Arena Combined Liability Insurance

BIA Arena Encore Ent 2 – April 2021

Important Information

The Important Information detailed in A to E below is for your information only. It does not form part of the insurance contract with you, and does not impose contractual obligations on you, or create contractual rights.

ABOUT ARENA

Arena Underwriting Pty Ltd (ABN 26 125 869 481 AFSL 317617) (Arena) Arranges for and on behalf of Berkley Insurance Australia.

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
Postal Address:	Suite 7, 25 Anzac Rd
	Tuggerah NSW 2259
Email:	info@arenaunderwriting.com.au

ABOUT BERKLEY INSURANCE

Berkley Insurance Australia (ABN 53 126 559 706, AFS 463129) is part of the W.R Berkley Corporation.

Berkley Insurance Australia underwrites this policy and is responsible for decisions on claims approvals and payments.

Phone:	02 9275 8500
Postal Address:	Level 7, 321 Kent St,
	Sydney NSW 2000
Email:	australia@berkleyinaus.com.au

Please read the following information

A. Your Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything you know or could reasonably be expected to know, that may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

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

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is of common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

B. Claims Made Policy

Sections 4 and 5 of this policy provide insurance on a "Claims Made" basis. This means that the policy covers you for Claims made against you during the period of cover. It does not provide cover for:

- Claims arising from an event which occurred before the policy's "retroactive date" where such a date is specified in the schedule;
- Claims made after the period of cover expires (even where the event giving rise to the Claim occurred during the period of cover);
- Claims made, threatened or intimated before the period of cover commenced;
- Claims arising from facts or circumstances of which you first became aware before commencement of the policy and which you knew or ought reasonably to have known, had the potential to give rise to a Claim under the policy or any previous policy;
- Claims arising from circumstances noted on the proposal form or any previous proposal form.

C. Subrogation Agreements

Where another person would be liable to compensate you for any loss or damage otherwise covered by the insurance, but you have agreed with that person either before or after the loss or damage occurred that you would not seek to recover any monies from that person, the Insurer will not cover you under the insurance for such loss or damage.

D. Average Provision

Sections 1.2, 2.2 and 4.2 of the policy provides that if the Insured's liability for any Claim is for an amount in excess of the amount of the Indemnity Limit, then Berkley Insurance Australia's liability for such Defence Costs will be in the same proportion as the Indemnity Limit bears to the sum required to dispose of that Claim.

E. Privacy

Berkley Insurance Australia seeks at all times to comply with the Privacy Act 1988 and the Australian Privacy Principles therein. If we disclose personal information to you for any reason you must also act in accordance with and comply with the terms of the Privacy Act and the

Australian Privacy Principles.

Purpose for collection of information

The information contained in this document and any other documents provided to us will be dealt with in accordance with our Privacy Policy.

Disclosure of Information that you provide to us

Berkley Insurance Australia will only use the information in accordance with the terms of the Privacy Policy. Without limiting the application of the Policy Berkley Insurance Australia may disclose personal information to other individuals or organisations in connection with your claim, including legal advisors, other parties, other lawyers, experts and witnesses, courts and tribunals and other organisations that need to be involved in the matter. By submitting your notification and continuing to deal with us you consent to Berkley Insurance Australia and these parties collecting, using and disclosing personal and sensitive information about you for these purposes. By signing the claim form you are consenting to the above.

You warrant to us that where you provide us with personal information that you have collected from other individuals:

- That the information has been collected in accordance with the Privacy Act 1988.
- That we are authorised to receive that information from you and to use it for the purpose of providing legal claims management services and advice.
- You, and the person who provided you with the information, are aware and have complied with the Privacy Act 1988 and have notified the person about whom the personal information is collected of the collection use and disclosure of such information.

By executing the claim form you are indemnifying Berkley Insurance Australia against any breach that arises directly or indirectly out of any act or omission on your part which does not accord with the conduct required under the Privacy Act 1988.

Direct Marketing

We do not disclose personal information that We collect to a third party for the purpose of allowing them to direct market their products and services unless you have given Us your permission for Us to do this.

Cross Border

We will share your personal information with the Berkley group of companies. Our data containing your information is stored in our data centre using dedicated Berkley hardware and network. We may also use Saas, Cloud computing or other technologies from time to time and your information may be stored outside Australia. We will not transfer personal information to a recipient in a foreign country unless We have appropriate protections in place as required by the relevant privacy laws. Your information will be stored on our data base for such period of time as required by law.

Further information

If you would like further information, please review our full Privacy Policy on our website www.berkleyinaus.com.au or if you have any complaints or concerns over the protection of the information you have given to us or that we have collected from others, contact the National Head of Claims at the Sydney address listed below or alternatively send an email to australiaclaims@berkleyinaus.com.au.

Arena Combined Liability Insurance

BIA Arena Encore Ent 2 – April 2021

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Arena Combined Liability Insurance

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Section 1 – Public Liability Insurance

This section only forms part of your Policy when Section 1 – Public Liability Insurance is shown as Insured in the Schedule.

This is in Occurrence based Section of the Policy.

1.1 Insuring Clause

We will indemnify the Insured, up to the Indemnity Limit against civil liability for compensation including claimant's legal costs and expenses arising from

1.1.1 Personal Injury to any person; and/or

1.1.2 Property Damage other than to property belonging to the Insured;

first happening during the Period of Insurance within the Territorial Limits as a result of an Occurrence in connection with The Business.

1.2 Defence Costs and Expenses

We will also indemnify the Insured for Defence Costs where such costs have been incurred with Our prior written consent (such consent not to be unreasonably withheld or delayed).

Defence Costs are payable in addition to the Indemnity Limit, PROVIDED ALWAYS THAT if the Insured's liability for any Claim is for an amount in excess of the amount of the Indemnity Limit, Our liability for such Defence costs will be in the same proportion as the Indemnity Limit bears to the sum required to dispose of that Claim including the claimant's legal costs and expenses.

In the event of an Occurrence happening in the United States of America or Canada or their respective protectorates and territories for which compensation is otherwise payable by Us under this policy, Defence Costs are part of the Indemnity Limit and will not be payable in addition to the Indemnity Limit.

EXTENSIONS APPLICABLE TO SECTION 1

We will provide the following cover under Section 1 of this policy ONLY, PROVIDED ALWAYS THAT:

a) the cover provided by each Extension is subject to the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated); and

b) the inclusion of any Extension will not increase the Indemnity Limit. Where a sub-limit is stated in respect of any Extension, such sub-limit shall form part of and not be in addition to the Indemnity Limit.

1.3 Movement of Obstructing Vehicles

Section 1 provides cover for any Claim caused by or arising from any vehicle (not owned by or hired by or lent to the Insured) being driven by the Insured or by any Employee with the Insured's permission whilst such vehicle is being moved for the purpose of allowing free movement of any vehicles or pedestrians.

PROVIDED ALWAYS THAT:

1.3.1 movements are limited to vehicles parked on or obstructing the Insured's premises or any site at which the Insured is working;

1.3.2 the vehicle causing obstruction will not be driven by any person unless such person is licensed and competent to drive the vehicle;

1.3.3 the vehicle causing obstruction is driven by use of the owner's ignition key;

1.3.4 We shall not provide indemnity against liability;

1.3.4.1 in respect of damage to such vehicle.

1.3.4.2 in respect of which compulsory insurance or security is required under any legislation governing the use of the vehicle.

The cover provided by this extension is not subject to Exclusion 1.9.

1.4 Overseas Personal Liability

We will indemnify at the request of the Company;

1.4.1 any director, officer, partner or Employee of the Company normally resident in Australia; and/or

1.4.2 any spouse or child of the persons stated in 1.4.1 above who is normally resident in Australia and are accompanying such persons;

in respect of liability incurred by such persons in a personal capacity in connection with an event occurring in a country outside of the Territorial Limits whilst on a temporary visit to such country in connection with The Business.

We will also indemnify the Company for any liability arising out of any event for which the persons referred to at 1.4.1 or 1.4.2 are or would, at the request of the Company, be entitled to be indemnified under this extension.

PROVIDED ALWAYS THAT:

1.4.3 any person entitled to indemnity under this extension shall as though they were the Insured be subject to the terms (including without limitation the conditions and the exclusions) of this policy insofar as they can apply;

1.4.4 nothing in this extension shall increase Our liability to pay any amount exceeding the Indemnity Limit regardless of the number of persons claiming to be indemnified;

We shall not provide indemnity against;

1.4.5 any contractual liability;

1.4.6 liability for which indemnity is provided by any other insurance;

1.4.7 liability in respect of Property Damage to property belonging to or in the custody or under the control of any person entitled to indemnity under this extension;

1.4.8 liability in respect of Personal Injury to any person entitled to indemnity under this extension;

1.4.9 liability caused by or arising from:

1.4.9.1 the ownership or occupation of land or buildings;

1.4.9.2 the carrying on of any business, profession, trade or employment;

1.4.9.3 the ownership possession or use of animals other than horses or domestic dogs or cats.

1.4.10 where the event occurs in the United States of America or Canada or their respective protectorates and territories for which compensation is otherwise payable by Us under this policy, Defence Costs are part of the Indemnity Limit and will not be payable in addition to the Indemnity Limit.

1.5 Leased or Rented Premises

We will indemnify the Insured for Property Damage to premises (including the fittings and fixtures) leased or rented to the Insured for the purpose of The Business provided always that We will not provide indemnity against:

1.5.1 any contractual liability; or

1.5.2 the first $1,000 of each and every occurrence of Property Damage caused other than by fire or explosion.

Notwithstanding General Exclusion 8.2, and Clause 1.5.1, We will indemnify a lessor with whom the Insured has entered into a written agreement for the rental or lease of premises (including the fittings and fixtures) for the purpose of The Business for Property Damage PROVIDED ALWAYS that:

1.5.3 coverage provided to the lessor will be no more extensive than the coverage that would be provided to the Insured if they were held legally liable for the Property Damage; and

1.5.4 coverage will only be provided where the liability arises out the Insured's use of the premises.

The cover provided by this extension is not subject to Exclusion 1.12.2.

1.6 Buildings Temporarily Occupied

We will indemnify the Insured for Property Damage to buildings (including contents therein) which are not owned, leased or rented by the Insured, but are temporarily occupied by the Insured for the purpose of maintenance, alteration, extension, installation or repair of their usual premises.

The cover provided by this extension is not subject to Exclusion 1.12.2.

1.7 Property in your Care, Custody or Control

We will indemnify the Insured for Property Damage to property in the physical or legal care, custody or control of the Insured or any Employee of the Insured up to a limit of $250,000 in the aggregate in any one Period of Insurance.

However, We shall not provide indemnity under this extension against liability in respect to;

1.7.1. property belonging to the Insured;

1.7.2. premises leased or rented by the Insured;

1.7.3. leased or rented office equipment;

1.7.4. buildings temporarily occupied by the Insured due to the maintenance, alteration, extension, installation or repair of their usual premises;

1.7.5. vehicles and their contents in any car park owned by the Insured where such car park is operated for reward.

The cover provided by this extension is not subject to Exclusion 1.12.2.

1.8 Plant Hire

We will indemnify the owner of plant with whom the Insured has entered into a written contract or agreement for the hire of such plant for the purpose of The Business for Bodily Injury and/or Property Damage PROVIDED ALWAYS that:

1.8.1 coverage provided to the owner will be no more extensive than the coverage that would be provided to the Insured if they were held legally liable for the Bodily Injury and/or Property Damage; and

1.8.2 coverage will only be provided where the liability arises out the Insured's use of the plant.

The cover provided by this extension is not subject to General Exclusion 8.2.

1.9 Principal's Indemnity

We will indemnify a Principal with whom the Insured has entered into a written agreement in the course of The Business for Bodily Injury and/or Property Damage PROVIDED ALWAYS THAT:

1.9.1 coverage provided to the Principal will be no more extensive than the coverage that would be provided to the Insured if they were held legally liable for the Bodily Injury and/or Property Damage; and

1.9.2 coverage will only be provided where the liability arises as a result of an Occurrence in the course of The Business.

The cover provided by this extension is not subject to General Exclusion 8.2.2.

EXCLUSIONS APPLICABLE TO SECTION 1

Under Section 1 of this policy, We shall not be liable to indemnify the Insured in respect of any Claim, liability, loss, cost, expense, Fine or Penalty directly or indirectly arising out of, related to, or in connection with:

1.10 Mechanically Propelled Vehicles

the ownership possession operation or use by or on behalf of the Insured of any Mechanically Propelled Vehicle:

1.10.1 for which compulsory Insurance or security is required under any legislation governing the use of the vehicle;

1.10.2 where indemnity is provided by any other insurance effected by or on behalf of the Company or the Insured.

PROVIDED ALWAYS THAT this Exclusion shall not apply to liability caused by or arising from:

1.10.3 the use of vehicles whilst being operated as a Tool of Trade at the Insured's premises or on any site at which the Insured is working;

1.10.4 the loading or unloading of any vehicle or the bringing to or taking away of a load from any vehicle;

1.10.5 damage to any building, bridge, weighbridge, road or to anything beneath the vehicle caused by vibration or by the weight of any vehicle or of its load.

1.11 Products Supplied

any Product supplied after it has ceased to be in the custody or under the control of the Insured or any Employee other than food or drink for consumption on the Insured's premises.

1.12 Damage to Property

Property Damage to any property:

1.12.1. belonging to the Insured;

1.12.2. in the physical or legal care, custody or control of the Insured or any Employee of the Insured.

1.13 Product Liability, Professional Indemnity and Management Liability

any claim under this policy which is indemnifiable under Section 2, Section 4 or Section 5 of this policy.

Section 2 – Product Liability

This section only forms part of your Policy when Section 2 – Product Liability Insurance is shown as Insured in the Schedule.

This is an Occurrence based Section of the Policy.

