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MIRAMAR

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*Policy Wording*

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ISSUE DATE 2013



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# About this Booklet

This booklet contains four separate sections:

## General Information

This part of the booklet contains information You need to know before You take out an insurance Policy. Please read it carefully before taking out this insurance.

## Policy Terms and Conditions

The Policy part of this booklet contains the Policy Terms and Conditions, which detail all the terms, conditions and exclusions relating to this Policy. It forms part of Your legal contract with Us.

If we issue You with an insurance Policy, You will be given a Schedule. The Schedule sets out the specific terms applicable to Your cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions and the Schedule We send to You form Your legal contract with us so please keep them in a safe place for future reference.

If You require further information about this product, please contact Your Insurance broker.

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## About Lloyd's

Lloyd's is a major general insurer in Australia, which is an Australian authorised insurer under the provisions of the Australian Insurance Act. Lloyd's syndicates have approximately \$1 billion placed in trust in Australia, purely to act as an additional layer of security to pay claims. Lloyd's is recognised by two leading independent international rating agencies, Standard and Poor's and AM Best who rate Lloyd's "A+" (Strong) and "A" (Excellent).

# General Information for Business Insurance Policy

The information contained in this part is general information only and does not form part of Your contract with Us. The Policy Terms and Conditions in the rest of this booklet contain details of Your contract.

## Important Information

This Policy and Your current Schedule are important. Please ensure You read them carefully and keep them in a safe place. The Policy, current Schedule, definitions, conditions, exclusions, extensions and endorsements are to be read together as one contract. Any word or expression to which a specific meaning has been given in any part of this Policy shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

This Policy makes provision for payment of Goods and Services Tax by You in relation to premiums and by us in relation to claims.

If You have any questions regarding the Policy, please contact Your insurance broker.

Plans, documents, reports, contracts, receipts, manuals and serial numbers relating to Your property should be kept. If a claim occurs the documents may be required by us and they will assist You completing Your claim form.

## Duty of Disclosure – What You Must Tell Us

Under the Insurance Contracts Act 1984 (the Act), You have a Duty of Disclosure. The Act requires that before a Policy is entered into, You must give us certain information we need to decide whether to insure You and anyone else to be insured under the Policy, and on what terms. Your Duty of Disclosure is different, depending on whether this is a new Policy or not.

### **New business**

Where You are entering into this Policy for the first time (that is, it is new business and is not being renewed, varied, extended or reinstated) You must tell us everything You know and that a reasonable person in the circumstances could be expected to tell us, in answer to the specific questions we ask.

When answering our questions You must be honest.

#### **Who needs to tell us**

It is important that You understand You are answering our questions in this way for Yourself and anyone else whom You want to be covered by the Policy.

#### **If You do not tell us**

If You do not answer our questions in this way, we may reduce or refuse to pay a claim, or cancel the Policy. If You answer our questions fraudulently, we may refuse to pay a claim and treat the Policy as never having worked.

### **Renewals, variations, extensions and reinstatements**

Once Your Policy is entered into and is no longer new business then Your Duty of Disclosure to us changes. You are required before You renew, vary, extend or reinstate Your Policy, to tell us everything You know and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to our decision whether to insure You, and anyone else to be insured under the Policy, and if so, on what terms.

**You do not have to tell us about any matter**

- that diminishes the risk
- that is of common knowledge
- that we know or should know in the ordinary course of our business as an insurer, or
- which we indicate we do not want to know.

**If You do not tell us**

If You do not comply with Your Duty of Disclosure we may reduce or refuse to pay a claim or cancel Your Policy. If Your non-disclosure is fraudulent we may treat this Policy as never being in force.

## Change of Risk or Circumstance

You should advise Us as soon as practicable of any change to Your normal Business as disclosed in the application form or statement of fact, such as, but not limited to changes in location, acquisitions and new overseas activities.

## Privacy

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

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

We may need to disclose personal information to our reinsurers, (who may be located overseas), insurance intermediaries, insurance reference bureaux, credit reference agencies, our advisers and those involved in the claims handling process (including assessors and investigators), for the purposes of assisting us and them in providing relevant services and products, or for the purposes of litigation. We may disclose personal information to people listed as co-insured on Your Policy and to Family members or agents authorised by You. We may also disclose information to organisations which conduct customer service surveys on our behalf. We will request Your consent to any other purpose.

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

You also have the opportunity to find out what personal information we hold about You and, when necessary, correct any errors in this information. Generally we will do this without restriction or charge. For further information about our privacy policy or to access or correct Your personal information, please contact

**The Compliance Manager,  
Miramar Underwriting Agency Pty Ltd,  
PO Box A2016  
Sydney South NSW 1235.  
Telephone: (02) 9307 6600, Fax: (02) 9307 6699.**

## The General Insurance Code of Practice

Miramar Underwriting Agency Pty Ltd is a signatory to the General Insurance Code of Practice. The Code aims to:

- promote more informed relations between insurers and their customers; and
- improve consumer confidence in the general insurance industry;
- provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- commit insurers and the professionals they rely upon to higher standards of customer service.

## Dispute Resolution

We will do everything possible to provide a quality service to You. However, we recognise that occasionally there may be some aspect of our service or a decision we have made that You wish to query or draw to our attention.

We have a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to Your complaint within fifteen (15) working days.

If You would like to make a complaint or access our internal dispute resolution service please contact the Miramar office and ask to speak to a dispute resolution specialist.

## Section 4 – Claims Made

Section 4 of this Policy operates on a 'claims made and notified' basis. This means that this Policy covers You for claims made against You and notified to Us during the Period of Insurance.

This Policy does not provide cover in relation to:

- acts, errors or omissions actually or allegedly committed prior to the retroactive date of this Policy (if such a date is specified)
- Claims made after the expiry of the Period of Insurance even though the event giving rise to the claim may have occurred during the Period of Insurance
- Claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy
- Claims made, threatened or intimated against You prior to the commencement of the Period of Insurance
- Facts or circumstances of which You first became aware prior to the Period of Insurance, and which You knew or ought reasonably to have known had the potential to give rise to a claim under this Policy.
- Claims arising out of circumstances noted on the proposal form for the current Period of Insurance or any previous proposal form.

When You give notice in writing to Us of any facts that might give rise to a claim against You as soon as reasonably practicable after You become aware of those facts but before the expiry of the Period of Insurance, You may have the rights under section 40(3) of the Insurance Contracts Act 1984 to be identified in respect of any claims subsequently made against You arising from those facts notwithstanding that the claim is made after the expiry of the Period of Insurance. Any such rights arise under the legislation only. The terms of this Policy and the effect of this Policy is that You are not covered for claims made against You after the expiry of the Period of Insurance.

