liability including preserving, without alteration, damaged property, defective property and property that may provide evidence in relation to any claim, until **We** have had an opportunity to inspect it;
- b) at **Your** own expense take all reasonable precautions to prevent **Personal Injury** and **Property Damage** and comply with all statutory obligations for the safety of persons and property including all reasonable steps:
  - i. to trace, recall or modify any **Product** containing any defect or deficiency of which **You** have knowledge or which **You** have reason to suspect contains any defect or deficiency;
  - ii. in the event of an **Occurrence**, to prevent other **Personal Injury** or **Property Damage** from arising out of the same or similar circumstances; and

- iii. to ensure the safety and sound condition of **Your Premises** and **Your Product** including complying with all applicable statutory obligations concerning **Your Premises** and **Your Product**;

- c) only employ competent employees; and
- d) comply with all statutory obligations, laws and regulations imposed by any competent authority in relation to any matter covered by this **Policy**.

#### 3. Joint Insureds

Where **You** comprise more than one party:

- a) the **Proposal** is deemed to have been furnished by and on behalf of all parties and any information supplied to **Us** or any omission, misrepresentation, or non-disclosure in relation to the **Proposal** or any renewal or extension of this **Policy** is deemed to have been furnished, supplied, omitted, misrepresented or not disclosed on behalf of all parties; and
- b) the conduct (other than conduct referred to in **General Exclusion 8 - Fraudulent and Intentional Conduct** of one or more of **You** will not prejudice the rights of the remainder of **You** provided that the remainder of **You**, immediately on becoming aware of any conduct that increases the risk of liability insured by this **Policy**, gives notice in writing to **Us** and pays any additional **Premium** that **We** may require).

#### 4. Premium Adjustment

- a) Unless otherwise indicated, the **Premium** for **Your** insurance under this **Policy** is adjustable.
- b) If the first or renewal **Premium** for this **Policy** is calculated on information and estimates furnished by **You**, **You** must:
  - i. keep an accurate record containing all relevant particulars and allow **Us**, **Our** agents and representatives, to inspect them at all times; and
  - ii. within two months of the end of each **Period of Insurance** furnish them to **Us**.

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## Part B - Professional Indemnity

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### Insuring Clause for Part B

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#### 1. The Cover

Subject to the terms of this **Policy**, **We** will indemnify **You** for all **Loss** arising from a **Claim** against **You** arising out of a breach of professional duty in the conduct of the **Business** where the **Claim** is first made during the **Period of Insurance** and first reported to **Us** during the **Period of Insurance**.

**We** will not indemnify **You** for the matters excluded under the **General Exclusions** or the **Additional Exclusions** for this **Part** of the **Policy**.

**You** must comply with the **General Conditions** and the **Additional Conditions** for this **Part** of the **Policy**.

Any indemnity provided by **Us** to **You** is provided in consideration of payment of the **Premium** by **You** and is subject to the terms and conditions of this **Policy** including the **Limit of Indemnity** for **Part B** and the **Excess**.

#### Limit of Indemnity for Part B

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**Our** total liability under **Part B** of the **Policy** in respect of any one **Claim**, and in the aggregate for all **Claims** made during the **Period of Insurance**, inclusive of **Defence Costs** will not exceed the **Limit of Indemnity** for **Part B**.

If a limit is shown in the **Schedule** for a particular cover or extension then **Our** total liability under that cover or extension is that limit (inclusive of **Defence Costs**) and not the **Limit of Indemnity** for **Part B**, or a limit is included in the **Policy** for a particular cover or extension, and the limit is part of and not in addition to the **Limit of Indemnity** for **Part B**.

#### Automatic Extensions for Part B

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**We** agree to provide cover under these extensions, for no additional premium, provided that:

- a) the indemnity provided is subject to the exclusions, conditions, **Excess** and all other terms of this **Policy**; and
- b) the inclusion of any extension shall not increase the **Limit of Indemnity** for **Part B**.

#### 1. Costs and Expenses

If **We** indemnify **You** under this **Part** of the **Policy**, **We** will:

- a) pay all **Defence Costs** incurred by **Us** and/or by **You** with **Our** prior written consent in the investigation, defence or settlement of any **Claim** up to the **Limit of Indemnity** for **Part B**;
- b) pay all legal costs taxed or assessed against **You** in any **Claim** and all interest accruing from the entry of judgment against **You** until **We** have paid, tendered or deposited in court such part of the judgment as does not exceed the **Limit of Indemnity** for **Part B**.