2.1 Insuring Clause

We will indemnify the Insured, up to the Indemnity Limit against civil liability for compensation including the claimant's legal costs and expenses arising from:

2.1.1 Personal Injury to any person;

2.1.2 Property Damage other than to property belonging to the Insured

first happening during the Period of Insurance anywhere within the Territorial Limits as a result of an Occurrence and caused by any Product.

2.2 Defence Costs and Expenses

We will also indemnify the Insured for Defence Costs where such costs have been incurred with Our prior written consent (such consent not to be unreasonably withheld or delayed).

Defence Costs are payable in addition to the Indemnity Limit, PROVIDED ALWAYS THAT if the Insured's liability for any Claim is for an amount in excess of the amount of the Indemnity Limit, Our liability for such Defence Costs will be in the same proportion as the Indemnity Limit bears to the sum required to dispose of that Claim including the claimant's legal costs and expenses.
In the event of an Occurrence happening in the United States of America or Canada or their respective protectorates and territories for which compensation is otherwise payable by Us under this policy, Defence Costs are part of the Indemnity Limit and will not be payable in addition to the Indemnity Limit.

EXCLUSIONS APPLICABLE TO SECTION 2

Under Section 2 of this policy, We shall not be liable to indemnify the Insured in respect of any Claim, liability, loss, cost, expense, Fine or Penalty directly or indirectly arising out of, related to, or in connection with:

2.3 Product Recall

damages, costs or expenses arising out of the withdrawal recall inspection repair replacement alteration removal rectification reinstatement or reinstallation of any of the Insured's Products or any refund made in respect of any of the Insured's Products.

2.4 Aviation and Marine Products

any Product which to the knowledge of the Insured is intended for:

2.4.1 use in or on any aircraft or aero spatial device; or

2.4.2 aviation or aero spatial purposes; or

2.4.3 use in the safety or navigation of marine craft of any sort.

2.5 Products for Use in the United States of America or Canada

any Product supplied which to the knowledge of the Insured is for use in or supply to the United States of America or Canada and their respective protectorates and territories unless otherwise agreed in writing by Us.

2.6 Property Damage

property damage to the Insured's Products if the damage is attributable to any fault or defect in them or to their harmful nature or unsuitability.

2.7 Public Liability, Professional Indemnity and Management Liability

any claim under this policy which is indemnifiable under Section 1, Section 4 or Section 5 of this policy.

Section 3 – Exclusions applicable to Section 1 and Section 2

Under Section 1 and Section 2 of this policy, We shall not be liable to indemnify the Insured in respect of any Claim, liability, loss, cost, expense, Fine or Penalty directly or indirectly arising out of, related to, or in connection with:

3.1. Construction Activities

any earthworks or construction activities of any kind [including the construction, erection, demolition (whether partial or complete), alteration, addition or renovation of buildings, earthworks or structures] by or on behalf of the Insured where the total contract or estimated value of all works and activities forming part of one project or a series of related projects exceeds two hundred and fifty thousand Australian dollars (AUD $250,000).

3.2. Libel, Slander or Defamatory Material

the publication or utterance of libel or slander or other defamatory material.

3.3. Rectification of Faulty Work

rectification of faulty work performed by or on behalf of the Insured.

3.4. Cyber Liability

3.4.1 alteration of, or damage to; or

3.4.2 a reduction in functionality availability or operation of;

a computer system or program hardware data information repository microchip integrated circuit or similar device in computer equipment or non-computer equipment as a result of the Insured's "e-activities".

For the purpose of this exclusion, "e-activities" means any use of or The Business undertaken by the Insured or by any person, persons, partnership, firm or company acting for or on behalf of the Insured in connection with electronic networks including the internet and private networks intranets extra-nets electronic mail worldwide web and similar medium.

3.5. Loss of Use

loss of use of tangible property which has not been physically damaged or destroyed resulting from:

3.5.1 a delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or

3.5.2 the failure of the Insured's Products to meet the level of performance, quality, fitness or durability warranted or represented by the Insured.

This Exclusion shall not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of Products or work performed by or on behalf of the Insured after such Products or work have been put to their intended use by any entity other than the Insured.

3.6. Pollution or Contamination

3.6.1 liability arising from Pollution or Contamination unless caused by a sudden identifiable unintended and unexpected incident which takes place within the Territorial Limits in its entirety at a specific time and place during the Period of Insurance; or

3.6.2 the cost of removing nullifying or cleaning up seeping polluting or contaminating substances unless the Pollution or Contamination is caused by a sudden identifiable unintended and unexpected incident which takes place within the Territorial Limits in its entirety at a specific time and place during the Period of Insurance.

3.7. Professional Liability

the rendering of or failure to render professional advice, design, specification or service, unless in connection with a product.

3.8. Underground Services

Property Damage to any underground services except where the Insured has 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.

3.9. Welding and Allied Processes

non-compliance by the insured or by others working on the Insured's behalf with all applicable laws and standards relating to welding and allied processes including but not limited to, AS1674.1-1997 "Safety in Welding and Allied Processes – Fire Precautions" published by Standards Australia and as amended or substituted from time to time.

Section 4 – Professional Indemnity

This section only forms part of your Policy when Section 4 – Professional Indemnity Insurance is shown as Insured in the Schedule.
This is a claims made section of your Policy.

INSURING CLAUSES APPLICABLE TO SECTION 4

4.1 Insuring Clause

We will indemnify the Insured, up to the Indemnity Limit, against civil liability for compensation including the claimant's legal costs and expenses arising from any Claim first made against the Insured during the Period of Insurance arising out of the conduct of The Business.

4.2 Defence Costs

We will also indemnify the Insured for Defence Costs where such costs have been incurred with Our prior written consent (such consent not to be unreasonably withheld or unreasonably delayed).
If the Schedule states that the Defence Costs are "inclusive" then Defence Costs are part of the Indemnity Limit and will not be payable in addition to the Indemnity Limit.

If the Schedule states that the Defence Costs are "in addition" then Defence Costs are payable in addition to the Indemnity Limit, PROVIDED ALWAYS THAT if the Insured's liability for any Claim is for an amount in excess of the amount of the Indemnity Limit, then Our liability for such Defence Costs will be in the same proportion as the Indemnity Limit bears to the sum required to dispose of that Claim including the claimant's legal costs and expenses.

EXTENSIONS APPLICABLE TO SECTION 4

We will provide the following cover but only under Section 4 of this policy, PROVIDED ALWAYS THAT:

a) the cover provided by each Automatic Extension is subject to the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated); and

b) the inclusion of any Automatic Extension will not increase the Indemnity Limit. Where a sub-limit is stated in respect of any Automatic Extension, such sub-limit shall form part of and not be in addition to the Indemnity Limit.

4.3 Reinstatement of the Indemnity Limit

If the Indemnity Limit is partially reduced or exhausted by any Claim, Claims and/or Defence Costs then We will reinstate the Indemnity Limit for any subsequent Claims covered by Insuring Clause 4.1 and 4.2 Defence Costs, PROVIDED ALWAYS THAT:

4.3.1 such reinstatement shall only apply to subsequent Claims and Defence Costs that are totally unrelated or unconnected to the Claim, Claims and/or Defence Costs that reduced or exhausted the Indemnity Limit; and

4.3.2 We will be liable for no more than twice the Indemnity Limit in the aggregate in respect of all Claims and Defence Costs (other than Defence Costs which are stated to be "in addition" as per Insuring Clause 4.2 Defence Costs in this policy).

4.4 Competition and Consumer Act and other Legislation

Insuring Clause 4.1 provides cover for any Claim which arises out of conduct in contravention of the Competition and Consumer Act 2010 (Cth), Australian Securities and Investments Commission Act 2001 (Cth), Corporations Act 2001 (Cth), National Consumer Credit Protection Act 2009 (Cth) or any State or Territory Fair Trading Act but only where such conduct:

4.4.1 constitutes a contravention of such statute because it:

4.4.1.1 is misleading or deceptive or likely to mislead or deceive;

4.4.1.2 is the making of a false or misleading representation;

4.4.1.3 is unconscionable; or

4.4.1.4 is in breach of a warranty implied in a contract for the provision of services by any of the above Acts; and

4.4.2 is not intentional.

4.5 Loss of or Damage to Documents

We will indemnify the Insured for reasonable and necessary costs and expenses incurred by the Insured (although not the Insured's own time) in replacing, restoring or reconstituting Documents due to a physical loss of or damage to such Documents that are the property of the Insured or are in the Insured's care, custody or control in the conduct of The Business and where such loss or damage is discovered and is notified to Us during the Period of Insurance.

The cover provided by this extension is not subject to Insuring Clause 4.1 or Exclusion 4.11.
Our total aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Loss of or Damage to Documents sub-limit of indemnity specified in the Schedule.

4.6 Dishonesty of Insured Persons

Insuring Clause 4.1 provides cover for any Claim brought about, or contributed to, by any dishonest, fraudulent, criminal or malicious act or omission of any Insured Person, PROVIDED ALWAYS THAT:

4.6.1 We will not indemnify the Insured in respect of any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the person concerned;

4.6.2 We will not indemnify the Insured in respect of any loss of negotiable instruments, bearer bonds or coupons, stamps, coins, bank or currency notes;

4.6.3 We will not indemnify any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;

4.6.4 We will not indemnify the Company where all directors of the Company or principals of the business are persons committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;

4.6.5 the Insured will, at Our request and expense take all reasonable steps to obtain reimbursement from any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;

4.6.6. We will deduct from any amount payable under this extension any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the Insured to the person committing such act, or any monies held by the Insured and belonging to such person;

4.6.7. We will only be liable to indemnify the Insured for the balance of loss sustained in excess of the amounts recoverable from the person(s) committing such dishonest, fraudulent, criminal or malicious act or omission or their estates or legal personal representatives;

4.6.8. Dual Sign Off was required for any withdrawal of funds from any bank or trust account operated by the Insured at the time the dishonest or fraudulent act or omission occurred;

4.6.9 if the dishonest or fraudulent act or omission is in connection with a trust account then the Insured's trust account must have been independently audited on an annual basis at the time of the dishonest or fraudulent act or omission; and

4.6.10 nothing herein will preclude Us from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.

"Dual Sign-Off" in this extension means that any cheque payment or electronic money transfer receives prior approval by at least two approved signatories; and that the person reconciling the Insured's bank statements is a different person to the one that operates those bank accounts.
The cover provided by this extension is not subject to General Exclusion 8.5.

4.7 Fiduciary Duty

Insuring Clause 4.1 provides cover for any Claim in direct consequence of a breach of fiduciary duty owed by the Insured to a client or customer of the Company arising out of the conduct of The Business.

4.8 Defamation, Libel and Slander

Insuring Clause 4.1 provides cover for any Claim as a direct consequence of any inadvertent defamation, libel or slander by the Insured arising out of the conduct of The Business.

4.9 Infringement of Copyright or Patents

Insuring Clause 4.1 provides cover for any Claim made as a direct consequence of any actual or alleged inadvertent infringement of any copyright, patents or other intellectual property rights arising out of the conduct of The Business.

The cover provided by this extension is not subject to Exclusion 4.17.

OPTIONAL EXTENSIONS APPLICABLE TO SECTION 4

We will provide the following cover but only under Section 4 of this policy, PROVIDED ALWAYS THAT:

a) each Optional Extension will only apply where it is specifically noted in the Schedule as Included; and

b) the cover provided by each Optional Extension is subject to the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated); and

c) the inclusion of any Optional Extension will not increase the Indemnity Limit. Where a sub-limit is stated in respect of any Automatic Extension, such sub-limit shall form part of and not be in addition to the Indemnity Limit.

4.10 Multi Year Run-Off

In the event that, during the Period of Insurance, a Company entity merges with or is taken over by another entity, or is sold or wound up, then We will make available to such Company entity (and any person who is or was a principal, partner, director or Employee of such Company prior to the effective date of such merger, takeover, sale or winding up) an extension to the Period of Insurance, but only in respect to Section 4 of this policy, for a period of up to an additional six (6) years PROVIDED ALWAYS THAT:

4.10.1 such Company shall give Us written notice of such merger, takeover, sale or winding up as soon as reasonably practicable and during the Period of Insurance;

4.10.2 Our offer to extend cover may be subject to such additional terms, conditions and premium as We may reasonably impose;

4.10.3 such extension of the Period of Insurance will not take effect until Our offer is accepted by such Company; and

4.10.4 such extension will only apply to claims arising out of a breach of professional duty in the exercise and conduct of The Business which occurred prior to the effective date of such merger, takeover, sale or winding up.

EXCLUSIONS APPLICABLE TO SECTION 4

Under Section 4 of this policy, We shall not be liable to indemnify the Insured in respect of any Claim, liability, loss, cost, expense, Fine or Penalty directly or indirectly arising out of, related to, or in connection with:

4.11 Personal Injury and/or Property Damage unless in the conduct of The Business

Personal Injury, mental injury (including but not limited to mental stress and mental anguish), harassment, invasion of privacy, disease or death of any person(s) or loss of or damage to property unless such Claim arises directly out of a breach of professional duty by the Insured.

4.12 Supply of Goods

the sale, manufacture, installation, construction, alteration, repair, servicing or treating of any goods or products sold, distributed or supplied including but not limited to the sale and/or supply of hardware and/or software by the Insured.

4.13 Pollution

Pollution or contamination of any kind.

4.14 Directors' and Officers' Liability

any conduct or alleged conduct of the Insured in the capacity of a director, secretary or officer of a body corporate or any breach or alleged breach by the Insured of a duty owed in that capacity.

4.15 Trustee Liability

any services provided by the Insured in the capacity of a trustee provided always that this exclusion will not apply where the Insured acts as a stakeholder, custodian or trustee where such activities are undertaken incidentally to the provision of other professional services in the conduct of The Business.