# Policy Terms and Conditions for Business Insurance Policy

## Insurer

The Policy is underwritten by Certain Underwriters at Lloyd's, Miramar acts under authority as an agent of the Insurer.

## Our Agreement with You

We agree to provide You with the insurance cover set out in each of the Policy cover sections that You select and that are listed in the Schedule.

You have paid or agree to pay us the premium set out in the current Schedule.

The insurance cover is in force for the Period of Insurance set out in the Schedule. We will cover You for loss, Damage and liability occurring during that Period of Insurance, subject to the provisions of this Policy.

We will not pay any more than the sum insured or limit of liability for each cover section which is shown in this Policy or Schedule.

We will not pay the Excesses shown in the Policy or Schedule. If any loss or Damage leads to a claim under more than one cover section of this Policy, You must pay the highest applicable Excess, but You need to pay only one Excess.

## Your Policy

Your Business Insurance Policy consists of the Policy Terms and Conditions in this booklet and the Schedule we give You.

Please read Your Policy carefully, and satisfy Yourself that it provides the cover You require.

If You want more information about any part of Your Policy, please ask us, or Your Insurance broker.

You should keep Your Policy Wording and Schedule together in a safe and convenient place for future reference.

## Paying Your premium

You must pay Your annual premium by the due date. If we do not receive Your premium by this date or Your payment is dishonoured this Policy will not operate and there will be no cover.

## Underinsurance

The following sections of the Policy:

### **Section 1 – Property Damage**

### **Section 2 – Business interruption**

contain underinsurance provisions which require You to insure for full value. If You do not, we may pay You a lower amount after taking into account the proportion of Underinsurance or You may be required to pay a portion of the loss Yourself.



## General Definitions

The following General Definitions apply to all Sections of this Policy unless noted to the contrary.

**Aircraft** — any craft or object designed to travel through air or space, other than model aircraft.

**Business Hours** — when You or any of Your employees are at Your Premises for the purpose of conducting Your Business.

**Computer Virus** — an executable program or computer code segment that is self-replicating, requires a host program or executable disc segment in which it can be contained and which destroys or alters the host program or other computer code or data causing undesired program or computer system operation.

**Damage or Damaged** — physical loss, destruction or damage that is not otherwise excluded by this Policy.

**Declared Values** — are the values of:

- (a) Property Insured (other than Money) under Section 1 at the Situation, and
- (b) Gross Profit / Gross Rentals / Gross Revenue / Insured Payroll as declared by You;

calculated in accordance with the applicable Basis of Settlement Clauses.

You shall complete a statement of Declared Values as at the commencement of the Period of Insurance and as at the end of the Period of Insurance.

**Electronic Data** — any facts, concepts and/or information converted to a form usable for communications and/or displays and/or distribution and/or processing by electronic and/or electromechanical data processing and/or electronically controlled equipment which includes but is not limited to programs and/or software and/or other coded instructions for such equipment.

**Excess** — the amount, or the loss applicable to a specified period of time, expressed as an Excess on the current Schedule or elsewhere in the Policy.

This is the first amount of any loss that You must pay before we pay Your claim.

**Flood** — the inundation of normally dry land by water escaping or released from the normal confines of any natural watercourse or lake (whether or not they have been altered or modified) or from any dam, reservoir or canal.

**Hazardous Substance** —

- (a) any Pollutant, contaminant or other substance declared by a governmental authority to be hazardous to health or the environment; or
- (b) any mould, yeast, fungus or mildew including any spores or toxins created or produced by or emanating from such mould, yeast, fungus or mildew, whether or not allergenic, pathogenic or toxigenic.

**Hovercraft** — any vessel, craft or device made or intended to float on or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

**Insured** — the person/s or entity/ies named in the Schedule as the Insured and any subsidiaries and/or social clubs established for the benefit of Your employees.

**Insurer** — various underwriters at Lloyd's, each of whom (including their executors and administrators) is only liable for their share of any claim, loss, liability or expense payable under this Policy.

**Limit of Liability** — the amount shown in the Schedule for each applicable Section of this Policy for which You are insured for any one loss or series of losses arising out of one event or Occurrence.

**Money** — current coin, bank notes, currency notes, cheques, credit card sales vouchers, postal orders, Money orders, negotiable and non-negotiable securities and other like documents of value, phone cards and/or stored value cards, unused postage and revenue stamps, public transport tickets, private transport tickets (excluding airline tickets), bridge or highway tokens, car wash tokens, lottery tickets, authorised gift vouchers from external parties, contents of franking machines and includes cash boxes, alarm bags, or any other portable container used to convey Money all belonging to You or for which You are legally responsible or have assumed a responsibility to insure but does not mean any of these in the possession of or carried by Professional Money carriers, professional carriers or common carriers.

**Period of Insurance** — the period set forth in the Schedule, or any shorter period arising as a result of cancellation of this Policy, and any extension thereof which may be agreed in writing between You and Us.

**Policy** — includes this document, the Schedule and any attachment or memoranda affixed and any future documents issued (either at inception or during the Period of Insurance) to You which amends this Policy wording or Schedule; and the Proposal.

**Pollutant** —

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

**Pollution or Contamination** — the discharge, dispersal, release, escape of any type of Pollutant into or upon property, land, atmosphere or any watercourse or body of water including, but not limited to, ground water.

**Premium** — the premium specified in the Schedule or in any endorsement to the Schedule.

**Premises** — the buildings, outbuildings, yards and land used by You for Your Business at the Situation.

**Proposal** — the written Proposal form submitted to Us containing particulars and statements (together with any other written information which may have been supplied in conjunction therewith) bearing the date as stated in the Schedule.

**Schedule** — the most current Schedule of Insurance or any future renewal Schedule, including any endorsements issued by us in connection with this Policy.

**Security** — various Underwriters at Lloyd's, each of whom (including their executors and administrators) is only liable for their share of any Claim, loss, liability or expense payable under this Policy.

**Securities** — any negotiable or non-negotiable instruments or contracts representing Money or other property including but not limited to shares, preference shares, stocks, bonds, promissory notes or other equity or debt security.

**Situation** — the location(s) stated in the Schedule.

**Subsidiary Company or Subsidiary** —

- (a) any company or other incorporated entity which by virtue of any applicable Australian

legislation or law is deemed directly or indirectly to be a subsidiary of the Corporation specified in the schedule; or

- (b) any company or other incorporated entity over which the corporation specified in the Schedule is in a position to exercise effective direction or control through ownership or control of more than fifty percent (50%) of the issued voting shares of such company or entity.