#### 2. Dishonesty

**You** agree that, subject to this clause and the remaining terms of the **Policy**, **General Exclusion 8 - Fraudulent and Intentional Conduct** will not apply to any **Claim** arising from or attributable to any dishonest, fraudulent, criminal or malicious act, error or omission of any **Employee** or **Officer** in the conduct of the **Business**.

Provided that no indemnity is available by virtue of this clause:

- a) where **You** have knowingly engaged in or condoned such conduct;
- b) for any person committing or condoning the act, error or omission;
- c) for any **Loss** sustained or liability incurred as a result of any act, error or omission occurring after the date on which **You** first discover, or have reasonable cause for suspicion of, dishonest, fraudulent, criminal or malicious conduct on the part of any such person.

#### 3. Reinstatement of Limit of Indemnity for Part B

If the **Limit of Indemnity** for **Part B** set out in the **Schedule** is exhausted or partially exhausted due to a payment by **Us** of **Loss** under this **Policy**, **We** agree to reinstate the **Limit of Indemnity** for **Part B** by the amount by which it is exhausted provided that:

- a) the reinstatement will not apply to **Claims** made that occurred prior to the effective date of the reinstatement;
- b) the aggregate of the amounts reinstated during the **Period of Insurance** will be limited to an amount equal to the **Limit of Indemnity** for **Part B** applicable at the start of the **Period of Insurance**; and
- c) the **Limit of Indemnity** for **Part B** reinstated will represent **Our** total liability for all **Claims** made during the time from the effective date of the reinstatement until the expiry of the **Period of Insurance**; and
- d) if any of **Your Officers** or **You** have insurance that operates in excess of this **Policy**, a reinstatement will not apply until the amounts payable under that insurance are exhausted.

#### 4. Continuous Cover

If **You**:

- a) first became aware of facts or circumstances that might give rise to a **Claim**, prior to the **Period of Insurance**; and
- b) had not notified **Us** of these facts or circumstances prior to the **Period of Insurance**, then **General Exclusion 14 - Prior Circumstances, Occurrences And Claims** will not apply to any notification during the **Period of Insurance** of any **Claim** later resulting from such facts or circumstances, provided that:
  - i. there has been no fraudulent non-compliance with **Your** duty of disclosure and no fraudulent misrepresentation by **You** in respect of these facts or circumstances; and

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## Part B - Professional Indemnity (cont'd)

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- ii. **You** have been continuously insured, without interruption at the time of the notification of the **Claim** to **Us**, under a **Professional Indemnity** insurance policy issued by **Us** and were insured by **Us** at the time when **You** first became aware of the facts or circumstances giving rise to the **Claim**; and
- iii. **We** can reduce **Our** liability under the **Policy** to the extent of any prejudice **We** may suffer as a result of **Your** failure to notify the facts or circumstances giving rise to a **Claim** prior to the **Period of Insurance**; and
- iv. this extension does not apply to any indemnity provided by **Automatic Extension 2 - Dishonesty**.

### 5. Severability

**We** agree that any conduct of **Yours**, or any of **Your Officers**, (where they have breached the duty of disclosure or made a misrepresentation to **Us** before this contract was entered into), will not prejudice either **Your** (or any **Officer's**) right to indemnity under the **Policy**. Provided that the other **Officer**:

- a) is innocent of and has no prior knowledge of this conduct; and
- b) immediately upon becoming aware of this conduct advises **Us** in writing of all known facts in relation to this conduct.

This **Extension** does not relieve **You** or any **Officer** from the **Duty of Disclosure** owed to the **Us**.

### 6. Extended Reporting Period

If **We** refuse to offer renewal terms at the end of the **Period of Insurance** for any reason other than failure to pay the premium, **You** may be entitled to one extension of the **Policy** for a further 12 months starting upon expiry of the **Period of Insurance** by paying **Us** 100% of the expiring annual premium. This extension only provides cover for **Wrongful Acts** actually or allegedly attempted or committed prior to expiry of the **Period of Insurance**. **You** must give **Us** notice that **You** require this **Extended Reporting Period** prior to expiry of the **Period of Insurance**. This extension will only be offered at **Our** option and **We** must agree to this extension in writing.

All cover under this extension ceases if **You** effect another professional indemnity policy with any insurer incepting at any time on or after the expiry of the original **Period of Insurance**.

### Additional Exclusions for Part B

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This **Part** of the **Policy** does not provide any indemnity for **Loss**, or **Defence Costs**, in respect of any actual or alleged liability:

#### 1. Property Damage

arising from, attributable to or in any way connected with destruction of or damage to tangible property including **Loss** of use of the tangible property.