4.16 Certain Legislation

the Competition and Consumer Act 2010 (Cth), Australian Securities and Investments Commission Act 2001 (Cth) or any State or Territory Fair Trading Act or similar or equivalent legislation enacted by the other states or territories of the Commonwealth of Australia unless covered by Automatic Extension 4.4.

4.17 Infringement of Intellectual Property Rights

any inadvertent or alleged infringement of any copyright or patents or other intellectual property rights.

4.18 Payments or Benefits Received

any fees, charges, disbursements, expenses, costs, taxes, commissions or other payments or benefits of whatsoever kind received or retained by, or paid or payable to, the Insured in connection with The Business.

4.19 Retroactive Date

the conduct of The Business prior to the Retroactive Date (if any) specified in the Schedule.

To the extent that any parts of the above exclusions are found to be invalid or unenforceable, the remainder of each exclusion and all other exclusions will remain in full force and effect.

Section 5 - Management Liability

This section only forms part of your Policy when Section 5 – Management Liability is shown as Insured in the Schedule. This is a claims made section of your Policy.

Insuring Clauses

5.1 Directors and Officers Liability

We shall pay to or on behalf of the Insured Person Loss arising from any Claim for a Wrongful Act which is first made against the Insured Person during the Period of Insurance and notified to Us in accordance with the terms of this Policy, except when and to the extent that the Company has indemnified the Insured.

5.2 Company Reimbursement

We shall pay on behalf of the Company Loss arising from any Claim for a Wrongful Act which is first made against an Insured Person during the Period of Insurance and notified to Us in accordance with the terms of this Policy, but only when and to the extent that the Company is permitted or legally obligated to indemnify the Insured Person.

5.3 Company Liability

We shall pay on behalf of the Company Loss arising from any Claim for a Wrongful Act which is first made against the Company during the Period of Insurance, if notice thereof is provided to Us in accordance with the terms of this Policy.

EXTENSIONS APPLICABLE TO SECTION 5

We will provide the following cover but only under Section 5 of this policy, PROVIDED ALWAYS THAT:

a) the cover provided by each Automatic Extension is subject to the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated); and

b) the inclusion of any Automatic Extension will not increase the Indemnity Limit. Where a sub-limit is stated in respect of any Automatic Extension, such sub-limit shall form part of and not be in addition to the Indemnity Limit.

5.4 Pollution Costs

5.4.1 In accordance with Insuring Clause 5.1 (Directors and Officers Liability) and/or Insuring Clause 5.2 (Company Reimbursement), We shall pay Costs in respect of any Claim, or Inquiry by an official body, related to a Pollutant up to the amount of the sub-limit of indemnity for all payments under this extension specified in the Policy Schedule. The coverage hereunder shall only apply to a Claim first made, or to an Inquiry where it is commenced and the notice legally requiring the attendance of the Insured is served, in the Period of Insurance.

5.4.2 In accordance with Insuring Clause 5.3 (Company Liability), We shall pay Costs in respect of any Claim, or Inquiry by an official body, related to a Pollutant up to the amount of the sub-limit of indemnity for all payments under this extension specified in the Policy Schedule. The coverage hereunder shall only apply to a Claim first made, or to an Inquiry where it is commenced and the notice legally requiring the attendance of the Insured is served, in the Period of Insurance.

5.5 Outside Directorships

We shall pay to or on behalf of the Insured Person Loss arising from any Claim which is first made against the Insured Person during the Period of Insurance and notified to Us in accordance with the terms of this Policy, where such Insured Person, was, is or becomes at the written request of the Company a director, officer or equivalent position in any Outside Entity, provided that:

5.5.1 the cover provided under this extension applies in excess of any other indemnification provided by the Outside Entity; and

5.5.2 the cover provided under this extension applies in excess of any other directors and officers liability insurance in force for such Outside Entity.

5.6 Retired Directors and Officers

If the Company does not renew or replace this Policy with any other policy affording directors and officers liability or management liability coverage,

We shall provide an extension of insuring clause 5.1 (Directors and Officers Liability) only of this Policy for eighty four (84) months from the end of the Period of Insurance to any Insured Person who voluntarily retired from their position as a Director or Officer of the Company during the Period of Insurance, other than in connection with a Takeover or Merger but only with respect to a Wrongful Act committed by such Insured prior to their date of retirement.

Nothing in this Section increases the Indemnity Limit.

5.7 Additional Non-Executive Directors Limit

In the event of the payment of Loss exhausting the Indemnity Limit, the limits of liability of any and all policies operating in excess of this Policy and all other sources of indemnification for the Non-Executive Directors of the Company, then We will pay to, or on behalf of Non-Executive Directors only, any Loss resulting from any Claim subject to the applicable Additional Non-Executive Directors Limit amount stated in the Schedule.

The Additional Non-Executive Directors Limit shall only apply in respect of Claims subsequent to, and completely unrelated and unconnected to, the Claim or Claims or the underlying facts and matters that led to, the exhaustion of the Indemnity Limit.

5.8 Superannuation Trustees Liability Cover

Notwithstanding any provision to the contrary in Exclusion 5.23 "Superannuation" and/or the Definition of "Director or Officer":

5.8.1 We shall pay to or on behalf of the Trustee, Loss arising from any Claim for Trustee Breach which is first made against an Insured Person during the Period of Insurance and notified to Us in accordance with the terms of this Policy, except when and to the extent that the Company has indemnified an Insured Person.
The Excess applicable to cover provided under Extension 5.8.1 is as stated in Excess 5.8.1 of the Schedule.

5.8.2 We shall pay on behalf of the Company, Loss arising from any Claim for Trustee Breach which is first made against an Insured Person during the Period of Insurance and notified to Us in accordance with the terms of this Policy, but only when and to the extent that the Company is permitted or legally obligated to indemnify the Insured Person.

The Excess applicable to cover provided under Extension 5.8.2 is as stated in Excess 5.8.2 of the Schedule.

5.8.3 We shall pay on behalf of the Company, Loss arising from any Claim for a Trustee Breach which is first made against the Company during the Period of Insurance, if notice thereof is provided to Us in accordance with the terms of this Policy.

The Excess applicable to cover provided under Section 5.8.3 is as stated in Excess 5.8.3 of the Schedule.

Our total aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Superannuation Trustees Liability sub-limit of indemnity specified in the Schedule.

5.9 Employment Practices Liability Entity Coverage (EPL).

In accordance with Insuring Clause 5.3 (Company Liability), We shall pay any Loss resulting from any Employment Practices Claim which is first made against the Company during the Period of Insurance and notified to Us in accordance with the terms of this Policy.

Our total aggregate sub-limit of indemnity for all claims under this extension shall not exceed the amount of the Employment Practices Liability sub-limit of indemnity specified in the Schedule.

The Company will be liable for the Employment Practices Liability Excess stated in the Schedule for any Claim made under this section.

5.10 Third Party Discrimination or Sexual Harassment

We will indemnify the Company for Loss arising from any Claim in connection with any actual or alleged Third Party Discrimination or Third Party Sexual Harassment which is first made against the Company during the Period of Insurance.

Our total aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Third Party Discrimination or Third Party Sexual Harassment sub-limit of indemnity specified in the Schedule.

The Company will be liable for the Employment Practices Liability Excess stated in the Schedule for any Claim made under this section.

5.11 Internet Liability

We will indemnify the Company for Loss arising out of all Internet Claims first made against the Company during the Period of Insurance.

Our total aggregate sub-limit of indemnity for all Internet Claims shall not exceed the amount of the Internet Liability sub-limit of indemnity specified in Schedule.

5.12 Occupational Health and Safety Costs

We shall pay on behalf of the Insured Person and the Company, Costs incurred as a result of any Inquiry first commenced and served on the Insured in the Period of Insurance arising out of a violation or breach of any Australian or New Zealand occupational health and safety law or regulation.

Our total aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Occupational Health and Safety Costs sub-limit of indemnity specified in the Schedule.

The coverage hereunder shall only apply to an Inquiry where it is commenced, and the notice legally requiring the attendance of the Insured is first served, in the Period of Insurance.

5.13 Extradition Bail Bond Costs

The Policy shall extend to include the reasonable premium (not including collateral) for a bond or other financial instrument to guarantee an Insured Person's contingent obligation for bail or equivalent in any jurisdiction required by a court in respect of an Extradition Proceeding.

Our total aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Extradition Bail Bond Costs sub-limit of indemnity specified in the Schedule.

OPTIONAL EXTENSIONS APPLICABLE TO SECTION 5

We will provide the following cover but only under Section 5 of this policy, PROVIDED ALWAYS THAT:

a) each Optional Extension will only apply where it is specifically noted in the Schedule as Included; and

b) the cover provided by each Optional Extension is subject to the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated); and

c) the inclusion of any Optional Extension will not increase the Indemnity Limit. Where a sub-limit is stated in respect of any Automatic Extension, such sub-limit shall form part of and not be in addition to the Indemnity Limit.

5.14 Employee Theft and Third Party Crime

We agree to provide indemnity to the Company against Direct Financial Loss, where any such loss is sustained in consequence of any dishonest, fraudulent, criminal or malicious act of any Employee of the Company or any Theft or Fraudulent Act committed by any Third Party. Provided always that:

5.14.1 such loss is first discovered by the Company during the Period of Insurance and is notified in writing to Us within ninety (90) days of the date of such discovery (but never beyond the expiry date of the Period of Insurance);

5.14.2 such dishonest, fraudulent, criminal or malicious act has wholly occurred within Australia or New Zealand;

5.14.3 there is no indemnity for any loss sustained in consequence of any act or omission occurring after the date of discovery, or the reasonable cause for suspicion, of dishonest or fraudulent conduct on the part of the Employee or other persons concerned;

5.14.4 no indemnity in respect of such loss shall be afforded hereunder to any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;

5.14.5 the Company shall take all reasonable steps to obtain reimbursement from such person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;

5.14.6 any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the Company to the person committing such act, or any monies held by the Company and belonging to such person, shall be deducted from any amount payable under this insurance;

5.14.7 the sums payable hereunder shall only be for the balance of loss in excess of the amounts recoverable from the person(s) committing such dishonest, fraudulent criminal or malicious act or omission or their estates or legal personal representatives;

5.14.8 nothing herein shall preclude Us from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.

Our total aggregate sub-limit of indemnity for all claims under this extension shall not exceed the amount of the Employee Theft and Third Party Crime sub-limit of indemnity specified in the Schedule.

5.15 Theft and Crime Investigation Costs and Data Reproduction Costs

5.15.1 We will indemnify the Company for the reasonable costs incurred and paid by the Company to an independent investigator, accountant or other consultant to establish the existence and the amount of any Direct Financial Loss covered by Extension 5.14, PROVIDED ALWAYS THAT reasonable costs payable shall not include wages, salaries, time costs and expenses or other remuneration of any Insured Person, or the time or expenses incurred by the Company's clients.

5.15.2 We will indemnify the Company for the Company's reasonable costs to reproduce or duplicate damaged or destroyed electronic Data or computer programs directly arising from any Direct Financial Loss covered under Extension 5.14. If such electronic Data or computer programs cannot be duplicated from other electronic Data or computer programs then We will indemnify the Company for reasonable costs incurred to purchase the replacement computer program software, or if it cannot be purchased, for the time taken for computer programmers, technical experts or consultants to restore such electronic Data or computer programs to substantially the same level of operational capability existing immediately before the covered loss.

Our total aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Crime Costs and Data Reproduction Costs sub-limit of indemnity specified in the Schedule. This sub-limit of indemnity is in addition to the sub-limit of indemnity provided under Extension 5.14.

In the event that a Direct Financial Loss is paid under Extension 5.14, no Excess is applicable to this extension.

EXCLUSIONS APPLICABLE TO SECTION 5

The following exclusions are applicable to Section 5 of this policy.

5.16 Public Securities Offering

We are not liable to indemnify an Insured Person or the Company for any Claim, Loss or loss directly or indirectly caused by, arising out of or in any way connected with the actual or alleged public sale, offer to sell, offer to purchase or offer to distribute securities representing a debt or equity interest in the Company or any Subsidiary.

5.17 Major Shareholders

We are not liable to indemnify an Insured Person or the Company for any Claim, Loss or loss brought by or on behalf of any person or entity holding beneficially or otherwise, or in control of more than 20% (twenty percent) of the issued share capital of the Company at the time of the Wrongful Act, whether such Claim is made in the name of the Company or not.

5.18 Bodily Injury or Property Damage

We are not liable to indemnify an Insured Person or the Company for any Claim, Loss or loss for any actual or alleged bodily injury, sickness, disease or death of any person or any actual or alleged damage to or destruction of any tangible property, including loss of use thereof, except as covered by Extension 5.12 (Occupational Health and Safety Costs) of this Policy and provided however that any Claim for emotional distress shall not be excluded with respect to an Employment Practices Claim or any Claim for libel, slander or defamation.

5.19 Personal Profit

We are not liable to indemnify an Insured Person or the Company for any Claim or Loss in connection with, or in any way arising directly or indirectly from any Insured Person or the Company gaining in fact any profit or advantage, or receiving any remuneration, to which they were or it was not legally entitled.

This Exclusion only applies in the event that the foregoing conduct is established by final adjudication by a court or tribunal or by written admission by such Insured Person.

5.20 Professional Services

We are not liable to indemnify an Insured Person or the Company for any Claim or Loss in connection with, or in any way arising directly or indirectly from any actual or alleged professional services provided by or on behalf of the Company or by any Insured Person.

5.21 Company versus Insured Person

We are not liable to indemnify an Insured Person or the Company for any Claim brought or maintained by or on behalf of the Company against any Insured Person. This Exclusion does not apply to:

5.21.1 Costs; or

5.21.2 any Claim that has been brought or maintained either directly or derivatively on behalf of the Company (without the solicitation, participation or assistance of any Insured Person or the Company) against an Insured Person; or

5.21.3 any Claim by a liquidator, administrative receiver or receiver; or any Claim arising from a shareholder derivative action.