**Vehicle** — any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power, and any trailer or other attachment to be utilised in conjunction with or drawn by any such machine.

**Watercraft** — any vessel, craft or thing made or intended to float on or in or travel through water, other than model boats.

**We/Us/Our** — Miramar Underwriting Agency Pty Ltd acting under a binder as an agent of the Security.

**You / Your** — the person(s), companies or firms named in the current Schedule as the 'Insured' and as more specifically defined under Section 3 of this Policy.

**Your Business** — the business as described in the Schedule (and, where applicable, as further described in any more specific underwriting information provided to us at the time when this insurance was negotiated).

## General Exclusions

The following General exclusions apply to all sections of this Policy.

### 1. War, terrorism, radioactivity

This Policy excludes loss, damage, destruction, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- 1.1 War, invasion, acts of foreign enemies, hostilities or war-like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, or confiscation or nationalization or requisition or destruction of or damage to property by or under order of any government or public local authority.

- 1.2 Any act(s) of Terrorism

For the purpose of this Exclusion 1.2, an act of terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

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

- 1.3 Radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion.

Provided that this Exclusion 1.3 shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

This Policy also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to the above.

**2. Business in liquidation or ceases to trade**

If Your Business is placed into liquidation or administration, a receiver is appointed or Your Business is wound up or is permanently discontinued, then unless otherwise agreed by Us in writing, all cover under this Policy ceases from the time Your interest is transferred or Your Business ceases to trade other than cover provided under Section 4 of this Policy.

**3. Geographical limitations**

Unless We agree in writing to the contrary, We will not pay for any loss or Damage to Your Property Insured that is outside the Commonwealth of Australia at the time of its Damage, except as specifically stated otherwise in the appropriate section of this Policy.

**4. Wilful acts**

Subject to the provisions of the Insurance Contracts Act 1984, We will not pay for any loss or Damage caused by either Your wilful act or by the wilful act of another party committed with Your knowledge and consent and which You were capable of preventing.

**5. Known defects**

We will not pay for loss or Damage caused by faults or defects known to You or any employee whose knowledge in law would be deemed to be Yours and not disclosed to Us at the time this insurance was arranged.

**6. Date recognition**

In respect of any claim of whatsoever nature which consists of or arises directly or indirectly out of or in connection with the failure or inability of any:

- (a) electronic circuit, microchip, integrated circuit, microprocessor, embedded system, BIOS or other instruction set, hardware, software, firmware, program, computer, data processing equipment, telecommunication equipment or systems, or any similar device, or any
- (b) media or systems used in connection with any of the foregoing

whether Your property or not, at any time to achieve fully and successfully any or all of the purposes and consequential effects intended by the use of any number, symbol or word to denote, represent or express a date including, but without being limited to, any failure or inability to recognise, capture, save, retain or restore and/or correctly to manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of or in connection with

- (i) anything referred to in (a) or (b) recognising, using or adopting any date, day of

the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of time, or

- (ii) the operation of any command or logic which has been programmed or incorporated into anything referred to in (a) or (b) above.

This exclusion will not exclude any claim for subsequent Damage to any property insured by this Policy or consequential loss which is solely and directly occasioned by a Defined Event (as defined hereunder), arising under any of the sections listed below, but only to the extent that such claim would otherwise be insured under those sections.

Section 1 - Property Damage

Section 2 - Business interruption

### **Defined Event**

For the purposes of this exclusion only, 'Defined Event' shall mean fire, lightning, thunderbolt, explosion, implosion, earthquake, subterranean fire, volcanic eruption, impact, Aircraft and other aerial devices or articles dropped or falling from them, the acts of persons taking part in riots, civil commotions, strikers or of locked out workers or of persons taking part in labour disturbances, malicious persons, storm and/or tempest and/or rainwater and/or wind and/or hail, water and/or other liquids and/or substances discharged and/or overflowing and/or leaking from any apparatus and/or pipes, impact by any road Vehicle or animal, or theft (other than theft by employees).

### **7. Electronic Data exclusion**

We will not cover Electronic Data or the cost of rewriting records as a result of loss of electronic data.

However, we will provide cover for losses to electronic data and rewriting of records arising out of the following perils:

fire, lightning, thunderbolt, explosion, implosion, earthquake, subterranean fire, volcanic eruption, impact, Aircraft and/or other aerial devices or articles dropped or falling from them, breakage of glass, the acts of persons taking part in riots or civil commotions or of strikers or of locked out workers or of persons taking part in labour disturbances, malicious persons, storm and/or tempest and/or rainwater and/or wind and/or hail, water and/or other liquids and/or substances discharged and/or overflowing and/or leaking from any apparatus and/or appliance and/or pipes, impact by any road Vehicle or animal, or theft (other than theft by employees).

If the Electronic equipment cover section of the Policy is current and Electronic Data and electronic data media is insured we will also provide cover for losses to electronic data arising out of vibration, power surge, low voltage, mechanical, electrical and electronic breakdown, but not breakdown occurring as a result of any virus, worm, trojan horse, hacking, or any unauthorised access.

## General Conditions

### The following General Conditions apply to all Sections of this Policy

#### 1. Accountancy records

You must provide to Us all books of account, business books and other documents as may be required to investigate or verify claims. If You do not, We may refuse to pay or may reduce the amount of a claim.

#### 2. Assignment

This Policy and any rights hereunder cannot be assigned without Our prior written consent.

#### 3. Notification of Alteration of Risk

Upon You becoming aware of any changes to the Business description as stated in the Schedule, or other changes material to the risk of Loss or Damage, You shall notify Us in writing as soon as reasonably practicable.

We reserve the right to accept or deny cover at the time of such notification and to establish a separate rate and premium for any such change in description of Business as described in the Schedule.

However, this insurance will not be prejudiced by:

- (a) such changes in the use or occupancy of the Premises as are usual or incidental to Your Business,
- (b) the performance of any structural alterations or repairs to Property Insured, providing the circumstances are reported to Us in writing within a reasonable time after You become aware of them; and provided that You agree to pay a reasonable additional premium for the increased risk if so requested by Us;
- (c) the cessation of operations or vacancy of any building for a period in excess of ninety (90) consecutive days, providing the circumstances are reported to Us within a reasonable time after You become aware of them; and provided that You agree to pay a reasonable additional premium for the increased risk if so requested by Us.