#### 2. Capital Raising and Prospectus Liability

arising from attributable to or in any way connected with any offer for the raising of capital by debt or equity, including but not limited to the initial public offering of securities in the **Business**.

#### 3. Conflict of Interest

arising from, attributable to or in any way connected with any **Conflict**.

#### 4. Consensual Claims

made, brought or maintained by or on behalf of any person or entity with **Your** solicitation, co-operation or assistance.

#### 5. Insolvency

first made or intimated subsequent to the date upon which the **Business** becomes **Insolvent**. This **Exclusion** shall not apply where **You** establish, to **Our** satisfaction, that the **Claim** would have arisen notwithstanding that the **Business** was **Insolvent**.

#### 6. Insolvency and Financial Impairment

any **Claim** arising out of **Your Insolvency** or **Your** inability to pay debts as and when they fall due, regardless of whether **You** were 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**.

#### 7. Major Shareholder Actions

brought by any shareholder having direct or indirect control of fifteen per cent (15%) or more of the **Business**.

#### 8. Fines, Penalties and Taxes

for any exemplary, aggravated, punitive or liquidated damages, fines, penalties, tax or duty.

#### 9. Related Parties

made, brought or maintained by or on behalf of:

- a) **You**;
- b) any person or entity who or which is related to **You**, unless such person or entity is acting without any prior direct or indirect solicitation, co-operation or assistance for **You**.

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## Part B - Professional Indemnity (cont'd)

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### 10. Trading Debt

arising from, attributable to or in any way connected with any trading debt incurred by **You** or any guarantee given by **You** for any debt.

#### Additional Conditions for Part B

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The following conditions apply to this **Part** of the **Policy**:

#### 1. Conduct of Defence

**We** are entitled at any time to take over and conduct the investigation, defence and/or settlement of any **Claim** in **Your** name.

Any amounts incurred either by **Us** or (with **Our** written consent) by **You** in the conduct of the defence of the **Claim** will be part of **Defence Costs**.

If either **We** assume the defence of a **Claim**, or **You** have **Our** written consent 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 that **You** are entitled to indemnity under the **Policy** or in any way waive or prejudice **Our** rights under the **Policy**.

#### 2. Loss Allocation

If a **Claim**:

- a) includes matters covered and matters not covered by this **Policy**; or
- b) is also made against a person or organisation other than **You**;

**We** 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 person appointed by the President of the Law Society or equivalent body in the State where the **Claim** is being heard or defended will make a final and binding determination as to the allocation of the **Loss**. The costs of that person making this determination will be **Defence Costs**.

### 3. Representation Issues

The lawyers that **We** instruct to act on **Your** behalf can disclose to **Us** any information they receive in that capacity. By claiming under this **Policy**, **You** authorise these lawyers to disclose this information to **Us** and **You** waive any claims for legal professional or client privilege against **Us**.

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

If any actual or potential conflict arises between **Your** interests and **Our** interests the lawyers **We** have appointed to investigate and defend the **Claim** may stop acting on **Your** behalf and may continue to advise **Us** in any dispute about **Your** entitlement to indemnity under the **Policy**.

All communications between **Us** and the lawyers **We** appoint to investigate, defend or settle a **Claim** are privileged as between **Us**, and those lawyers and **You** are not entitled to demand access or obtain these communications or information about their contents.

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## Part C – Management Liability

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### Specific Definitions for Part C

The following definitions apply to **Part C** of the **Policy**:

#### Employment Benefits

Includes amounts due or payable pursuant to:

- a) any worker's compensation, disability benefits, retirement benefits, social security benefits, redundancy or unemployment benefits or compensation, superannuation or similar law; or
- b) employee entitlements arising from **Your** employment relationship including but not limited to fringe benefits, employee share or equity plans bonuses, incentive schemes, leave, severance, superannuation contributions or redundancy entitlements or amounts; or
- c) any other payment, other than salary or wages, to or for the benefit of an **Employee** arising out of the employment relationship.