5.22 Warranties and Guarantees

We are not liable to indemnify an Insured Person or the Company for any Claim arising from or attributable to any actual or alleged liability of the Company under any contract, guarantee, warranty or agreement or assumed liability to the extent that the contract or other assumed liability increases the compensation or damages payable beyond the amount payable in tort or under any applicable statute.

5.23 Superannuation

We are not liable to indemnify an Insured Person or the Company for any Claim or Loss arising directly or indirectly from or in connection with any actual or alleged violation of any responsibilities, obligations or duties protecting or regulating any superannuation or similar fund.

5.24 Illegal Copies of Programs

We are not liable to indemnify an Insured Person or the Company, in respect of any data reproduction fees, costs or expenses claimed under Extension 5.15 (Theft and Crime Investigation Costs and Data Reproduction Costs) where the reconstitution of Data is required as a result of the Insured Person knowingly using illegal copies of programs.

Exclusions applicable to Insuring Clause 5.3 – Company Liability

These exclusions are applicable to coverage provided under the Insuring Clause 5.3 only.

5.25 Anticompetitive Behaviour

We are not liable to indemnify the Company under Insuring Clause 5.3 (Company Liability) in respect of any Claim or Loss arising directly or indirectly from or in connection with or attributable to violation of any law, rule or regulation relating to competition, price fixing, activities in restraint of trade, or deceptive acts and practices in trade and commerce.

5.26 Intellectual Property Rights

We are not liable to indemnify the Company under Insuring Clause 5.3 (Company Liability) in respect of any Claim or Loss arising directly or indirectly from or in connection with any misappropriation, plagiarism or infringement of any trade mark, trade secret, patent, copyright or any other intellectual property rights.

5.27 Financial Commitments

We are not liable to indemnify the Company under Insuring Clause 5.3 (Company Liability) in respect of any Claim or Loss arising directly or indirectly from or in connection with any trading debt or financial commitment of the Company in conducting its business.

5.28 Employment Practices Claims

We are not liable to indemnify the Company under Insuring Clause 5.3 (Company Liability) in respect of any Claim or Loss arising directly or indirectly from or in connection with conduct leading to any Employment Practices Claim, other than as covered under Extension 5.9 (Employment

Exclusions Applicable To Extension 5.8 Superannuation Trustees Liability Cover

These exclusions are applicable to coverage provided under the Extension 5.8 only.

5.29 Fraudulent or Criminal Acts

We are not liable to indemnify an Insured Person or the Company for any Claim, Loss or loss arising directly or indirectly from or in connection with any actual or alleged dishonest, fraudulent or malicious act of any Trustee.

5.30 Illegal Profit

We are not liable to indemnify an Insured Person or the Company for any Claim, Loss or loss arising directly or indirectly from or in connection with or in any way involving any Trustee or the Fund gaining any profit or advantage or receiving any remuneration to which they were not legally entitled.

5.31 Investment Performance

We are not liable to indemnify an Insured Person or the Company for any Claim, Loss or loss arising directly or indirectly from or in connection with the downward valuation or negative financial performance of any investment entered into by the Company or any Insured Person, where such downward valuation or negative financial performance results from any investment market fluctuation which is outside of the control or influence of the Fund.

5.32 Denial of Benefits

We are not liable to indemnify an Insured Person or the Company for any Claim, Loss or loss arising directly or indirectly from or in connection with the grant or denial of any superannuation Benefit, or Benefit for death, temporary disability (total or partial) or permanent disability (total or partial) to a beneficiary of a Fund, other than defence Costs of the Trustee.

Exclusions Applicable To Extension 5.14 Employee Theft and Third Party Crime

5.33 Agent Acts

We are not liable to indemnify the Company for Direct Financial Loss or loss arising directly or indirectly from or in connection with any act, error or omission of any independent contractor (other than an Employee), broker, merchant, external solicitor or external accountant, or other similar agent or representative. This exclusion shall not apply to any organisation to which the Company has outsourced any normal administrative function under a written contract of engagement with such organisation.

5.34 Confidential Information

We are not liable to indemnify the Company under Extension 5.14 for Direct Financial Loss or loss arising directly or indirectly from or in connection with the loss or misuse of confidential information, material or data.

5.35 Dishonest Board or Directors

We are not liable to indemnify the Company in respect of any Direct Financial Loss under Extension 5.14 for loss arising from or in connection with theft, forgery or any fraudulent, dishonest or criminal act committed by any member of the board, or director of the Company, whether acting alone or in collusion with others.

5.36 Loss of Income

We are not liable to indemnify the Company in respect of any Direct Financial Loss under Extension 5.14 for loss arising from or in connection with loss of income or profit.

5.37 Consequential Damage

We are not liable to indemnify the Company in respect of any Direct Financial Loss under Extension 5.14 for loss arising from or in respect of indirect or consequential loss or damage of any kind, apart from the Company's costs to establish the existence and the amount of any loss provided such loss is covered by Extension 5.14 (Employee Theft and Third Party Crime).

5.38 Surrendered Money

We are not liable to indemnify the Company in respect of any Direct Financial Loss under Extension 5.14 where such loss results from an Insured Person knowingly having given or surrendered Money or Securities or tangible personal property in any exchange or purchase with a third party not in collusion with an Insured Person.

5.39 Money in Third Party's Custody

We are not liable to indemnify the Company in respect of any Direct Financial Loss under Extension 5.14 for loss arising directly or indirectly from or in connection with loss of or damage to Securities or Property whilst in the custody of any bank or authorised deposit taking institution or any person who is duly authorised by the Company to have custody of Securities or Property.

5.40 Profit, Loss or Inventory Computation

We are not liable to indemnify the Company in respect of any Direct Financial Loss which can only be proved solely by:

5.40.1 a profit and loss computation or comparison; or

5.40.2 a comparison of inventory records with an actual physical count.

5.41 Trading

We are not liable to indemnify the Company in respect of any Direct Financial Loss under Extension 5.14 for loss arising directly or indirectly from or in connection with:

5.41.1 any trading of Money or Securities whether or not in the name of the Company and whether or not in a genuine or fictitious account;

5.41.2 any credit arrangement, false accounting, trading in securities, commodities, futures, options, currencies, foreign exchange or the like unless the loss is a result of a fraudulent act which results in the Insured Person making an improper financial gain other than salary, wages, commissions, fees, bonuses, promotions, awards, profit sharing, superannuation or any other remuneration.

5.42 Data Loss

We are not liable to indemnify the Company in respect of any Direct Financial Loss under Extension 5.14 for loss comprising in whole or part fees, costs or expenses incurred or paid:

5.42.1 as a result of the reconstitution of Data if the Company knowingly uses illegal copies of programs;

5.42.2 to render the Data usable by replacement processing equipment;

5.42.3 to design, update or improve software programs or to perfect their operation or performance;

5.42.4 as a result of an alteration in Data held on magnetic media due to the effect of magnetic fields, their incorrect use or the obsolescence of the computer system.

5.43 Fire or Premises Damage

We are not liable to indemnify the Company in respect of any fire or any damage or destruction to any premises or building.

5.44 Geographical Limits

We are not liable to indemnify the Company in respect of any Direct Financial Loss under Extension 5.14, arising out of or in any way connected with any dishonest, fraudulent, criminal or malicious act of any Employee committed, in whole or part, outside of Australia or New Zealand.

DEFINITIONS AND INTERPRETATIONS APPLICABLE TO SECTION 5

The following additional definitions are applicable to Section 5 – Management Liability. All words appearing in the title also include the plural or singular of those words. For the sake of clarity and with respect to coverage provided under Section 5 of this Policy, the below definitions will prevail over any General Definitions.

5.45 Benefit

means any amount payable to a beneficiary of a Fund by the Trustee under the governing rules of the Fund.

5.46 Cheque Forgery

means:

5.46.1 the Forgery or fraudulent alteration of any cheque or similar written promise by the Insured to pay money where such money is drawn upon the Insured's account at any bank at which the Insured maintains a current or savings account;

5.46.2 the fraudulent alteration of, on or in any cheque or draft:

5.46.2.1 drawn upon by any bank; or

5.46.2.2 drawn upon by any corporation upon itself;

5.46.3 the fraudulent alteration of, on or in any cheque or written order or direction to pay money where such money is drawn by any public body upon itself, or any warrant drawn by any public body which the Insured shall receive at any of its Premises in payment or purported payment for:

5.46.3.1 tangible property sold and delivered; or

5.46.3.2 services rendered.

5.47 Claim

For the purpose of:

5.47.1 cover for any Insured Person under Insuring Clauses 5.1 and 5.2, and Extensions 5.4 – 5.8, Claim means:

5.47.1.1 a written demand by a third party against an Insured Person for compensation, damages or for non-monetary relief; or a civil proceeding brought by a third party against an Insured Person for recovery of compensation, damages or for non-monetary relief; or

5.47.1.2 any criminal proceeding against, or any proceeding for extradition of an Insured Person; or

5.47.1.3 any formal administrative or regulatory proceeding against an Insured Person, commenced by the filing of notice of charges, formal investigative order or similar document; or

5.47.1.4 any Employment Practices Claim against an Insured Person

5.47.2 cover for the Company under Insuring Clause 5.3 (Company Liability) and Extensions 5.8 – 5.10, Claim means a written demand to, or civil proceedings by a third party against the Company for compensation or damages.

5.47.3 Extensions 5.12 (Occupational Health and Safety Costs) only and the terms of the Policy applicable to such cover, Claim means an Inquiry.

5.48 Corporate Card Fraud

means the fraudulent use of any corporate credit, debit or charge card issued to the Company or any Employee for The Business purposes where such card is a Forgery or is the subject of fraudulent alteration provided that the Company or Employee has complied fully with the provisions, conditions and other terms under which the card was issued and provided the Company is legally liable for such Direct Financial Loss.

This does not include any Insured's or the Company's own internal or overhead costs and expenses.

5.49 Data

means information contained in records or accounts.

5.50 Direct Financial Loss

means loss of Money, Securities or Property belonging to the Company.

5.51 Employment Practices Claim

means an employment related Claim for any actual or alleged, unfair or wrongful dismissal, termination or discharge of employment (either actual or constructive, including breach of an implied contract), misrepresentation, wrongful failure to employ or promote, failure to grant tenure, discrimination, harassment, retaliation, humiliation, defamation, invasion of privacy, wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference), which relate solely to the Company's past, present or prospective Employees.

5.52 Extradition Bail Bond Costs

means the reasonable premium (not including any collateral) for a bond or other financial instrument to guarantee an Insured's contingent obligation for bail required by a court in respect of an Extradition Proceeding.

5.53 Extradition Proceeding

means

5.53.1 a written request for extradition of an Insured, a warrant for the arrest of an Insured or other proceedings commenced by a writ, complaint, summons or other originating process against an Insured Person under the provisions of the Extradition Act 1988 (Cth) and/or any associated regulations; and

5.53.2 any associated appeals, including but not limited to the pursuit of judicial review proceedings, against the decision of the Attorney General or other appropriately authorised representative of the Australian Government to issue a surrender warrant under the Extradition Act 1988 (Cth); and

5.53.3 the equivalent of the above in any other jurisdiction.

A Wrongful Act of an Insured Person is not required for cover for an Extradition Proceeding.

5.54 Forgery

means the signing or endorsing of the name of a genuine person or a copy of the said person's signature without authority and with intent to deceive. A signature may be hand-written or mechanically or electronically produced or reproduced. It does not include the signing in whole or in part of one's own name, with or without authority, in any capacity, for any purpose.

5.55 Fraudulent Act

means:

5.55.1 Cheque Forgery;

5.55.2 Corporate Card Fraud; or

5.55.3 Imitation Fraud.

5.56 Fund

means any single employer superannuation fund or similar superannuation fund established for the benefit of any Employee. It does not include any industry, master or self-managed superannuation funds.

5.57 Imitation Fraud

means:

5.57.1 the Counterfeiting of any Money or negotiable instruments, upon which the Company has acted or relied.

5.58 Insured Person

means any Director, Officer, Employee and any volunteer worker but only while carrying out work for The Business.

5.59 Internet Activities

means:

5.59.1 the display or other use of Matter on an Internet Site; or

5.59.2 transmission of Matter via an Internet Site.

5.60 Internet Claim

means a written demand to, or civil proceedings by a third party against the Company for compensation or damages, for:

5.60.1 libel, slander or arising out of other written publication of defamatory or disparaging material; or

5.60.2 invasion of or interference with any right of privacy committed or allegedly committed by the Company;

solely arising out of the Company's Internet Activities.

5.61 Internet Site

means that or those internet site or sites specified in the Schedule but shall not include any Third Party Internet Sites accessed by or through links from the Company's Internet Site.

5.62 Loss

means any amount which an Insured Person or the Company is legally obligated to pay on account of any covered Claim including, but not limited to:

5.62.1 damages, judgements and costs awarded by a court or tribunal empowered to do so;

5.62.2 settlements entered into with Our prior written consent (such consent not to be unreasonably withheld);

5.62.3 costs;

5.62.4 extradition Bail Bond Costs;

5.62.5 pecuniary penalties; and

5.62.6 attendance compensation.

Loss shall not include taxes, fines, penalties, punitive, exemplary, aggravated or multiplied damages, or any amount in respect of any Claim or conduct deemed uninsurable by law, except for exemplary or aggravated damages arising from any Claim against any Insured Person for libel, slander or defamation.

In respect of any Employment Practices Claim, Loss shall also not include:

5.62.7 any obligation pursuant to any law or any regulation in any jurisdiction in respect of workers' compensation, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law or regulation whatsoever;

5.62.8 any salary or wages earned while in the employment of the Company;

5.62.9 any employment-related benefits to which the claimant would have been entitled as an Employee had the Company provided the claimant with a continuance, reinstatement or commencement of employment;

5.62.10 contractual damages based upon the terms of a contract of employment;

5.62.11 any liability or costs incurred to modify any building or property in order to make such a building or property more accessible or

5.62.12 accommodating to any disabled persons; or

5.62.13 any amount payable by the Company in respect of an unfair contract of employment.