#### 4. Breach of Condition or Warranty

Breach of a condition or warranty without Your knowledge or consent or error in name, description or Situation of property will not prejudice Your rights under this Policy provided notice in writing is given to Us when such breach or error comes to Your knowledge. Reasonable extra premium shall be paid if required, from the date of such breach or error.

#### 5. Cancelling Your Policy

##### How You may cancel this Policy

- You may cancel this Policy at any time by telling Us in writing that You want to cancel it. You can do this by giving the notice to Your Insurance broker.
- Where 'You' involves more than one person, We will only cancel this Policy when a written agreement to cancel this Policy is received from all persons named as the Insured.

##### How We may cancel this Policy

- We may cancel this Policy in any of the circumstances permitted by law by informing You in writing, in which case cancellation takes place at the time You enter into another contract of insurance intended to replace this Policy, or at 4.00 pm on

- the 30th day after delivery of the notice to You, whichever is the earlier.
- We will give You this notice in person or send it to Your address last known to us.

### **The premium**

We will refund to You the proportion of the premium for the remaining Period of Insurance.

### **6. Premium funders**

If the premium has been funded by a premium funding company which holds a legal right over this Policy by virtue of a notice of assignment and irrevocable power of attorney, a refund will be made to the premium funding company of the proportionate part of the premium applicable to the unexpired Period of Insurance.

### **7. Excess**

If more than one Excess can be applied to one occurrence, then You will only need to pay the highest Excess. The applicable Limit(s) or Sub Limit(s) of Liability shall apply in addition to, and shall not be reduced by, the amount of any applicable Excess.

### **8. How Goods and Services Tax (GST) affects any payments We make**

The amount of premium payable by You for this Policy includes an amount on account of the GST on the premium.

When We pay a claim, Your GST status will determine the amount We pay.

When You are:

- (a) not registered for GST, the amount We pay is the applicable Limit(s) or Sub Limit(s) of Liability including GST.
- (b) registered for GST, We will pay the applicable Limit(s) or Sub Limit(s) of Liability and where You are liable to pay an amount for GST in respect of an acquisition relevant to Your claim (such as services to repair a Damaged item insured under the Policy) We will pay for the GST amount.

We will reduce the GST amount We pay for by the amount of any input tax credits to which You are or would be entitled if You made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through Your Business Activity Statement (BAS).

You must advise Us of Your correct Australian Business Number and Taxable Percentage.

Any GST liability arising from Your incorrect advice is payable by You.

Where the amount of Your claim is greater than the applicable Limit(s) or Sub Limit(s) of Liability, We will only pay an amount for GST (less Your entitlement for Input Tax Credit) applicable to the amount of the loss settlement. This means that if these amounts are not sufficient to cover Your loss, We will only pay the GST relating to Our settlement of the claim.

We will (where relevant) pay You on Your claim by reference to the GST exclusive amount of any supply made by any business of Yours which is relevant to Your claim.

GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable Percentage is Your entitlement to an Input Tax Credit on Your premium as a percentage of the total GST on that premium.

**9. Our maximum liability**

Except as otherwise stated elsewhere in this Policy, the maximum amount We will pay will not exceed the amount stated in the Schedule as the applicable Limit(s) or Sub Limit(s) of Liability for those sections selected.

The Limit(s) or Sub Limit(s) of Liability shall apply in addition to, and shall not be reduced by, the amount of any applicable Excess.

**10. Currency**

All amounts under this Policy are expressed and payable in Australian dollars.

**11. Inspections**

We (or agents appointed by Us) have the right to inspect and examine, by mutual appointment, any Property Insured.

**12. Jurisdiction**

All disputes arising out of or under this Policy shall be subject to determination by any court of competent jurisdiction within Australia according to the law which applies to that jurisdiction.

**13. Progress payments**

We will not unreasonably withhold progress payments. We will make progress payments on claims at intervals to be agreed by Us following receipt of an interim report from our loss adjuster or representative.

**14. Reasonable care**

You must take reasonable precautions to prevent Personal Injury or Property Damage as if You were not covered by this Policy such as:

- (a) if You discover Your Products may be defective and the defect may cause a claim under Section 3 - General and Products Liability, at Your expense You must take reasonable steps to restrict, trace, recall, modify, replace or repair the Products.
- (b) maintain and look after other person's or organisation's property and buildings used or occupied by You, in accordance with Your agreement with them.
- (c) if Your occupation includes digging below ground at sites away from Your Business Premises, You must obtain the location of underground services from the owners of the services.
- (d) use and store all hazardous materials as required by law.

If You do not take reasonable precautions, We may refuse to pay part or all of Your claim.

**15. Single occurrence**

We will not pay for loss or Damage to property covered by this Policy under more than one section of this Policy in respect of the same item and occurrence unless a relevant Limit or Sub Limit of Liability has been paid out in full and You have not been fully covered for the loss or Damage.



## **16. Waiver of subrogation rights**

We may not be liable to pay any benefits under this Policy for loss, Damage or liability if You agree or have agreed to limit or exclude any right of recovery against any third party who would be liable to compensate You with respect to that loss, damage or liability however:

- (a) We shall waive any rights and remedies or relief to which we are or may become entitled by subrogation against:
  - (i) any co-insured (including directors, officers and employees);
  - (ii) any corporation or entity (including directors, officers and employees) owned or controlled by any insured or against any co-owner of the property insured.
- (b) You may without prejudicing Your position under this Policy:
  - (i) release any statutory governmental, semi-governmental or municipal authority from any liability if required at law to do so;
  - (ii) agree to enter into a contract for storage of goods or merchandise if the terms of the contract include a disclaimer clause;
  - (iii) agree to enter into a lease for occupancy of any building or part of a building or a lease or hiring of property where the terms of the lease or hiring include a disclaimer clause in favour of the lessor or the owner.

## **17. Claim preparation expenses**

We will pay for costs necessarily and reasonably incurred for the preparation of a claim for which we agree to indemnify You under this Policy. The most we will pay is \$25,000 (twenty five thousand dollars) in total, unless a specific amount is included in the particular section of the Policy.

Provided that before You incur these claim preparation costs You obtain our written approval to incur these costs.

This benefit is in addition to any applicable Limit or Sub Limit of Liability.

## **18. Bankruptcy or insolvency**

In the event that You should become bankrupt or insolvent, we shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency.

In case of execution against You of any final judgment covered by this Policy being returned 'unsatisfied' by reason of such bankruptcy or insolvency, then an action may be maintained by the injured party or their representative against us in the same manner, and to the same extent as You but not in excess of the applicable Limit or Sub Limit of Liability of this Policy.