#### Employment Practices Liability Claim

Any actual or alleged **Claim** against **You** arising from any act, error or omission in connection with the recruitment, employment or termination of **Your Employee** or applicant for a position as **Your Employee** including but not limited to:

- a) workplace discrimination or harassment on any ground including but not limited to sex, age, disability, race, colour, sexual orientation, marital status, pregnancy or otherwise;
- b) wrongful dismissal;
- c) invasion of privacy, denial of natural justice, defamation and infliction of emotional distress;
- d) misleading conduct or advertising in relation to the terms and conditions of employment;
- e) breach of any oral or written, express or implied, employment contract or quasi-employment contract;
- f) wrongful demotion, failure to promote, failure to employ, deprivation of career opportunity, refusal of tenure;
- g) negligent employee evaluation or wrongful discipline;
- h) permission of a harassing workplace environment.

For the purpose of this definition **Employee** includes principals, partners, voluntary workers, contractors and temporary workers.

#### Loss

Amounts that **You** are legally obliged to pay in respect of a **Claim** or an **Occurrence** including damages, **Defence Costs**, settlements and interest arising in the conduct of the **Business**. **Loss** does not include penalties, fines or exemplary, punitive or aggravated damages. In respect of an **Employment Practices Claim**, where reinstatement of an employee is ordered by a court of law, **We** will pay back-pay excluding any amount payable by **You** pursuant to a specific obligation imposed under a contract of employment, employment agreement, statute award or otherwise.

### Insuring Clause for Part C

#### I. The Cover

Subject to the terms of this **Policy**, **We** will:

- a) indemnify **Your Officer** or **Your Employee** for all **Loss** arising from a **Claim** against that **Officer** or **Employee**, where the **Officer** or **Employee** is not indemnified by **You**;
- b) indemnify **You** for all **Loss** arising from a **Claim** against **You** for a **Wrongful Act** in the conduct of the **Business**;
- c) indemnify **You** for all **Loss** arising from an **Employment Practices Liability Claim**; and
- d) reimburse **You** for all **Loss** arising from a **Claim** against **Your Officer** or **Your Employee**, where **You** have indemnified that **Officer** or **Employee**;

where the **Claim** is first made during the **Period of Insurance** and first reported to **Us** during the **Period of Insurance**.

**We** will not indemnify **You** or **Your Officer** or **Your Employee** for the matters excluded under the **General Exclusions** or the **Additional Exclusions** for this **Part** of the **Policy**.

**You** must comply with the **General Conditions** and the **Additional Conditions** for this **Part** of the **Policy**.

Any indemnity provided by **Us** to **You** or **Your Officer** or **Your Employee** is provided in consideration of payment of the **Premium** by **You** and is subject to the terms and conditions of this **Policy** including the **Limit of Indemnity** for **Part C** and the **Excess**.

#### Limit of Indemnity for Part C

**Our** total liability under **Part C** of the **Policy** in respect of any one **Claim**, and in the aggregate for all **Claims** made during the **Period of Insurance**, inclusive of **Defence Costs** will not exceed the **Limit of Indemnity** for **Part C**.

If a limit is shown in the **Schedule** for a particular cover or extension then **Our** total liability under that cover or extension is that limit (inclusive of **Defence Costs**) and not the **Limit of Indemnity** for **Part C**, or a limit is included in the **Policy** for a particular cover or extension, and the limit is part of and not in addition to the **Limit of Indemnity** for **Part C**.

#### Automatic Extensions for Part C

**We** agree to provide cover under these extensions, for no additional premium, provided that:

- a) the indemnity provided is subject to the exclusions, conditions, **Excess** and all other terms of this **Policy**; and
- b) the inclusion of any extension shall not increase the **Limit of Indemnity** for **Part C**.

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## Part C – Management Liability (cont'd)

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### 1. Advanced Defence Costs

Prior to determining **You** or **Your Officer's** or **Your Employee's** entitlement to indemnity under the **Policy We** will advance **Defence Costs** to **You** or **Your Officer** or **Your Employee** subject to the following:

- a) **We** reserve the right to cease paying any **Defence Costs** or paid to **You** or **Your Officer** or **Your Employee** under this **Extension** in relation to the extent that either **You** or **Your Officer** or **Your Employee** are found not to be entitled to indemnity;
- b) in the event that either **You** or **Your Officer** or **Your Employee** are found not to be entitled to indemnity, **We** require **You** or **Your Officer** or **Your Employee** to repay all **Defence Costs** within 30 days.