5.63 Matter

means printed, verbal, numerical, audio or visual expression, or any other expression whatsoever, regardless of the medium through which such expression is made.

5.64 Money

means currency, electronically held funds, bank notes, coins, bullion, cheques, travellers cheques, postal orders and money orders.

5.65 Non-Executive Director

means any Director who, at the time of the alleged Wrongful Act or Inquiry, is not an Employee of the Company, or a paid consultant of the Company.

5.66 Outside Entity

means any:

5.66.1 not for profit organisation; or

5.66.2 any entity listed in the Schedule of Outside Directorships endorsement (if any) attaching to and forming part of this Policy.

5.67 Pollutant

means any solid, liquid, gaseous, biological, radiological, nuclear, radioactive, or thermal irritant or contaminant whether occurring naturally or otherwise, including but not limited to dust, germs, mould, mildew, fungus, spores, fumes, acids, alkalis, smoke, vapour, soot, fibres, nuclear, asbestos, silica or radioactive material of any sort, chemicals, or waste materials (including but not limited to any materials to be recycled, reconditioned or reclaimed).

5.68 Premises

means the interior portion of any building owned or occupied by an Insured Person and in which it conducts its business.

5.69 Property

means tangible personal property other than Money or Securities.

5.70 Securities

means negotiable and non-negotiable instruments or contracts representing money or other property, but excluding Money and Property.

5.71 Theft

means the unlawful taking of the Company's Money, negotiable instruments or Property occurring:

5.71.1 within the Premises; or

5.71.2 within the interior of any banking premises or similar recognised place of safe deposit; or

5.71.3 while in transit and in the care, custody and control of an Employee or Director or Officer of the Company following the actual or threatened use of force or violence; or

5.71.4 while in the care, custody and control of any security company or armoured motor vehicle company, duly authorised by the Company to retain such care, custody and control; and

provided that We shall only be liable for the amount that is in excess of the amount of any other valid and collectible insurance or indemnity, contractual or otherwise, available to the security company or armoured motor vehicle company.

5.72 Third Party

means any natural person who is a customer, vendor, service provider or business invitee of the Company. Third Party does not include:

5.72.1 any Employee or Director or Officer;

5.72.2 any person who owns or controls any of the Company's issued share capital;

5.72.3 any person acting in collusion with any Employee; or

5.72.4 any natural person providing services under any contract for services, written or implied, with the Company.

5.73 Third Party Discrimination

means discrimination against a Third Party based upon such Third Party's race, colour, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference or protected military status or other status which is protected pursuant to any anti-discrimination law.

5.74 Third Party Internet Site

means web sites that are not owned, controlled, leased, administered, maintained or provided by the Company.

5.75 Third Party Sexual Harassment

means sexual harassment, including unwelcome sexual advances, requests for sexual favours or conduct of a sexual nature against a Third Party.

5.76 Trustee

means an Insured or the Company if validly appointed to act, and while acting in that capacity, as a trustee of a Fund.

5.77 Trustee Breach

means any Wrongful Act committed or allegedly committed by an Insured in their capacity as a Trustee or as a Director or Officer of the Company acting as a corporate Fund Trustee, or by the Company acting in its capacity as a corporate Fund Trustee.

5.78 Wrongful Act

means:

5.78.1 For the purpose of insuring clauses 5.1 (Directors and Officers Liability) and 5.2 (Company Reimbursement), any actual or alleged wrongful act or omission on the part of an Insured committed solely in such person's actual or deemed capacity as an Insured.

5.78.2 For the purpose of Insuring Clause 5.3 (Company Liability), any actual or alleged wrongful act or omission on the part of the Company.

5.78.3 For the purpose of Extension 5.8 (Superannuation Trustees Liability cover), any actual or alleged wrongful act or omission on the part of an Insured or Company, individually or otherwise, in the management of a Fund.

5.78.4 For the purpose of Extension 5.9 (Employment Practices Liability Entity Coverage), any actual or alleged wrongful act or omission on the part of the Company giving rise to an Employment Practices Claim.

Related or continuous or repeated or causally connected Wrongful Acts shall constitute a single Wrongful Act.

Section 6 - Exclusions Applicable To Section 4 and Section 5

6.1 Prior or Pending Claims and Circumstances

We are not liable to indemnify an Insured Person or the Company, in respect of any:

6.1.1 Claim, investigation, litigation or proceeding threatened, intimated, in existence or commenced against the Company or an Insured Person before the Period of Insurance, or

6.1.2 Claim arising from the same or essentially the same cause as any Claim, investigation, litigation or proceeding threatened, intimated, in existence or

6.1.3 commenced against the Company before the Period of Insurance, or

6.1.4 fact, circumstance, act, omission or claim which, prior to the Period of Insurance, an Insured Person or the Company is aware may result in or could reasonably be expected to result in a Claim or Inquiry, or

6.1.5 Claim, circumstance or any Inquiry of which notice has been given, or should have been given, under any policy existing or expired before or on the inception date of this Policy or which was included on the proposal form.

6.1.6 Claims, Loss or Inquiry, arising from an event which occurred before this Policy's retroactive date (if any), where such a date is specified in the Policy Schedule.

6.2 Pollution

We are not liable to indemnify an Insured Person or the Company in connection with the actual, alleged, or threatened discharge, release or escape of Pollutants, or the containment, clean up, removal, treatment, or monitoring of such Pollutants, except to the extent covered by Extension 5.4 (Pollution Costs).

6.3 Insolvency or Administration

We are not liable to indemnify an Insured Person or the Company for any Claim, Loss or loss arising directly or indirectly from or in connection with or as a consequence of one or more of the following:

6.3.1 an order being made for the winding up of the Company; or

6.3.2 the appointment to the Company of a liquidator or a receiver or an administrator or an administrative receiver or a trustee in bankruptcy or, in the case of a voluntary arrangement, a nominee or a supervisor; or

6.3.3 a proposal being made by or to the Company, or by or to its creditors, of a composition of debts or scheme for arrangement to be conducted under the supervision of an insolvency practitioner, either as a nominee or otherwise; or

6.3.4 in any way whatsoever relating to the solvency or insolvency of the Company.

6.4 Trading Debts

any trading losses or trading liabilities or debts incurred by any business managed or carried on by the Insured

Section 7 – General Extensions applicable to this Policy

We will provide the following cover under this policy, PROVIDED ALWAYS THAT:

a) the cover provided by each Extension is subject to the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated); and

b) the inclusion of any Extension will not increase the Indemnity Limit. Where a sub-limit is stated in respect of any Extension, such sub-limit shall form part of and not be in addition to the Indemnity Limit.

7.1 Advancement of Costs and Emergency Defence Costs

We will, to the fullest extent permissible by law and subject to the Indemnity Limit and any applicable Excess, advance costs resulting from a Claim prior to the final settlement of said Claim.

Notwithstanding any provision in the Policy to the contrary, if it is not possible for the Insured to obtain consent prior to the incurring of costs, We will temporarily waive prior consent as long as Our consent is obtained within thirty days of the first of such costs being incurred. The sub- limit of indemnity for all payments made during the aforementioned thirty day period is 10% of the Indemnity Limit.

Such advance payments of costs shall be repayable to Us by the Insured Person and the Insured severally according to their respective interests, in the event and to the extent that it is determined that they shall not be entitled under this Policy to payment of such costs.

7.2 Claim Preparation Costs

We will indemnify the Named Insured for reasonable and necessary costs and expenses incurred with Our prior written consent (not to be unreasonably withheld) for the preparation of any claim that is covered under this policy, PROVIDED ALWAYS THAT:

7.2.1. cover afforded under this extension will not include any Defence Costs;

7.2.2. Cover afforded under this extension will not include the Insured's own time or any of it's staff; and

7.2.3. Our total aggregate sub-limit of indemnity for all claims under this extension shall not exceed $25,000.

7.3 Attendance Compensation

We shall pay the Company, attendance compensation resulting from the attendance by a maximum of two Insured Persons on any one day:

7.3.1 at a court hearing, arbitration, mediation, conciliation or alternative dispute resolution proceeding or Inquiry as a witness;

7.3.2 at an interview in the presence of a lawyer conducting the defence of any Claim for the purpose of composing a witness statement;

7.3.3 at a conference or consultation with a barrister for the purpose of preparation in relation to any Claim; and

7.3.4 as an observer at a court hearing, arbitration, mediation, conciliation or alternative dispute resolution proceeding or Inquiry, provided that We shall only be liable for the attendance of one observer for all Companies per day; and

7.3.5 where the attendance is in connection with a Claim.

For the purposes of this extension, attendance compensation means $650 per day for a director/officer or partner of the Named Insured or $250 per day for an employee.

7.4 Public Relations Expenses

Where a Claim has been made against the Insured for which cover is available under this policy, and in the reasonable belief of the Insured the Insured's reputation has been or will be significantly impaired, then We will reimburse the Insured for any reasonable and necessary costs and expenses of a public relations consultant retained by the Insured with Our prior written consent to design and implement a reasonable and necessary publicity campaign approved by Us with the object of preventing or mitigating damage to the reputation of the Insured in consequence of such Claim or anticipated Claim.

We will not unreasonably withhold or unreasonably delay Our consent or approval required by this extension.

Our total aggregate sub-limit of indemnity for all claims under this extension shall not exceed $50,000.

7.5 Legal Panel

The Insured may contact Us to access Our legal panel during business hours for one complimentary session of up to sixty (60) minutes of verbal advice in relation to matters which are covered under this policy.

In the event of a Claim arising from the matters discussed We agree to the appointment of any of Our legal panel firms to act on the Insured's behalf in respect of any Claim notified to Us providing there is no existing or potential conflict of interest, in which case We will refer the Insured to another member of the panel.

The cover provided by this extension is not subject to Insuring Clause 1.1, Insuring Clause 2.1, Insuring Clause 4.1 or Insuring Clause 5.1.

7.6 Cross Liabilities

If the Named Insured comprises more than one party, We will provide indemnity to each such Named Insured in the same manner and to the same extent as if a separate policy had been issued to each of them, PROVIDED ALWAYS THAT nothing in this Extension shall increase Our liability to pay any amount exceeding the Indemnity Limit of this policy, regardless of the number of persons or entities claiming to be indemnified.

7.7 Appointed Sub Consultants

7.7.1 We will provide cover for any Claim directly arising out any act, error or omission of any appointed consultant, sub-consultant or contractor in the conduct of The Business.

7.7.2 We will indemnify any appointed consultant, sub-consultant or contractor as if they were an Employee of the Company, PROVIDED ALWAYS THAT:

7.7.2.1 at least 90% of such consultant, sub-consultant or contractor's income in the previous twelve (12) months to the inception date of this policy, or reasonably anticipated in the next twelve (12) months, is derived from the Company;

7.7.2.2 such consultant, sub-consultant or contractor at the time the conduct that gave rise to the Claim was acting under the direct control of a principal, partner, director or Employee of the Company and in accordance with the Company's standard operating and risk management procedures; and

7.7.2.3 cover afforded under this extension will only apply in respect of an act, error or omission of the consultant, sub-consultant or contractor in the conduct of The Business.

7.8 Contractual Liability

The cover provided by Sections 1, 2, 4 or 5 is extended to include cover for any Claim in respect of any Contractual Liability in the conduct of The Business.

7.9 Mitigation Costs

We will indemnify the Insured for reasonable and necessary mitigation costs and expenses incurred or agreed to be incurred by the Insured;

7.9.1 as a result of a reasonable and necessary action taken by the Insured to reduce the amount of any potential Claim that would be covered under this policy; and

7.9.2 arising from a fact, matter or circumstance first discovered by the Insured during the Period of Insurance which might lead to the potential Claim that would be covered under this policy;

PROVIDED ALWAYS THAT:

7.9.3 such fact, matter or circumstance is notified to Us as soon as possible upon being discovered by the Insured, during the Period of Insurance and prior to the Insured incurring any such mitigation costs or expenses;

7.9.4 no admission of liability (whether by word, conduct or otherwise) is made by the Insured;

7.9.5 We have given prior written consent (not to be unreasonably withheld or unreasonably delayed) to the incurring of, or agreement to incur, such mitigation costs or expenses;

7.9.6 We will not pay any costs or expenses incurred by the Insured in proving entitlement to coverage under this extension;

7.9.7 cover afforded under this extension will not include any Defence Costs; and

7.9.8 Our total aggregate sub-limit of indemnity for all Claims under this extension shall not exceed $50,000.

7.10 Fee Recovery

7.10.1. We will pay to the Company the outstanding professional fees for which the Insured has raised an invoice to their client when the client; has advised the Insured of their dissatisfaction with the conduct of The Business by the Insured; andrefuses to pay the outstanding professional fees; and

7.10.2. threatens to initiate a Claim against the Insured;

PROVIDED ALWAYS THAT;

7.10.3. in Our opinion payment of the outstanding professional fees would prevent initiation of such a Claim;

7.10.4. cover afforded under this extension will not include any Defence Costs; and

7.10.5. Our total aggregate sub-limit of indemnity for all Claims under this extension shall not exceed $10,000.

7.11 Inquiry Costs

We will indemnify the Insured for the reasonable and necessary legal costs and expenses incurred with Our prior written consent (not to be unreasonably withheld or unreasonably delayed) for representation of the Insured at any Inquiry (other than in respect of a Claim) that the Insured first became aware of and was first initiated during the Period of Insurance.

Our total aggregate sub-limit of indemnity for all Claims under this extension shall not exceed $250,000.

7.12 Crisis Costs

We shall pay on behalf of the Company Crisis Loss arising from any Crisis Event which first occurs and is notified to Us during the Period of Insurance.

Our total aggregate sub-limit of indemnity for all Claims under this extension shall not exceed $25,000.