## **19. Non-imputation**

Where this insurance is arranged in the joint names of more than one Insured person, company or organisation, as described in the Schedule, it is hereby declared and agreed that:

- (a) each Insured shall be covered as if it made its own proposal for this insurance
- (b) any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each Insured
- (c) any knowledge possessed by any Insured shall not be imputed to the other Insured(s).

## **20. Complaints Handling and General Insurance Code of Practice**

This Certificate is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. Any enquiry or complaint relating to this Insurance should be referred to the Coverholder shown above in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

**Lloyd's Underwriters' General Representative in Australia**  
**Suite 2, Level 21 Angel Place**  
**123 Pitt Street Sydney NSW 2000**  
**Telephone Number: (02) 9223 1433**  
**Facsimile Number: (02) 9223 1466**

who will refer your dispute to the Complaints Department at Lloyd's.

Complaints that cannot be resolved by the Complaints Department may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

The Underwriters hereon agree that:

- (i) In the event of a dispute arising under this Insurance, the Underwriters at the request of the Assured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- (ii) Any summons notice or process to be served upon the Underwriters may be served upon the Lloyd's Underwriters' General Representative in Australia as referenced above who has authority to accept service and to enter an appearance on the Underwriters' behalf, and who is directed at the request of the Assured to give a written undertaking to the Assured that he will enter an appearance on the Underwriters' behalf.
- (iii) If a suit is instituted against any one of the Underwriters, all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

# Section 1 — Property Damage

## The Indemnity

In the event of any Damage (not otherwise excluded) happening at the Situation to the Property Insured, We will, subject to the provisions of this Policy including the limitation on Our liability, indemnify You in accordance with the applicable Basis of Settlement.

## Additional Benefits

We will also indemnify You for the following Additional Benefits. However, unless otherwise stated to the contrary hereunder, Our liability shall not be increased beyond the applicable Limit(s) or Sub Limit(s) of Liability as stated in the Schedule.

### (a) Professional Fees

Architects', surveyors', consulting engineers', town planning and other consultants', legal and other fees and clerks of works' salaries for estimates, plans, specifications, quantities, tenders, reports, consultations, giving of evidence and supervision necessarily incurred in Reinstatement consequent upon Damage to Property Insured but not such costs, fees and salary for preparing any claim hereunder. Our liability under this Additional Benefit is limited to \$25,000 (twenty five thousand dollars) any one event, unless stated otherwise in the Schedule.

### (b) Government Fees

Any fee, contribution or other impost payable to any Government, Local Government or other Statutory Authority; where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate any building(s) insured hereunder; provided that We shall not be liable for payment of any fines and/or penalties imposed upon You by any such Authorities. The cost of government fees is included in the Limit of Liability.

### (c) Fire Extinguishment Costs

Costs and expenses necessarily and reasonably incurred for the purpose of:

- (i) extinguishing fire at or in the immediate vicinity of Your Premises or threatening to involve the Property Insured or for the purpose of preventing or diminishing imminent Damage to the Property Insured by any other event insured against by this Policy, and including gaining access consequent upon Damage to Your Premises,
- (ii) the replenishment of fire fighting appliances and apparatus;
- (iii) shutting off the supply of water or other substance following accidental discharge from any fire protective equipment or otherwise escaping from intended confines;
- (iv) statutory charges payable by You to a fire brigade or fire fighting authority for attendance at a fire or chemical emergency involving Your Premises.

Our liability under this Additional Benefit is limited to \$50,000 (fifty thousand dollars) any one event and is payable in addition to the Limit of Liability.

### (d) Protection and Security Guard Costs

Costs and expenses necessarily and reasonably incurred for the protection and safety of

the Property Insured (including the employment of security guards to safeguard Property Insured) pending the repair or replacement made necessary by any Damage for which a claim is payable under this Section.

Our liability under this Additional Benefit is limited to \$25,000 (twenty five thousand dollars) any one event and is payable in addition to the Limit of Liability.

**(e) Locks and Keys**

The cost of replacing locks and/or keys and/or electronic access cards and/or combinations where (if as a result of burglary, theft or any attempt thereof) the keys and/or electronic access cards are stolen and/or details of combinations have become known, or if there are reasonable grounds to believe the keys and/or electronic access cards may have been duplicated.

We will also pay costs and expenses necessarily and reasonably incurred for:

- (i) opening safes and/or strongrooms as a result of the theft of keys and/or combinations becoming known, and
- (ii) switching off and re-setting security or alarm systems consequent upon Damage recoverable hereunder.

Our liability under this Additional Benefit limited to \$10,000 (ten thousand dollars) any one event, unless stated otherwise in the Schedule.

**(f) Removal of Debris**

Costs and expenses necessarily and reasonably incurred in respect of:

- (i) the removal, storage and/or disposal of Debris (or anything which caused the Damage) from the Situation and the cost of cleaning up at the Situation, including the removal of water and/or other substances used to extinguish or suppress fire or otherwise minimise the extent of the Damage.
- (ii) the removal, storage and/or disposal of Debris from premises, roadways, services, railways or waterways owned by any other person or entity (and (notwithstanding Perils Exclusion 6) where You are liable at law to remove, store or dispose of such Debris as a result of the Damage, together with the cost of cleaning up; provided that such liability was not assumed by You under an agreement entered into after the commencement of the Period of Insurance or any renewal thereof unless liability would have attached in the absence of such agreement.

Provided that the insurance under this section does not extend to any liability that You may incur to pay compensation to others as a consequence of Pollution or Contamination of any kind.

- (iii) the demolition and removal of any Property Insured that is no longer useful for the purpose for which it was intended, providing such demolition and removal is necessary to repair, replace or rebuild Damaged Property Insured.
- (iv) the demolition, dismantling, shoring up, propping, underpinning of the Property Insured or the carrying out of other temporary repairs to the Property Insured as a result of the Damage, including the shoring up, propping or underpinning of adjoining premises as a result of the Damage.

Our liability under this Additional Benefit is limited to \$100,000 (one hundred thousand dollars) any one event, unless stated otherwise in the Schedule, and is payable in addition

to the applicable Limit or Sub Limit of Liability.

**(g) Rent Payable**

Rent payable by You where the Building or any part(s) thereof are unfit for occupation in consequence of Damage to the Building or elsewhere on or about the Building.

Our liability under this Additional Benefit is limited to \$25,000 (twenty five thousand dollars), any one event and is payable in addition to the Limit of Liability.