### 2. Inquiry Costs

Prior to determining **You** or **Your Employee's** or **Officer's** entitlement to indemnity under the **Policy We** may advance **Inquiry Costs** up to a limit of \$250,000 to **You** or **Your Officer** subject to the following:

- a) the notice requiring **You** or **Your Employee's** or **Officer's** attendance at an **Inquiring Body** is first received by **You** or **Your Employees** or **Officer** and notified to **Us** during the **Period of Insurance**;
- b) the attendance arises directly from **Your Business**;
- c) **We** reserve the right to cease paying any **Inquiry Costs** or paid to **You** or **Your Officer** or **Your Employee** under this **Extension** to the extent that **You** are found not to be entitled to indemnity;
- d) in the event that **You** or **Your Officer** or **Your Employee** are found not to be entitled to indemnity, **We** require **You** or **Your Officer** or **Your Employee** to repay all **Inquiry Costs** within 30 days.

### 3. Fines and Penalties

**We** will indemnify any of **Your Employees** or **Officers** for **Penalties** arising out of any **Claim** indemnified under this **Part** up to a limit of \$50,000. **Exclusion 6 - Fines Penalties and Taxes** contained within the **Additional Exclusions Part C** does not apply to any **Claim** under this **Automatic Extension**.

### 4. Dishonesty

**You** agree that, subject to this clause and the remaining terms of the **Policy**, **General Exclusion 8 - Fraudulent and Intentional Conduct** will not apply to any **Claim** arising from or attributable to any dishonest, fraudulent, criminal or malicious act, error or omission of any **Employee** or **Officer** in the conduct of the **Business**.

Provided that no indemnity is available by virtue of this clause:

- a) where **You** have knowingly engaged in or condoned such conduct;
- b) for any person committing or condoning the act, error or omission;

- c) for any **Loss** sustained or liability incurred as a result of any act, error or omission occurring after the date on which **You** first discover, or have reasonable cause for suspicion of, dishonest, fraudulent, criminal or malicious conduct on the part of any such person.

### 5. Loss of Documents

If during the **Period of Insurance** **You** first discover that any **Documents** the property of or entrusted to **You** have been destroyed, damaged, lost or mislaid **We** will cover **You** up to a limit of \$250,000 for:

- a) **Your** legal liability which is based on or attributable to such **Documents** having been destroyed, damaged, lost or mislaid; and
- b) costs and expenses of whatsoever nature incurred by **You** in replacing or restoring such **Documents**.

Provided always that:

- i. such costs and expenses are supported by accounts approved by a competent person nominated by **Us**;
- ii. no liability will attach for any **Loss** brought about by **Wear**, tear, vermin, mould or mildew or any other gradually operating cause;
- iii. the maximum aggregate amount payable by the **Us** under this extension in any **Period of Insurance** is \$250,000 inclusive of **Defence Costs** which is part of and not in addition to the **Limit of Indemnity** for **Part C**.

### 6. Intellectual Property

**We** agree to provide cover for infringement of rights of intellectual property, provided that the act, error or omission by **You** is unintentional and is committed in the course of the conduct of **Your Business**.

### 7. Estates

**We** agree to provide cover for the estate, heirs, legal representatives or assigns of any deceased, incompetent or insolvent **Officer** or **Employee**.

### 8. Reinstatement of Limit of Indemnity for Part C

If the **Limit of Indemnity** for **Part C** set out in the **Schedule** is exhausted or partially exhausted due to payment(s) by **Us** of **Loss** under this **Policy**, **We** agree to reinstate the **Limit of Indemnity** for **Part C** by the amount by which it is exhausted provided that:

- a) the reinstatement will not apply to **Claims** made that occurred prior to the effective date of the reinstatement;
- b) the aggregate of the amounts reinstated during the **Period of Insurance** will be limited to an amount equal to the **Limit of Indemnity** for **Part C** applicable at the start of the **Period of Insurance**; and
- c) the **Limit of Indemnity** for **Part C** reinstated will represent **Our** total liability for all **Claims** made during the time from the effective date of the reinstatement until the expiry of the **Period of Insurance**;

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## Part C – Management Liability (cont'd)

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- d) if **You** or any of **Your Officers** or **Your Employees** has insurance that operates in excess of this Policy, a reinstatement will not apply until the amounts payable under that insurance are exhausted.