7.13 Indemnity to Other Persons

We will also indemnify:

7.13.1 the legal personal representative of the Named Insured or any other person entitled to indemnity under this policy but only in respect of liability incurred by the Named Insured or such other person;

7.13.2 any officer or member of the Named Insured's catering social sports educational medical dental and welfare organisations and fire security first aid and ambulance services in their respective capacity as such but not any medical or dental practitioner in respect of medical or dental services provided.

PROVIDED ALWAYS THAT:

any persons specified above shall as though they were the Named Insured be subject to the terms (including without limitation the Conditions and the Exclusions) of this policy insofar as they can apply.

Nothing in this Extension shall increase Our liability to pay any amount exceeding the Indemnity Limit under this Policy regardless of the number of parties claiming to be indemnified.

7.14 Fines and Penalties

We will indemnify the Insured Person and/or the Company for Fines or Penalties arising from any Claim, PROVIDED ALWAYS THAT:

7.14.1. the conduct giving rise to the Claim was not

7.14.2. intentional, wilful, reckless or deliberate;

7.14.3. indemnification is permitted at law;

7.14.1 We will not indemnify the Insured for Fines and Penalties imposed in connection with any requirement to pay taxes, rates, duties, levies, charges, fees or other revenue charge or impost; and

7.14.2 Our total aggregate sub-limit of indemnity for all Claims under this extension shall not exceed $25,000. However this sublimit increases to $250,000 if Section 5 Management Liability is also covered.

The cover provided by this extension is not subject to General Exclusion 8.3.

EXTENSIONS APPLICABLE TO SECTION 4 AND 5 ONLY

We will provide the following cover but only under Section 4 and Section 5 of this policy, PROVIDED ALWAYS THAT:

a) the cover provided by each Automatic Extension is subject to the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated); and

b) the inclusion of any Automatic Extension will not increase the Indemnity Limit. Where a sub-limit is stated in respect of any Automatic Extension, such sub-limit shall form part of and not be in addition to the Indemnity Limit.

7.15 Extended Reporting Period

In the event that this policy is not renewed or replaced then the cover provided by Insuring

Clause 4.1 or Insuring Clauses 5.1 – 5.3 shall be extended to any Claim first made against the Insured and notified to Us within the Extended Reporting Period, PROVIDED ALWAYS THAT:

7.15.1 the Insured pays Us an additional premium equivalent to 100% of the expiring annual premium

7.15.2 cover afforded under this extension will not reinstate or increase the Indemnity Limit or extend the Period of Insurance; and

7.15.3 cover afforded under this extension will only apply to an act, error or omission committed by the Insured prior to the end of the Period of Insurance.

7.15.4 the Insured is not entitled to purchase an Extended Reporting Period if the Insured becomes insolvent during the Period of Insurance.

"Extended Reporting Period" means the period commencing immediately following the end of the Period of Insurance and 365 days thereafter or when the Insured first effects another professional indemnity insurance policy (whichever is the earlier).

The cover provided by this extension does not apply if this policy is cancelled.

7.16 Continuous Cover

Notwithstanding Exclusion 6.1 (Prior and Pending Claims and Circumstances) of this Policy, We will cover the Insured and the Insured Person for any Claim arising from such fact, circumstance, act, omission or claim, where otherwise covered by this Policy, if:

7.16.1 We were the management liability or professional indemnity insurer of the Insured and the Insured Person when the Insured and/or the Insured Person first became aware of such circumstance; and

7.16.2 We continued without interruption to be the management liability or professional indemnity insurer of the Insured and/or the Insured Person up until this Policy came into effect; and

7.16.3 had We been notified by the Insured and/or the Insured Person of the circumstance when it or they first became aware of it, the Insured and the Insured Person would have been covered under the policy in force at that time but is not now entitled to be covered by that policy; and

7.16.4 the Claim or the Inquiry or the circumstance have not previously been notified to Us or any other insurer.

If the Insured and/or the Insured Person was entitled to have given notice under any other policy of insurance and thereby have an entitlement to indemnity, in whole or in part, then this Continuous Cover extension does not apply.

The Indemnity Limit provided for Claims covered by this provision is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph 7.16.1 above, or under Section 4 or Section 5 of this policy (whichever applies). The terms of this Policy otherwise apply.

Section 8 – General Exclusions applicable to this Policy

The following exclusions apply to all Sections of this policy.

We shall not be liable to indemnify the Insured or an Insured Person in respect of any Claim, liability, loss, cost, expense, Fine or Penalty directly or indirectly arising out of, related to, or in connection with:

8.1 Asbestos or Toxic Mould

asbestos, asbestosis or toxic mould.

8.2 Contractual Liability

any liability assumed by the Insured under any contract or agreement where such liability would not have existed in the absence of such a contract or agreement including, without limitation, any contractual term or agreement:

8.2.1 to pay liquidated damages or any penalty; or

8.2.2 in the nature of an indemnity, release, hold harmless, warranty or guarantee.

PROVIDED THAT this clause shall not apply to Section 2 Products Liability of this policy but only in respect of:

8.2.2.1 liability arising out of a condition or warranty of goods implied or imposed by statute or liability assumed by the Insured under a warranty of fitness or quality as regards any Product; or

8.2.2.2 liability assumed under any:

I. written agreement for the lease of real property which does not impose upon the Insured any obligation to insure such property or any liability regardless of fault; or

II. written contract with any public supplier for the supply of water, gas or electricity, sewerage or waste removal services, telephone, telex or other communications services, except contracts with such suppliers for the performance of work by the Insured, And unless such liability would have attached in the absence of such contract or agreement.

8.3 Fines and Penalties

multiplied, punitive, aggravated, or exemplary damages, or fines or any criminal or civil penalties imposed by law, except to the extent covered by Extension 7.14 (Fines and Penalties).

8.4 Liability arising out of Employment

bodily injury, mental injury (including but not limited to mental stress and mental anguish), harassment, bullying, invasion of privacy, disease or death of any Employee of the Insured or damage to or destruction of any property of any Employee, including loss of use, arising out of, or in the course of, their employment or any dispute in connection with employment.

8.5 Dishonesty, Fraud or Willful Breach of Duty

8.5.1 with any dishonest, fraudulent, criminal or malicious act of any Insured Person or the Company; or

8.5.2 is intended by any person to cause loss, damage or injury or to deprive a third party of a right to which they would otherwise be entitled or which is done or omitted to be done with reckless disregard for the consequences; or

8.5.3 is a willful or reckless breach of statute, contract or duty; or

8.5.4 arising out of conduct which involves wilful breach of duty in relation to the Company or any breach of Section 182 (Use of information – civil obligations) or Section 183 (Use of position – civil obligations) of the Corporations Act 2001 (Cth).

For the purpose of determining the applicability of this Exclusion, the knowledge and conduct of any Insured Person or the Company shall not be imputed to any other Insured Person. This Exclusion only applies in the event that the foregoing conduct is established by final adjudication by a court or tribunal or by written admission by such Insured Person.

8.6 Liability Involving Transport or Property Owned by the Insured

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

8.6.1 Aircraft, airlines, aerodromes, airports and/or other aviation risks, spacecraft,

8.6.2 launchsites and/or other space risks; or

8.6.3 Hovercraft or Watercraft other than hand propelled Watercraft or other Watercraft not exceeding 8 metres in length; or

8.6.4 Vehicle or any trailer; or

8.6.5 buildings, structures, premises or land or that part of any building leased, occupied or rented by the Insured or any property of the Insured.

8.7 Loss of Documents - Magnetic or Electrical Media

Property Damage to Documents which are stored on magnetic or electrical media unless such Documents have been duplicated on magnetic or electrical media with the intention that in the event of loss or damage the duplicate can be used as the basis for restoring the Documents to their original status.

8.8 Nuclear Risks and Radioactive Contamination

8.8.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

8.8.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or

8.8.3 exposure to magnetic, electric or electromagnetic fields or radiation.

8.9 Radiation

We are not liable to indemnify the Insured or the Company for any Claim, Loss or loss in connection with any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

8.9.1 ionising radiation or contamination by radioactivity from any nuclear fuel or from waste from the combustion of nuclear fuel; or

8.9.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

8.10 USA/Canada

8.10.1 any action brought in any court of the United States of America, Canada or their dominions or protectorates or any judgement registered or lodged in any jurisdiction in connection with such an action; or

8.10.2 any work or activities undertaken by the Insured in the United States of America, Canada or their dominions or protectorates.

PROVIDED THAT this Exclusion shall not apply to Section 1 of this policy but only in respect of liability arising out of the temporary presence in the United States of America or Canada of any Employee, director or partner of the Company who is normally resident in Australia and who is not performing any manual or supervisory work whatsoever whilst in the United States of America or Canada.

8.11 War and Terrorism

any of the following regardless of any other cause or event contributing concurrently or in any other sequence any of the following:

8.11.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, riot; or

8.11.2 civil commotion assuming the proportions of or amounting to an uprising,

8.11.3 military or usurped power, confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any public authority or government de jure or de facto, martial law;

8.11.4 strikes;

8.11.5 any Act of Terrorism; or

8.11.6 any action taken in controlling, preventing, suppressing, retaliating against or responding to or in any way relating to those things in 8.11.1 to 8.11.5 above.

The burden of proving that a Claim does not fall within this exclusion will be upon the Insured, Insured Persons or the Company.

8.12 Worker's Compensation

the imposition of liability arising out of any workers' compensation law or accident compensation legislation or industrial award, agreement or determination; or Personal Injury to any Employee or person arising out of and in the course of employment where the Insured is indemnified (either in whole or in part) in accordance with insurance arranged or required to be arranged in respect of any worker's compensation law.

8.13 Molestation

the molestation of, or physical or psychological interference with any person.

8.14 Tobacco and Smoking

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.

8.15 Communicable Diseases

the contraction of any infectious disease that is transmitted through direct contract from one person to another.

8.16 Money and Securities

loss or damage to cash, securities, bullion, gold or negotiable instruments owned by the Insured or any Insured Persons for which the Insured has assumed responsibility.

8.17 Demolition

the demolition of property the highest part of which, immediately before demolition works commence, exceeds 10 metres from ground level.

8.18 Associated Companies

made against the Insured by any firm, company, partnership or other entity in which the Insured or any director, partner or principal of the Insured has a financial or executive interest or which has a financial or executive interest in the Insured unless solely emanating from an independent and unrelated third party.

8.19 Crowd Control

any crowd control operation or security screening operation carried out by or on behalf of the Insured.

However, this exclusion shall not apply to the Insured's vicarious liability arising from an act, error or omission (not otherwise excluded by this Policy) of licensed security contractors engaged by the Insured provided that the Insured has obtained proof of current liability insurance from such contractors and to whom the Insured has contractually assigned responsibility for crowd control, crowd safety, security screening and bag inspections.

8.20 Pyrotechnics

the storage and/or use of any pyrotechnics.
However, this exclusion shall not apply to the Insured's vicarious liability arising from an act, error or omission of contracted pyrotechnicians that are appropriately licensed & have provided the Insured with proof of liability insurance.

8.21 Participation Risk & Fire

any person's participation in any:

8.21.1 sport, game, match, race, practice, training course, trial, contest, competition; or

8.21.2 performances involving the use of fire.

Exclusion 8.21.1 does not apply to the following:

(a) party games played by children which are put on by children's entertainers;

(b) practices which involve rehearsal or practicing for performing arts performances;

(c) competitions/contests that involve non-contact sports or non contact physical challenges.

8.22 Crowd Surfing, Moshing and Stage Diving

crowd surfing, stage diving and or moshing activities.
However, this exclusion shall not apply to the Insured's liability arising from these activities, subject to a condition that signage is present near the stage and at the entrance to the venue prohibiting moshing, stage diving & crowd surfing.

8.23 Martial Arts Events

any persons, participants or officials whilst participating in or officiating over, or training for, any boxing, martial arts, wrestling, MMA, kickboxing or any other type of contact fighting sports.

8.24 Self Promoted Show, Performance or Concert

shows, performances or concerts where the Insured is acting as event organizer, event promoter or who "self-promote" their own performances.

"Self-promoted" means Insureds who hire out venues to stage their own shows, performances or concerts. Door-deals are not considered "self-promoted".

8.25 Workshop/Tuition – Excluded Activities

Insureds' who are responsible for staging workshops or activities which include any of the following:-

8.25.1 Dance schools where this is their primary business;

8.25.2 Drama schools where this is their primary business;

8.25.3 Tuition of or participation in aerial, acrobatics or trapeze activities;

8.25.4 Tuition of or participation in fire performing (but only where naked flames are being used;

8.25.5 Tuition of or participation in gymnastics;

8.25.6 Tuition of or participation in competitive sporting activities;

8.25.7 Tuition of or participation in adventure type activities;

8.25.8 Tuition of or participation in circus skills;

8.25.9 Tuition of or participation in Tattooing and body piercing (face painting and spray tattooing are covered);

8.25.10 Tuition of or participation in Filming and/or video production activities.

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Section 9 – Definitions and Interpretations

Headings and notes are for information purposes only and are not to be construed as part of the policy. Various words and phrases are used in all Sections of this policy and wherever they appear starting with a capital letter and whether they are used in the plural or singular form, they are deemed to have the meaning set out below:

9.1 Act of Terrorism

9.1.1 means the actual or threatened:

9.1.2 use of force or violence against persons or property;

9.1.3 commission of an act dangerous to human life or property;

9.1.4 commission of an act that interferes with or disrupts an electronic or communication system undertaken by any person or group whether or not acting on behalf of or in connection with any organisation government power authority or military force;

and the reasonably apparent intent or effect is to:

9.1.5 intimidate or coerce a government or organisation or to disrupt any segment of the economy;

9.1.6 cause alarm fright fear of danger or apprehension of public safety in one or more distinct segments of the general public or to intimidate or coerce one or more such segments; or

9.1.7 further political ideological religious or cultural objectives or to express support for (or opposition to) a philosophy ideology religion or culture;

9.1.8 affect the conduct of a government de jure or de facto by mass destruction, assassination, kidnapping or hostage taking.