**(h) Temporary Accommodation Expenses**

Where any residential accommodation occupied by You or by any of Your employees is Property Insured under Section 1 of this Policy and is rendered uninhabitable by the occurrence of an insured event, this insurance is extended to include reasonable expenses for alternative accommodation necessarily incurred by You provided that:

- (i) such expenses are not otherwise insured,
- (ii) the period for which the expenses are covered will be limited to the period reasonably required for Reinstatement of the Damaged Property Insured; and
- (iii) We will be entitled to deduct a reasonable allowance for expenses reduced or avoided in consequence of the Damaged Property Insured being rendered uninhabitable.

Our liability under this Additional Benefit is limited to \$10,000 (ten thousand dollars) in respect of any one event, unless otherwise stated in the Schedule.

**(i) Personal property (including tools of trade)**

The cost of repairing or replacing personal property (including tools of trade) belonging to Your directors, partners, executive officers and employees, and personal property of visitors or patients whilst such persons are at Your premises, where such property has been Damaged by any peril or event insured against hereunder.

However, unless You are responsible for the Damage, this extension of cover does not apply to Damage to the personal effects of any of Your directors or employees who is entitled to indemnity for that Damage under any other policy of insurance.

Our liability under this Additional Benefit to any one person is limited to \$5,000 (five thousand dollars) any one event, unless stated otherwise in the Schedule.

**(j) Social Club**

The cost of repairing or replacing property of Your welfare, sports and social club, which has been Damaged by any peril or event insured against hereunder.

This Policy extends to cover the property of any social club, sports club or similar body whose activities are principally for the benefit of Your Employees and is deemed to be included in the description of Insured Property as if it were owned by You.

Our liability under this Additional Benefit is included in the Limit of Liability.

**(k) Customs, Excise and Other Duties**

Customs, excise and/or other duties which You may become liable to pay in the event of Damage to Property Insured and/or Your liability to compensate others who may become liable for such customs, excise and/or other duties.

Our liability under this Additional Benefit is included in the Limit of Liability.

**(l) Locating the source of Water Damage**

The cost of locating the source of any water Damage which is caused by water bursting or leaking from any pipes, water mains, tanks or drains. However, We will not pay for the cost of repairing or replacing any pipes, water mains, tanks or drains unless they have been Damaged by an insured event.

Our liability under this Additional Benefit is limited to \$10,000 (ten thousand dollars) any one event, unless stated otherwise in the Schedule.

**(m) Expediting Expenses**

Costs and expenses incurred for expediting the Reinstatement of any Damaged Property Insured. Such costs and expenses, includes but is not limited to, penalty rates for wages during overtime, shift, night, Sunday or holiday working; the hire of additional labour, equipment or resources, payment for carriage by express passenger, fast goods or other rail or road transport, or carriage by air freight via licensed airline(s) operating regular scheduled services but not by aircraft chartered for such carriage unless agreed in writing by Us.

Our liability under this Additional Benefit is limited to \$100,000 (one hundred thousand dollars) any one event, unless stated otherwise in the Schedule.

**(n) Liability to make enquiries**

Costs and expenses necessarily and reasonably incurred by the Insured in respect of any legal liability to make Statutory Inquiries or other inquiries as a result of Damage to the Property Insured. The term "Statutory Inquiries" shall mean any judicial, coronial or other form of inquiry or hearing established by or at the direction of any government, semi-government, local or planning authority.

Provided always that Our liability under this Additional Benefit shall not exceed the Sub Limit of Liability stated in the Schedule against "Liability to make enquiries".

**(o) Taking Inventory**

Costs and expenses necessarily and reasonably incurred by the Insured in taking inventory (including unpacking, repacking and restocking) to identify, quantify and value any property which has been Damaged consequent upon the occurrence of any peril or event hereby insured against, including examination of property not belonging to but in the care, custody or control of the Insured.

Provided always that Our liability under this Additional Benefit shall not exceed the Sub Limit of Liability stated in the Schedule against "Taking Inventory".

**(p) Rewards**

This Policy is extended to cover the cost of any reward paid by You for the purpose of protecting or recovering any Property Insured.

However:

- (a) no payment will be made unless it contributes to the protection or recovery of Your property; and
- (b) the terms of the reward must be agreed by Us prior to the reward being offered; and
- (c) Our liability will not be increased beyond the applicable Limit or Sub Limit of Liability on that property. We will not unreasonably refuse its agreement to the terms of a reward payable under this extension.

Our liability under this Additional Benefit is limited to \$5,000 (five thousand dollars) any one event, unless stated otherwise in the Schedule.

**(q) Landscaping**

Reasonable costs of landscaping at Your Premises, including trees, shrubs, plants, lawn, gates, fences and retaining walls, following Damage by an insured event.

Our liability under Additional Benefit is limited to \$50,000 (fifty thousand dollars) any one event, unless stated otherwise in the Schedule.

Provided that only the insurance under Clause (a) of these Additional Benefits shall be subject to the application of the Under Insurance Memorandum applicable to Section 1.

## Definitions Applicable to Section 1

**Debris** — means the residue of Damaged Property Insured excluding any material which is itself a Pollutant and which is deposited beyond the boundaries of the Situation.

**Documents** — means written or printed: deeds, wills, agreements, manuscripts, maps, plans, drawings, office and business records of every description, computer data, designs, books of account, books, letters, certificates, documents or forms of every description (but excluding book debts and Money) belonging to You, or in Your custody, or for which You are legally liable or have assumed a responsibility.

**Indemnity Value** — means the cost necessary to rebuild, replace, repair or restore (as the case may be) Property Insured to a condition substantially the same as its condition at the time of the Damage, but not better or more extensive than that condition, taking into consideration its age, wear and tear and remaining useful life.

**Market Value** — means the estimated amount for which Your goods or merchandise should exchange immediately before the Damage, between a willing buyer and a willing seller in an arms-length transaction, after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion.

**Property Insured** — means all real and personal property of every kind and description (except as hereinafter excluded) belonging to You or for which You are responsible, or have assumed responsibility to insure prior to the occurrence of any Damage, including all such property in which You may acquire an insurable interest during the Period of Insurance.

The term 'personal property' shall include Money as defined in the General Definitions of this Policy.

**Designation Clause** — For the purpose of ascertaining the classification under which any property is insured, We agree to accept the designation assigned to such property by You.

## Basis of Settlement

**(a) On buildings, machinery, plant and all other property and contents (other than those specified below);** the cost of Reinstatement in accordance with the provisions of the Reinstatement and Replacement, Extra Cost of Reinstatement and Output Replacement Memoranda as set out herein.