### 9. Continuous Cover

If **You**:

- a) first became aware of facts or circumstances that might give rise to a **Claim**, prior to the **Period of Insurance**; and
- b) had not notified **Us** of these facts or circumstances prior to the **Period of Insurance**, then the **General Exclusion 14 - Prior Circumstances and Claims** will not apply to any notification during the **Period of Insurance** of any **Claim** later resulting from such facts or circumstances, provided that:
- there has been no fraudulent non-compliance with **Your Duty of Disclosure** and no fraudulent misrepresentation by **You** in respect of these facts or circumstances; and
  - You** have been continuously insured, without interruption at the time of the notification of the **Claim** to **Us**, under a Directors and Officers or Management Liability insurance policy issued by **Us** and were insured by **Us** at the time when **You** first became aware of the facts or circumstances giving rise to the **Claim**; and
  - We** can reduce **Our** liability under the **Policy** to the extent of any prejudice **We** may suffer as a result of **Your** failure to notify the facts or circumstances giving rise to a **Claim** prior to the **Period of Insurance**; and
  - this extension does not apply to any indemnity provided by **Automatic Extension 8 - Reinstatement of Limit of Indemnity for Part C** or **Optional Extension 1 - Fidelity Cover**.

### 10. Run Off Cover

If an insured entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity prior to the expiry of the **Period of Insurance**, **We** will provide indemnity to **You**, or any of **Your Officers** or **Your Employees** until expiry of the **Period of Insurance**, but only in respect of **Wrongful Acts** occurring prior to the date that any such entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity.

### 11. Subsidiary Run Off Cover

If an entity ceases to be a **Subsidiary** prior to or during the **Period of Insurance**, **We** will provide indemnity for **Officers** or **Employees** of that **Subsidiary** for **Wrongful Acts** committed prior to the time that the entity ceased to be a **Subsidiary**.

### 12. Run Off for Outside Directorships

**We** agree to provide indemnity for **Outside Directorships** which any of **Your Officers** held in an **Outside Entity** or **Not for Profit Organisation** if the **Officer**:

- ceased to hold the **Outside Directorship** during the **Period of Insurance**;
- the **Wrongful Act** giving rise to the **Claim** occurred before the **Officer** ceased to hold the **Outside Directorship**; and
- the **Outside Directorship** had been or is covered by **Us** under this **Policy** or previous policies.

The provisions of **Automatic Extension 16 - Not for Profit Organisation Outside Directorships** apply to this **Automatic Extension**.

### 13. Joint Venture Cover

**We** agree 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**.

### 14. Libel and Slander

**We** agree to provide cover for defamation provided that the act, error or omission by **You** is unintentional and is committed in the course of the conduct of **Your Business**.

### 15. New Subsidiaries

If **You** create or acquire a **Subsidiary** during the **Period of Insurance**, **We** 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 **You**, the cover provided by this **Extension** will cease at 4 pm 60 days after the creation or acquisition of the **Subsidiary** unless:

- We** are given notice of the **Subsidiary** within 60 days of its creation or acquisition; and
- We** agree to indemnify the **Subsidiary**; and
- We** agree to any additional terms or payment of premium that **We** may request.

### 16. Not for Profit Organisation Outside Directorships

**We** will provide **You** with cover for **Outside Directorships** in **Not for Profit Organisations** held by **Your Officer** 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 **Your Officers**. This cover will only apply in excess of any insurance indemnifying the **Officer** available to the **Not for Profit Organisation**.

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## Part C – Management Liability (cont'd)

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### 17. Occupational Health and Safety

**We** will pay on behalf of **You** **Defence Costs** incurred in defending **Claims** against **You** first made and notified to **You** during the **Period of Insurance** in connection with Occupational 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.

**Exclusion 1 - Bodily Injury and Property Damage** of the **Additional Exclusions** for this Part does not apply to this extension.

**Our** total liability under this **Extension** is limited to \$250,000. If **You** are entitled to payment under this extension there is no entitlement to cover under the **Inquiry Costs Extension**.

### 18. Severability

**We** agree that any conduct of any individual **Officer**, where the **Officer** breached the duty of disclosure or made a misrepresentation to **Us** before this contract was entered into, will not prejudice the right of any other **Officers** to indemnity under the **Policy**. Provided that the other **Officer**:

- is innocent of and has no prior knowledge of this conduct; and
- immediately upon becoming aware of this conduct advises **Us** in writing of all known facts in relation to this conduct.

This **Extension** does not relieve any **Officer** from the duty of disclosure owed to **Us**.

### 19. Spousal Cover

**We** will pay on behalf of the legal spouse of an **Officer** or **Employee** any **Loss** in respect of any **Wrongful Act** by the **Officer** or **Employee** as if the **Claim** were made against the **Officer** or **Employee** but only if the claim is made against the spouse only due to:

- the spouse's legal status as spouse of the **Officer** or **Employee**; or
- the spouse's interest in property which the claimant seeks as recovery for a **Wrongful Act**.