9.2 Aircraft

means any vessel, craft or thing made or intended to transport persons or property through the air, atmosphere or space.

9.3 Cash

means current coins, currency notes, cheques, postal orders, money order, unused postage or revenue stamps, including the value of stamps contained in franking machines, negotiable instruments, credit card sales vouchers, lottery tickets (for their face value only), public transport tickets (excluding airline tickets), phone cards for which the Insured is legally responsible.

9.4 Claim

means:

9.4.1 for the purposes of Section 1 any claim against the Insured for compensation arising from Personal Injury and/or Property Damage; or

9.4.2 for the purposes of Section 2 any claim against the Insured for compensation arising from Personal Injury and/or Property Damage caused by any Product;

9.4.3 for the purposes of Section 3 as defined for the purposes of the relevant insuring clause;

9.4.4 for the purposes of Section 4 and Section 5;

9.4.4.1 any writ, application, summons or other originating legal process, cross claim or counter claim issued against or served on the Insured claiming damages or other compensatory relief;

9.4.4.2 the positive assertion in writing of a legal entitlement to damages or other compensatory relief in connection with an alleged civil liability on the part of the Insured, in terms evincing an intention to pursue such legal entitlement.

9.4.5 for the purposes of Sections 6 & 8 as defined for the purposes of the relevant insuring clause;

9.4.6 for the purposes of Section 7 means a claim covered by section 1, 2, 4 or 5 of this policy and not excluded.

9.5 Company

means the entity named as such in the Schedule and their Subsidiaries.

9.6 Contractual Liability

means liability which attaches by virtue of a contract or agreement.

9.7 Cooperate

means that the Insured:
assists Us and Our duly appointed representatives to put forward the best possible defence of a Claim within the time constraints available;

9.7.1 will have adequate internal systems in place, which will allow ready access to material information; and

9.7.2 will at all times and at its own cost give to Us or Our duly appointed representatives all such information, assistance, signed statements or depositions as may properly be required to facilitate compliance with all applicable Court Rules and Practice Directions, recoveries and subrogation claims.

9.8 Crisis Event

means any of the following unforeseen events where, in the reasonable opinion of the chief executive officer (or equivalent) of the Company, the event has the potential to cause an imminent decrease of greater than 30% (thirty percent) of the total consolidated annual revenues of the Company if left unmanaged:

9.8.1 the sudden, unexpected death or disability of any executive;

9.8.2 loss of a major customer, contract or credit facility;

9.8.3 Employee workplace violence;

9.8.4 the first apparent unauthorised intrusion into any Company's computer facilities;

9.8.5 a recall or boycott of any product;

9.8.6 a man-made disaster;

9.8.7 any criminal or fraud investigation.

Crisis Event does not include an event that affects the Company's industry in general rather than the Company specifically.

9.9 Crisis Loss

means the reasonable and necessary fees, costs and expenses paid by the Company for external crisis management services provided in response to a Crisis Event within the first thirty (30) days after the event (but never beyond the expiry of the Period of Insurance).

9.10 Damage

means any physical destruction of or damage to Cash or Receptacles or any physical loss of Cash or Receptacles.

9.11 Defence Costs

means all reasonable and necessary legal costs, fees (including barrister fees and expert fees) and expenses incurred in the investigation, reporting on, defence or settlement of any Claim and of any appeal in respect of which We are liable to indemnify the Insured under this policy. Defence Costs includes the costs of legal representation at any Inquiry and the legal costs associated with the preparation for said Inquiry.

9.12 Director or Officer

means,

9.12.1 in respect of all Claims under Section 5 (but not Extension 5.51 (Employment Practice Claims), any natural person who was, now is, or may hereafter become a director or officer of the Company or any other person who may at any material time be deemed to be such a director or officer within the meaning of any applicable law or regulation; and

9.12.2 in respect of the cover under Extension 5.51 of (Employment Practice Claims), any natural person who was, now is, or may hereafter become a director or officer or employee of the Company and any other person who may at any material time be deemed to be such a director or officer or employee within the meaning of any applicable law or regulation; and

9.12.3 in respect of the cover under Extension 5.5 (Outside Directorships), any director, officer or employee of the Company who was, now is or becomes at the written request of the Company a director, officer or equivalent position in any Outside Entity, but shall not include any natural person who was, now is, or may hereafter become a trustee or administrator of any health and welfare plan or other Employee benefit program, social benefits system or trust program established or maintained for the benefit of Employees with the exception of any Fund.

9.12.4 the lawful spouse or domestic partner of any Director or Officer but only to the extent that such spouse or domestic partner is a party to any Claim solely in his or her capacity as spouse or domestic partner of any Director or Officer, and only for the purposes of any Claim seeking damages which are recoverable from marital community property, property jointly held by the Director or Officer and their spouse or domestic partner, or property transferred from the Director or Officer to the spouse or

domestic partner for solely lawful purposes, and only to the extent that such Director or Officer is covered by this Policy for such Claim.

9.13 Documents

means project models or displays, deeds, wills, agreements, maps, plans, records, photographs or negatives, written or printed books, letters, certificates or written or printed documents of any nature whatsoever and will include computer software and systems records (electronic data will be deemed to be physical property for the purposes of this policy). This definition excludes bearer bonds, coupons, stamps, coins, bank or currency notes and other negotiable instruments.

9.14 Employee

means any person employed by the Company under a contract of service during or prior to the commencement of the Period of Insurance. The definition of Employee excludes any consultant, contractors, agents or labour hire personnel supplied to the Company.

9.15 Excess

means the total amount shown in the Schedule payable by the Insured or any other person entitled to indemnity. The Excess applies to each Occurrence or Claim as specified in the Schedule and is payable at such time required by Us. The Excess shall be net of any input tax credit the Insured may be entitled to claim in relation to GST. If any payment made by Us shall include the amount for which the Insured or any other person entitled to indemnity is responsible such amount shall be repaid to Us forthwith.

For the purpose of Section 4 Professional Indemnity only, if the Schedule states that the Excess is Defence Costs “inclusive” then Excess means the sum shown in the Schedule unless otherwise stated in this policy and will be the first amount payable of each Claim or Occurrence made against the Insured. If the Schedule states that the Excess is Defence Costs “exclusive” then Excess means the sum shown in the Schedule unless otherwise stated in this policy and will be the first amount payable of each Claim or Occurrence made against the Insured excluding Defence Costs.

9.16 Fine or Penalty

means:

9.16.1 a penalty imposed upon the Insured by any regulatory authority arising from any actual or alleged breach of any occupational health and safety, privacy or environmental legislation; or

9.16.2 any compensatory civil penalty.

9.17 Indemnity Limit

means the sum insured shown in the Schedule which is available to indemnify the Insured in respect of:

9.17.1 any one Occurrence under Section 1 of this policy; or

9.17.2 all Personal Injury and/or Property Damage occurring during the Period of Insurance caused by an Occurrence in connection with any Product, in respect of Section 2 of this policy; or

9.17.3 all Claims first made against the Insured during the Period of Insurance, in respect of Section 4 of this policy, subject to Extension 4.3 “Reinstatement of Indemnity Limit"; or

9.17.4 all Claims first made against the Insured during the Period of Insurance in respect of Section 5 of this policy, subject to Extension 5.7, “Additional Non-Executive Directors Limit”.

All Claims arising from one or the same source or originating cause shall be deemed to constitute one Claim. Under no circumstances will any Claim give rise to indemnity under more than one Section. The Indemnity Limit in respect of Occurrences in the United States of America, Canada and their respective protectorates and territories shall be inclusive of Defence Costs, claimant’s costs and expenses and will apply in the aggregate to all claims in any one Period of Insurance.

9.18 Inquiry

means:

9.18.1 for the purposes of Section 4 any regulatory inquiry, privacy inquiry, disciplinary proceeding or other proceedings; or

9.18.2 for the purposes of Section 5 any official investigation, inquiry or examination into the affairs of the Company, or the conduct of an Insured Person as a Director or Officer or Employee of the Company, which an Insured Person is legally compelled to attend by official notice or process.

9.19 Insured

means:

9.19.1 the Company;

9.19.2 any person who is, during the Period of Insurance, a principal, partner or director of the Company but only in respect of work performed while a principal, partner or director of the Company;

9.19.3 any person who is, during the Period of Insurance, an Employee of the Company but only in respect of work performed while an Employee of the Company;

9.19.4 any former principal, partner, director or Employee of the Company but only in respect of work performed while a principal, partner, director or Employee of the Company and on behalf of the Company;

9.19.5 any person engaged in The Business under an apprenticeship with the Company;

9.19.6 any person under contract of service or apprenticeship with another employer who is hired to or borrowed by the Company; any person engaged by the Company under a work experience government training or similar scheme; and/or

9.19.7 the estate, heirs, legal representatives or assigns of any persons noted in 9.19.1 to 9.16.6 above in the event of the death, incompetence or bankruptcy of that Insured, PROVIDED ALWAYS THAT,

9.19.7.1 We will only indemnify the estate, heirs, legal representatives or assignees in respect of any civil liability of the Insured to the extent that the Insured would have been Insured was alive, had capacity or was not insolvent or bankrupt; and

9.19.7.2 such persons will observe and be subject to all the terms conditions and exclusions of this policy insofar as they can apply.

9.20 The Business

means The Business as described in the Schedule. For the purposes of Sections 1 and 2, The Business shall include:

9.20.1 the provision and management of catering, social, sports, educational, medical, dental and welfare organisations for the benefit of the Employees and fire, security, first aid and ambulance services;

9.20.2 the ownership, repair, maintenance and decoration of the Insured's premises; and

9.20.3 private work carried out by any Employee (with the consent of the Insured) for any principal, partner, officer or director of the Insured.

9.21 Insured Person

means any Director, Officer, Employee and any volunteer worker but only while carrying out work for The Business.

9.22 In Transit

means the time the Cash or Receptacles to be loaded at the place of dispatch and continues during the normal course of transit, until delivered and unloaded at the place of destination.

9.23 Mechanically Propelled Vehicle

means any type of machine on wheels, skis or on self-laid tracks made or intended to be propelled other than by manual or animal power.

9.24 Named Insured

means any entity or person named on the Schedule as an Insured.

9.25 Occurrence

means an event, including continuous or repeated exposure to substantially the same general conditions, which result in Personal Injury and/or Property Damage that is neither expected nor intended from the Insured's standpoint. The effects of assault and battery committed for the purpose of preventing or eliminating danger to persons or property committed by or at the direction of the Insured shall be deemed to be Personal Injury neither expected nor intended from the Insured's standpoint . All events of a series consequent on or attributable to one source or original cause are deemed to be one Occurrence.

9.26 Personal Injury

means:

9.26.1 bodily injury (including death at any time resulting therefrom), death, illness, disease, or disability;

9.26.2 mental injury, mental anguish or shock;

9.26.3 false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;

9.26.4 assault and battery not committed by or at the direction of the Insured, unless committed for the purpose of preventing or eliminating danger to persons or property;

9.26.5 racial, religious, sexual or age discrimination not committed by or at the direction of the Insured; and/or

9.26.6 loss of consortium resulting from any of the circumstances described in clauses 9.26.1 to 9.26.4 above.

9.27 Policy

means this policy wording, Schedule, attached endorsements and any additional endorsements agreed to by Us in writing.

9.28 Period of Insurance

means the period shown in the Schedule.

9.29 Pollution or Contamination

means any one or a combination of a release, emission, discharge, dispersal, disposal, escape of any substances, which are capable of causing harm (which will mean harm to the health of any living organism or interference with ecological systems of which they form part and, in the case of a person, will include offence caused to any of their senses) into or onto any water, land or air, and shall include solid, liquid, gaseous or thermal irritant or contaminant including (but not limited to) smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. "Waste" includes material to be recycled, reconditioned or reclaimed.

9.30 Preceding Policy

means an insurance policy providing professional indemnity insurance for a period of twelve (12) months immediately preceding, without interruption, the Period of Insurance.

9.31 Principal

means any person, employer, firm, company, ministry or authority for whom the Insured is carrying out a contract or agreement for the performance of work.

9.32 Product

means an article, item or substance (after it has ceased to be in the Insured's possession or control) sold supplied erected repaired altered treated installed processed manufactured tested services hired out stored transported or delivered by or through the Insured including containers packaging or labelling thereof in the course of The Business in or from the Territorial Limits and also includes:

9.32.1 any design, formula or specification of such Product; or

9.32.2 anything in respect of which the Insured is deemed to be the manufacturer by operation of a law of Australia or its external territories.

9.33 Product Recall Expenses

means reasonable and necessary costs incurred directly by the Insured in respect of:

9.33.1 the recall notification via media including radio and television announcements and printed advertisements;

9.33.2 shipping the Insured's recalled Products from any purchaser, distributor or user to a place or places designated by the Insured;

9.33.3 the hire of additional personnel (other than the Insured's employees) to handle the recall

9.33.4 the Insured's usual, employees employed on an hourly wage rate (not salaried employees) at basic rates for necessary straight time or overtime to handle the recall;

9.33.5 expenses incurred by employees for transportation and accommodation where necessary;

9.33.6 additional expenses required for the rent or hire of additional warehouse or storage space;

9.33.7 expenses required for the disposal or destruction of the Insured's Product that has been recalled;

PROVIDED THAT:

9.33.8 such costs are incurred solely for the purpose of recalling the Insured's Products or property of which they form a part, because of Bodily Injury or Property Damage occurring within the Period of Insurance.

Product Recall Expenses does not mean the following:

9.33.9 any legal liability to pay compensation to any other person; or

9.33.10 the actual value of the Insured's Products or of any property which they form a part.