Provided that if You elect to claim the Indemnity Value of any Damaged property, We will pay to You the value of such property at the time of the happening of the Damage or at Our option reinstate, replace or repair such property or any part thereof. In any event

We will pay costs incurred by You in accordance with the provisions of the Extra Cost of Reinstatement Memorandum.

**(b) On machinery, plant and equipment leased on a Residual Value basis:**

- (i) In the event of the actual or constructive total loss or destruction of such property; the amount for which You, as lessee, are contractually liable to the lessor, but not exceeding the sum represented by rent payable under such lease(s) for the period commencing on the date of the loss or destruction and ending not later than the retirement date(s) of such lease(s), plus the Residual Value(s), less any salvage value.
- (ii) Where the Reinstatement Value of such property exceeds its Residual Value, We will also pay to You difference between the Reinstatement Value and the Residual Value.
- (iii) Where such property is Damaged but not lost or destroyed, the Basis of Settlement shall be the cost of repairs in accordance with the provisions of the Reinstatement or Replacement and Extra Cost of Reinstatement Memoranda and any other applicable Memoranda as set out herein.

For the purpose of this clause (b):

- (1) There shall be deemed to be a constructive total loss of a Damaged item of machinery, plant or equipment when the cost necessary to repair that item exceeds the cost necessary to replace it with similar property in a condition equal to, but not better or more extensive than, its condition when new.
  - (2) the term 'Residual Value' shall mean the minimum amount which the lessee has guaranteed that the lessor will receive on conclusion of the lease, by disposal of the leased property.
  - (3) the 'Reinstatement Value' shall mean the cost of Reinstatement as defined in clause (a) of the Reinstatement or Replacement Memorandum.
- (c) On raw materials, supplies and other merchandise not manufactured by You;** the replacement cost at the time and place of replacement or, if such property is not replaced, the value thereof at the time and place of the Damage.
- (d) On material in process of manufacture;** the replacement value of the raw materials and the value of labour and other overhead charges expended thereon at the time and the place of the Damage.
- (e) On finished goods;** the replacement value of the raw materials and the value of labour and other overhead charges expended thereon before any allowance for profit or the cost of re-stocking such goods, whichever is the lesser.
- (f) On goods sold but not delivered for which You are responsible, and with regard to which under the conditions of sale, or any statute or at common law, the contract of sale is cancelled either wholly or in part by reason of the Damage;** the contract price or, in the case of a partial cancellation of the contract of sale, that part of the contract price which shall have been lost to You because of the partial cancellation.
- (g) On customers' goods for which You are responsible or may be held legally liable in the event of Damage to such goods;** the replacement cost at the time and place of replacement.
- (h) On computer systems records which includes Electronic Data, Documents, manuscripts, deeds, specifications, plans, drawings, designs, business books**



**and other records of every description;** the cost of reinstating, replacing, reproducing or restoring same, including information contained therein or thereon but excluding the value to the Insured of the said information; or, if such is not required, the Basis of Settlement shall be the replacement cost of materials as blank stationery at the time and place of the Damage.

- (i) **On patterns, models, moulds, jigs, templates, dies or casts;** the cost of repair or replacement (if actually replaced) otherwise the Indemnity Value to You of such property.
- (j) **On glass;** the cost of repairing or replacing the broken glass including the cost of temporary shuttering and hiring of security service pending replacement of broken glass, the cost of replacing signwriting, ornamentation, burglar alarm tapes or protective films on the glass, the removal and re-fixing of window and show case frames and fittings and heat reflecting material or process on the glass.
- (k) **On personal property (including tools of trade) belonging to Your directors, partners, executive officers and employees, and personal property of visitors or patients whilst such persons are at Your premises;** the cost of replacement or repair as described in clauses (a) and (b) of the Reinstatement or Replacement Memorandum or, if such property is not replaced or cannot be repaired, the replacement value thereof at the time and place of the Damage.
- (l) **On personal property of Your welfare, sport and social clubs;** the cost of Reinstatement, replacement or repair as described in clauses (a) and (b) of the Reinstatement or Replacement Memorandum.
- (m) **On works of art and/or curios;**
  - (1) where the Damage is repairable, the cost of repair or restoration to a condition substantially the same as its condition prior to the occurrence of the Damage.
  - (2) where the property is physically lost or destroyed; the cost of replacement or, where such property cannot be replaced, the greater of the market value immediately prior to the occurrence of the loss or destruction or the value as evidenced by the latest valuation(s) held by You.
- (n) **On empty premises awaiting demolition;** the salvage value of the building materials and/or landlords fixtures and fittings.
- (o) **On Securities** (as herein defined):
  - (i) if the Securities can with Our approval be replaced, the cost of replacement paid or payable by You, or
  - (ii) if the Securities cannot or are not to be replaced by You, the greater of:
    - (a) the price for which You purchased them, and
    - (b) the closing market value on the last business day prior to the date of discovery by You of the loss or destruction of the Securities, or if the time of discovery by You is after the close of the market, their closing market value on the day of discovery by You of the loss or destruction of the Securities;
  - (iii) In the case of a loss of subscription, conversion or redemption privileges through the loss of any Security, the value of such privileges immediately preceding the expiration thereof;
  - (iv) where the property is held by You as security, pledge or collateral for an advance or

loan, the lesser of:

- (a) the value of the property as determined and recorded by You when making the advance or loan, or;
- (b) in the absence of such record the unpaid portion of the advance or loan plus accrued interest thereon at prevailing commercial rates.

such valuation being the in the currency in which the loss was sustained. Losses sustained in currencies other than Australian dollars shall be settled by converting the amount of loss to Australian dollars at the market rate at the time of settlement of the loss or such other rates as may be expressly agreed with Us.

If there is no market price or value on the relevant day stated herein, then, the value shall be agreed between You and Us or, in default thereof, You and the Ourselves shall submit to arbitration and be bound by the decision of the arbitrator.

The arbitrator must be appointed by mutual agreement between the parties within seven (7) days of either party giving notice that the matter will be required to be submitted for arbitration. If the parties cannot agree on an arbitrator, then either party may request the President of the Securities Institute of Australia to appoint an arbitrator. If the said President is a present or past employee of any parties to this insurance contract or has a direct or indirect interest in the security or securities in dispute, then another senior officer of the Securities Institute of Australia who is not likewise compromised shall appoint the arbitrator.