### 20. Trade Practices Act

**We** will pay on **Your** behalf any **Claim** brought pursuant to the:

- misleading and deceptive conduct provisions under Part V of the Trade Practices Act 1974 (Cth) or similar legislation enacted by the states or territories of the Commonwealth of Australia; or
- restrictive trade practices provisions of the Trade Practices Act 1974 (Cth) or any similar legislation enacted by the states or territories of the Commonwealth of Australia.

### 21. Extended Reporting Period

If **We** refuse to offer renewal terms at the end of the **Period of Insurance** for any reason other than failure to pay the premium, **You** may be entitled to one extension of the **Policy** for a further 12 months starting upon expiry of the **Period of Insurance** by paying **Us** 100% of the expiring annual premium. This extension only provides cover for **Wrongful Acts** actually or allegedly attempted or committed prior to expiry of the **Period of Insurance**. **You** must give **Us** notice that **You** require this **Extended Reporting Period** prior to expiry of the **Period of Insurance**. This extension will only be offered at **Our** option and **We** must agree to this extension in writing.

All cover under this extension ceases if **You** effect another management liability or directors and officers policy with any insurer incepting at any time on or after the expiry of the original **Period of Insurance**.

### 22. Retirement Cover

Any **Officer** or **Employee** 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.

### Additional Extensions for Part C

**We** agree to provide cover under these **Optional Extensions**, provided that:

- it is shown on the **Schedule** that indemnity is provided under an extension; and
- all terms and conditions of this **Policy** apply; and
- the inclusion of any extension does not increase the **Limit of Indemnity** for **Part C**; and
- if a limit for an extension is shown in the **Schedule** then this amount represents **Our** total liability for that extension.

#### I. Fidelity Cover

**We** will reimburse **You** up to a limit of \$100,000 for any **Loss** of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to **You** or for which **You** are legally liable; due to any dishonest or fraudulent act or omission of an **Employee** or **Officer** which is first discovered by **You** during the **Period of Insurance** and notified to **Us** during the **Period of Insurance**.

**You** will be responsible for the costs of proving **Loss** under this extension.

**We** will not cover any **Loss**:

- discovered before the start of the **Period of Insurance**;
- 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;

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## Part C – Management Liability (cont'd)

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- c) if the **Loss** can only be proven by profit and loss accounts or inventory calculations or stock takes;
- d) of income direct, indirect or consequential regardless of whether it is realised or not realised by **You**;
- e) in relation to the costs of rewriting or reinstalling computer programs or systems;
- f) caused by or contributed to by an **Officer** or **Employee** who did not hold that office or was not employed by **You** at the time the **Loss** occurred;
- g) any consequential **Loss** arising from any dishonest, fraudulent, criminal or malicious acts or omissions of any **Employee** or **Officer**;
- h) arising from default of a loan or credit offered by or to the **Business**;
- i) 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 a **Employee** or **Officer**;
- j) arising from or as a result of any kidnap, ransom or extortion; or
- k) 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 trade marks.

### 2. Pollution Defence Costs

**We** will pay **Defence Costs** or **Inquiry Costs** up to a limit of \$100,000 for any **Claim** brought against **You** for a **Claim** arising directly or indirectly from the actual or alleged dispersal, discharge, release or escape of **Pollutants**. **General Exclusion 13 - Pollution** does not apply to this **Extension**.

### Additional Exclusions for Part C

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This **Part** of the **Policy** does not provide any indemnity for **Loss**, or **Defence Costs**, in respect of any actual or alleged liability:

#### 1. Bodily Injury and Property Damage

arising from, attributable to or in any way connected with bodily injury, sickness, disease or death of any person (but not emotional distress or mental anguish); or destruction of or damage to tangible property including **Loss** of use of the tangible property.

#### 2. Capital Raising and Prospectus Liability

arising from attributable to or in any way connected with any offer for the raising of capital by debt or equity, including but not limited to the initial public offering of securities in the **Business**.

#### 3. Conflict of Interest

arising from, attributable to or in any way connected with any **Conflict**.

#### 4. Consensual Claims

made, brought or maintained by or on behalf of any person or entity with **Your** solicitation, co-operation or assistance.