9.34 Property Damage

means:

9.34.1 physical damage to, destruction of or loss of tangible property including resulting loss of use of that property; or

9.34.2 loss of use of tangible property that is not physically damaged, lost or destroyed provided that such loss of use is caused by physical damage to or destruction of other tangible property.

9.35 Receptacles

means cash box or other receptacle for the transit of cash, excluding any motor vehicle or trailer.

9.36 Retroactive Date
means the date specified in the Schedule.

9.37 Schedule
means the document entitled 'Schedule' that attaches to this policy wording.

9.38 Subsidiary
means

9.38.1 any branch, division or other internal structure of the Company except any superannuation fund or scheme established for the Company's own directors, officers or Employees;

9.38.2 any company in respect of which the Company (either directly or indirectly through one or more of its Subsidiaries) at the commencement of the Period of Insurance:

9.38.2.1 controls the composition of the board of directors; or

9.38.2.2 controls more than half of the voting stock; or

9.39 Takeover or Merger
means any sale of the Company or its merger with or acquisition by another entity such that the Company is not the surviving entity, or the acquisition by any entity or person of 50% (fifty percent) or more of the voting stock of the Company.

9.40 Territorial Limits
means anywhere in the world except the United States of America, Canada and their respective protectorates and territories where this insurance will only apply in respect of the Insured's Product exported into such countries as agreed in writing by Us (with the exception of the temporary presence in the United States of America or Canada of any Employee, director or partner of the Company who is normally resident in Australia and who is not performing any manual or supervisory work whatsoever whilst in the United States of America or Canada).

9.41 Tool of Trade
means any Mechanically Propelled Vehicle which has mechanical digging, scraping, drilling equipment or any tool or plant attached but only when it is being used by the Insured on any worksite at which work is performed for or in connection with The Business.

9.42 Watercraft
means any vessel or craft or thing designed to float on or in or travel through water for the purpose of carrying persons or property.

9.43 We, Us, Our
Means Berkley Insurance Company (trading as Berkley Insurance Australia) ABN 53 126 559 706.

Section 10 – Claims Conditions applicable to this Policy

The following conditions apply to this policy:

10.1 Discovery and Notice of a Claim

If during the Period of Insurance the Insured receives notice of any Claim that may be covered and/or any Occurrence or event which may give rise to liability under this policy the Insured will give notice to Us as soon as practicable. Such notice of any Claim must be provided to Us before the expiry of the Period of Insurance.

Every claim notice letter or writ or process or other document served on the Insured shall be forwarded to Us as soon as reasonably practicable on receipt.

Notice in writing shall also be given as soon as practicable to Us by the Insured of any impending prosecution inquest or inquiry into a fatality in connection with any such Occurrence or event.

Notice of any Claim will be provided in writing to:

National Head of Claims

australiaclaims@berkleyinaus.com.au

Berkley Insurance Australia

PO Box Q296

QVB NSW 1230.

10.2 Admission of Liability

In the event of any Claim, the Insured will not admit liability and no admission, offer, settlement, promise or payment will be made by the Insured without Our prior written consent.

10.3 Conduct and Control of Claims

Following notification of any Claim under this policy, We will be entitled to take over and conduct in the name of the Insured the investigation, defence or settlement of any such matter. The Insured will Cooperate with and give all such assistance as We may reasonably require.

No admission, promise, payment or indemnity shall be made or given by or on behalf of the Insured without Our prior written consent.

10.4 Claim Settlements and Discharge of Liability

We may at any time pay (or agree to pay) to the Insured in connection with any Claim(s) the Indemnity Limit (less the Excess, any sums already paid or in lieu of Compensation and unpaid Defence Costs incurred with Our prior written consent) or any lesser sum for which the Claim(s) against the Insured can be settled. Upon such payment (or agreement to pay) We will not be under any further liability in respect of such Claim

or Defence Costs except for other costs and expenses or Defence Costs incurred prior to such payment (or agreement to pay) with Our prior written consent.

In no circumstances will We be liable in respect of such Claim(s) for an amount greater than otherwise provided for in this policy. In the event that:

10.4.1 We have made a payment in excess of the amount for which We would otherwise have been liable in accordance with the policy in respect of such Claim or Defence Costs, the Insured will refund to Us that proportion of the payment which exceeds the amount which We would otherwise have been liable for in accordance with the policy; and

10.4.2 We have agreed to pay an amount in excess of the amount which We would otherwise have been liable for in accordance with the policy in respect of such Claim or Defence Costs, Our liability in respect of such agreement will be limited to the amount which We would otherwise have been liable for in accordance with the Policy.

Any dispute concerning the interpretation of the terms of this policy shall be resolved in accordance with the law and submit to the jurisdiction of the territory in which this policy is issued.

10.5 Our and the Insured's Right to Defend

The Insured will not be required to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon by the Insured and Us or failing agreement to be appointed by the President of the Bar Association of the State or Territory of Australia where this policy is issued) advises that, taking due account of the interests of both Us and the Insured, the defence of such proceedings has reasonable prospects of being successful and should be contested having regard to the alternative to contesting the proceedings.

If the Insured wishes to continue to contest any Claim which We wish to settle, the Insured may do so. However, Our maximum liability in respect of that Claim will thereafter be limited to the amount for which the Claim could have been settled plus

Defence Costs incurred with Our prior written consent up to the date upon which it would have reasonably settled the Claim, less any unpaid Excess or the final amount of the Claim including Defence Costs.

10.6 Excess

In respect of each Claim or loss covered by this policy the Insured is liable for the amount of any Excess stated in the Schedule and We will have no liability for the amount of any Excess.

10.7 Allocation

Where, between any Insured Person and any other person or the Company, any amount has been jointly or jointly and severally incurred, Our liability under this Policy is limited to the proportion which represents a fair and equitable allocation between the Insured Person and those other persons or the Company, taking into account the relative legal and financial exposures of, and the relative benefits obtained by, the Insured Person and those other persons or the Company.

Where any amount is incurred in respect of any Claim which arises from both covered matters and matters not covered by this Policy, Our liability is limited to the proportion which represents a fair and equitable allocation between any Company, the Insured Person and Us, taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this Policy.

If the Insured Person and the Company and Us cannot agree on an allocation between covered and uncovered amounts and/or parties, the matter shall be submitted to binding opinion from a Senior Counsel agreed between the parties or, failing agreement, appointed by the President of the Bar Association of the State or Territory or Country in which this Policy is issued.

10.8 Notification of Other Insurances in respect of Sections 1 and 2 Public & Products Liability

If at any time of any Personal Injury or Property Damage which is indemnifiable, or would be indemnifiable, under this policy there exists any other insurance policy which would provide indemnity to the insured, then the Insured must provide Us with full details of any such insurance policy when making any Claim under this policy.

Section 11 – General Conditions applicable to this Policy

The following conditions apply to this policy (for the purposes of these conditions any reference to Claim also includes reference to legal costs and expenses and a Fine or Penalty):

11.1 Newly Created or Acquired Subsidiaries

We will indemnify, in the same manner and to the same extent as the Company, any entity or Subsidiary acquired or created by the Company during the Period of Insurance, PROVIDED ALWAYS THAT:

11.1.1 the Period of Insurance applicable to such cover will be the period commencing on the date of such acquisition or creation and expiring sixty (60) days after that date or on the expiry of the Period of Insurance (whichever is the earlier);

11.1.2 the retroactive date applicable to such cover will be the date of acquisition or creation of the entity or Subsidiary; and

11.1.3 the Claim arises out of the exercise and conduct of the entity or subsidiary's business which is the same as or substantially similar to the Company's Business.

The Company may apply to Us within sixty (60) days of this extension being triggered to vary the policy to continue the cover provided by this extension until the expiry date of the Period of Insurance by notifying Us of the acquisition or creation of the entity or subsidiary and providing all information requested by Us. Any such variation will only be offered by Us at Our sole and absolute discretion (acting reasonably) and subject to any additional terms imposed including the charging of any additional premium which We consider appropriate, having regard to the nature of the risk being assumed by Us.

11.2 Run off cover for Takeover and Merger

In the event of a Takeover or Merger or if the Company ceases to exist or operate any coverage provided under Section 4 or Section 5 shall apply only to Wrongful Acts, and acts, errors or omissions committed prior to the date of such Takeover or Merger or cessation of operations.

11.3 Jurisdiction and Service

In the event of a dispute arising under or in connection with this policy, We at the request of the Insured will submit to the jurisdiction of competent courts in the Commonwealth of Australia. The dispute shall be determined in accordance with the law and practice of that jurisdiction, as applied in those courts.

11.4 Terms of Payment

All premiums due to Us under this policy will be paid within thirty (30) days from the policy's inception.

11.5 GST

Where We are required to indemnify the Insured and the Insured is entitled to claim an input tax credit in relation to GST the amount of such input tax credit will be deducted from any amount payable by Us.

Where the Insured is entitled to claim an input tax credit in relation to GST for a payment required to be made by the Insured as an Excess, then the monetary limit of the Excess shall be deemed to be net of the Insured’s entitlement to the Input Tax Credit.

11.6 Cancellation

The circumstances and manner in which We may cancel this insurance is governed by the Insurance Contracts Act 1984 (Cth) and as amended.

We may cancel this insurance at any time by giving fourteen (14) days’ notice and provided there have been no notifications made by the Insured under this policy the Insured will be entitled to a pro rata refund. If the Insured has made a notification under the policy then the Insured is not entitled to any refund of premium.

Where stated in the policy schedule and agreed to by the Insured at the time of issuing this insurance, We will retain an agreed minimum premium to cover our reasonable costs in issuing the insurance policy. This minimum premium will apply regardless of the reasons for cancellation of the policy.

11.7 Subrogation

If any payment is made by Us under this policy, the Insured grants to Us all rights of recovery against

any parties from whom a recovery may be made and the Insured will take all reasonable steps to preserve such rights. The Insured is not to waive or release any right of recourse against any other entity without first obtaining our written consent.

11.8 Alteration to Risk

The Insured will give Us written notice as soon as reasonably practicable of any material alteration to The Business during the Period of Insurance including but not limited to:

11.8.1 an Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an Insured failing to pay debts or breaching any other obligation which could give rise to the appointment of a receiver or bankruptcy or winding-up proceedings; and

11.8.2 any material change in the nature of the advice or professional services offered by an Insured.

Where such notice is given and/or where there is any material alteration to the risk, We will be entitled to cancel this policy or amend the terms and conditions of this policy upon receipt of this information in accordance with our rights at law, including under the Insurance Contracts Act 1984 (Cth).

11.9 Premium Adjustment

If the Premium is based on estimates an accurate record containing all particulars relative thereto shall be kept by the Insured. The Insured shall at all times allow Us to inspect such record and shall supply such particulars as We may require within one (1) month from the expiry of the Period of Insurance and the Premium shall thereupon be adjusted by Us from time to time. At Our request the Insured shall supply an auditor's certificate in support of such particulars.

The Insured shall at all times allow Us to inspect such record (on reasonable notice to the Insured) and shall supply such particulars as the We may reasonably require within one (1) month from the expiry of the Period of Insurance and the Premium shall thereupon by adjusted by Us from time to time.

If the Insured fails to supply such particulars within the period stated the Insurer shall be entitled to make a reasonable estimate of such particulars and adjust the Premium accordingly.

11.10 Reasonable Care

The Insured shall take all reasonable care:

11.10.1 to prevent any event which may give rise to a claim under this policy; and

11.10.2 to maintain the premises plant and everything used in The Business in proper repair; and

11.10.3 in the selection and supervision of Employees; and

11.10.4 to comply with all statutory and other obligations and regulations imposed by any authority; and

11.10.5 to make good or remedy any defect or danger which becomes apparent and take such additional precautions as the circumstances may require.

11.11 Claims Aggregation in respect of Section 5 Professional Indemnity and Section 6 Management Liability

11.11.1 Where under Section 4 and Section 5, two (2) or more Claims arise from the same Wrongful Act, act, error or omission, or from an original cause or event or from related,

continuous, repeated or causally connected or a series of interrelated Wrongful Acts, acts, errors or omissions, then all such Claims shall constitute one Claim and;

11.11.1.1 only one Deductible shall be payable by the Insured Person or Company; and

11.11.1.2 the maximum amount payable by Us in respect thereof will not exceed the Indemnity Limit (except in respect of Defence Costs which are stated to be "in addition" to the Indemnity Limit).

11.11.2 Where under Extension 5.14 (Employee Theft or Third Party Crime) two (2) or more covered losses arise from the same act or conduct, or from more than one act, or series of conduct, which arise from an original cause or event or from related continuous, repeated or causally connected events, or a series of interrelated, acts or conduct, then all such losses shall constitute one loss, and only one Excess shall be payable by the Company.

11.12 Severability

Where the Named Insured comprises more than one entity, any conduct on the part of a Named

Insured whereby such Named Insured:

11.12.1 failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984 (Cth); or

11.12.2 made a misrepresentation to Us before this contract of insurance was entered into; or

11.12.3 failed to comply with any terms of this policy;

will not prejudice the right of any other Named Insured to indemnity as may be provided by this policy, PROVIDED ALWAYS THAT:

11.12.4 such other Named Insured is entirely innocent of and have no prior knowledge of any such conduct. The onus of proof in this regard will be upon such other Insured;

11.12.5 such other Named Insured will, as soon as is reasonably practicable upon becoming aware of any such conduct, advise Us in writing of all known facts in relation to such conduct; and

11.12.6 enquiry has been made by each Company, before the contract of insurance was entered into of each other Company and persons who make up the Named Insured for the purposes of complying with the duty of disclosure under the Insurance Contracts Act 1984 (Cth).

This provision does not limit the duty of disclosure owed by the entities or persons that make up the Insured.

11.13 Responsible Service of Alcohol

It is a condition that where alcohol is supplied, served or sold by the Insured, all bar and service staff hold the legally required licenses & responsible service of alcohol certificate.