#### 5. Employment Practices Liability

for an **Employment Practices Liability Claim** against **You** directly or indirectly arising from attributable to or in any way connected with:

- a) **Your** actual or alleged obligation to pay **Employment Benefits**; or
- b) **Your** failure or allegations of failure to comply with procedural or notification requirements upon termination of employment because of redundancy; or
- c) **Your** failure or allegations of failure to comply with workers' compensation or occupational health and safety laws however this does not apply to the **Extension 17 - Occupational Health and Safety**; or
- d) any contracts alleged to be harsh, unfair, unconscionable or contrary to public interest; or
- e) **Your** costs of changing premises (including modifications to any building or property to accommodate or allow access to any disabled person) or equipment or work practices; or
- f) **Your** 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) **Your** actual or alleged breach of an implied or express term of a contract of employment requiring **You** to treat an **Employee** in good faith, fairly, with trust and confidence; or
- h) any strike, lock out, picket, go slow, work to rule or any other industrial action.

#### 6. Fines, Penalties and Taxes

for any exemplary, aggravated, punitive or liquidated damages, fines, penalties, tax or duty.

#### 7. Insolvency

first made or intimated subsequent to the date upon which **You** become **Insolvent**. This **Exclusion** shall not apply where **You** establish, to **Our** satisfaction, that the **Claim** would have arisen notwithstanding that **You** were **Insolvent**.

#### 8. Insolvency and Financial Impairment

any **Claim** arising out of **Your Insolvency** or **Your** inability to pay debts as and when they fall due, regardless of whether **You** were **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**.

#### 9. Major Shareholder Actions

brought by any shareholder having direct or indirect control of fifteen per cent (15%) or more of **You**.

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## Part C – Management Liability (cont'd)

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### 10. Breach of Professional Duty

breach or alleged breach of duty, or error or omission, relating to the rendering or failure to render professional services and/or professional advice.

### 11. Related Parties

made, brought or maintained by or on behalf of **You** except for:

- a) any **Claim** resulting from **Employment Practices Liability**;
- b) **Defence Costs**;
- c) any shareholder derivative action brought or maintained on behalf of **You** without the solicitation, co-operation or assistance of any of **Your Officers** and provided the shareholder was not an **Officer** at the time the **Wrongful Act** occurred;
- d) any **Claim** brought or maintained by a liquidator, receiver or administrative receiver derivatively on **Your** behalf without the solicitation, co-operation or assistance of any **Officer**;
- e) any **Claim** brought or maintained by **You** for contribution or indemnity if the **Claim** is directly resulting from another **Claim** covered by this **Policy**;
- f) a **Claim** by **You** pursuant to Section 50 of the Australian Securities and Investments Commission Act 2001 (Cth); or
- g) a **Claim** by any person or entity who or which is related to or associated with **You**, and such person or entity is acting without **Your** prior direct or indirect solicitation, co-operation or assistance.

### 12. Trading Debt

arising from, attributable to or in any way connected with any trading debt incurred by **You** or any guarantee given by **You** for any debt.

## Additional Conditions for Part C

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The following conditions apply to this **Part** of the **Policy**.

### 1. Conduct of Defence

**We** are entitled at any time to take over and conduct the investigation, defence and/or settlement of any **Claim** in **Your** or **Your Officer's** name.

Any amounts incurred either by **Us** or (with **Our** written consent) by **You** in the conduct of the defence of the **Claim** will be part of **Defence Costs**.

If either **We** assume the defence of a **Claim**, or **You** or **Your Officer** have **Our** written consent 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 that **You** or **Your Officer** are entitled to indemnity under the **Policy** or in any way waive or prejudice **Our** rights under the **Policy**.

### 2. Loss Allocation

If a **Claim**:

- a) includes matters covered and matters not covered by this **Policy**; or
- b) is also made against a person or organisation other than an **Insured**;

**We** 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 person appointed by the President of the Law Society or equivalent body in the State where the **Claim** is being heard or defended will make a final and binding determination as to the allocation of the **Loss**. The costs of the appointed person making this determination will be **Defence Costs**.

### 3. Representation Issues

The lawyers that **We** instruct to act on **Your** or **Your Officer's** behalf can disclose to **Us** any information they receive in that capacity. By claiming under this **Policy**, **You** authorise these lawyers to disclose this information to **Us** and **You** waive any claims for legal professional or client privilege against **Us**.

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

If any actual or potential conflict arises between **Your** interests and **Our** interests the lawyers **We** have appointed to investigate and defend the **Claim** may stop acting on **Your** behalf and may continue to advise **Us** in any dispute about the **Your** entitlement to indemnity under the **Policy**.

All communications between **Us** and the lawyers **We** appoint to investigate, defend or settle a **Claim** are privileged as between **Us**, and those lawyers and **You** are not entitled to demand access or obtain these communications or information about their contents.

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