## Memoranda to Section 1

Except to the extent that this Policy is hereby modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

### **Interests Of Other Parties**

We will indemnify any other persons or entities having any pecuniary or economic interest in the Property Insured by virtue of any financial or other agreement entered into between such persons or entities and You. We shall waive all rights of subrogation which may otherwise have existed against such other persons or entities.

The written receipts of any such other persons or entities in respect of any claims settlements under this section made in relation to their respective interests shall be a full and sufficient discharge to Us with respect thereto and shall not increase Our overall liability beyond the Limit(s) or applicable Sub Limit(s) of Liability as stated in the Schedule.

Where the insurance covers the interest of more than one person or entity, any act or neglect of an individual person or entity will not prejudice the rights of the remaining persons or entities; provided that the remaining persons or entities shall, immediately on becoming aware of any act or neglect whereby the risk of Damage has increased, give notice in writing to Us and, if so requested, pay such reasonable additional premium as We may require.

### **Branded Goods**

In the event of a claim, any salvage of branded goods or merchandise owned by You or held by You in trust or on commission and any goods sold but not delivered shall not be disposed of by sale without Your consent. If such salvage is not disposed of by sale, then the basis of settlement of the claim shall be the Market Value of the goods after brands, labels or names

have been removed by You or on Your behalf.

### **Declared Values**

The Schedule of Declared Values at each Situation (in accordance with the applicable Basis of Settlement) attaches to and forms part of this Policy for the purpose of the application of the Under Insurance Clause applicable to this Section.

**Reinstatement or Replacement** (Applicable to buildings, machinery, plant and all other property and contents; other than those specified in items (c) to (i) and (l) to (o) under Basis of Settlement)

The basis upon which the amount payable is to be calculated shall be the cost of Reinstatement of the Damaged property insured at the time of its Reinstatement; subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub Limit(s) of Liability of this Section.

For the purpose of the insurance under this memorandum “**Reinstatement**” shall mean:-

- (a) Where property is lost or destroyed: in the case of a building, the rebuilding thereof or in the case of property other than a building, the replacement thereof by similar property; in either case in a condition equal to, but not better or more extensive than, its condition when new.
- (b) Where property is Damaged: the repair of the Damage and the restoration of the Damaged portion of the property to a condition substantially the same as, but not better or more extensive than, its condition when new.

### **Provisions**

- (1) The work of Reinstatement may be carried out at another location, and in any manner suitable to You, provided You pay any additional costs to carry out such work at another location.
- (2) You must commence and carry out the work of Reinstatement with reasonable despatch after Our consent has been obtained. If You do not, We will not pay more than the cost that would have been incurred if the work of Reinstatement had been commenced and carried out with reasonable despatch.
- (3) Where any lost or destroyed property is replaced by smaller and/or cheaper property, We shall pay to You (in addition to the cost of such replacement property) the difference between the cost which would have been incurred, if the lost or destroyed property had been reinstated (in accordance with clause (a) of the definition of “Reinstatement”) and the cost of the said smaller and/or cheaper property.
- (4) Where any lost or destroyed property is reinstated or replaced with dissimilar property, whether or not such property is to be used for a similar purpose to the lost or destroyed property, We shall pay to You the cost of such dissimilar property; provided that Our liability is not thereby increased beyond the amount which would have been payable under this Policy if such lost or destroyed property had been reinstated in accordance with clause (a) of the definition of ‘Reinstatement’.

Provided that, where the cost of such dissimilar property is less than the cost which would have been incurred if the lost or destroyed property had been reinstated in accordance with clause (a) of the definition of ‘Reinstatement’, We shall also pay to You the difference between the cost of such dissimilar property and the cost of Reinstatement which would otherwise have been incurred.

- (5) Where Property Insured is Damaged but not destroyed, Our liability will not exceed the amount We could have been called upon to pay for Reinstatement of such property if it had been destroyed.
- (6) If You elect not to rebuild, replace, restore or repair the Damaged Property Insured, We will pay You the Indemnity Value or the cost that would have been incurred if such property could have been repaired, whichever is the lesser amount.
- (7) You shall not be bound to reinstate any destroyed building(s) (together with machinery, plant and all other contents, other than stock, therein) but may, at Your option purchase an alternative building(s) (including or excluding machinery, plant and all other contents, other than stock, therein) to replace the destroyed property insured; provided that Our liability is not thereby increased beyond the amount which would have been payable under this Policy if the destroyed property had been reinstated in accordance with the provisions of clause (a) of the definition of 'Reinstatement'.

In the event that both the total replacement value and the total volume (measured over the roof and external walls) of the building or buildings purchased are less than both the total replacement value and the total volume (measured over the roof and external walls) of the building or buildings destroyed, then, the total amount recoverable hereunder shall include (in respect of that portion of the building volume which is not replaced) an additional amount equal to but not exceeding the equivalent proportion of the Indemnity Value of the destroyed building(s).

If both the total replacement value and the total quantity of machinery, plant and all other contents (other than stock) purchased are less than both the total replacement value and the total quantity of machinery, plant and all other contents (other than stock) destroyed, then, the total amount recoverable hereunder shall also include (in respect of that proportion of the total quantity of machinery, plant and equipment (excluding stocks) which is not replaced) an additional amount equal to but not exceeding the equivalent proportion of the Indemnity Value of the destroyed machinery, plant and all other contents (other than stock).

### **Extra Cost of Reinstatement**

(Applicable to buildings, machinery, plant and all other property and contents; other than those specified in items (c) to (i) and (l) to (o) under Basis of Settlement)

This Policy extends to include the extra cost of Reinstatement (including demolition or dismantling) of Damaged and/or undamaged property necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-Law or Regulation of any Municipal or other Statutory Authority; subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub Limit(s) of Liability of this Policy.

### **Provisions**

- (1) We will not pay the additional cost incurred in complying with any such Act, by-law or regulation with which You had been duly required to comply prior to the happening of the Damage.
- (2) The work of Reinstatement may be carried out at another location, and in any manner suitable to You, provided You pay any additional costs to carry out such work at another location.

- (3) You must commence and carry out the work of Reinstatement with reasonable despatch after Our consent has been obtained. If You do not, We will not pay more than the cost that would have been incurred if the work of Reinstatement had been commenced and carried out with reasonable despatch.
- (4) Our total liability under this Extra Cost of Reinstatement Memorandum will be limited to:
  - (a) the Sub Limit of Liability shown in the current Schedule for “Extra Cost of Reinstatement” which shall be payable in addition to the applicable Limit or Sub Limit of Liability, or
  - (b) if no such Sub Limit of Liability is stated, and the Damage is less than fifty percent (50%) of the Reinstatement cost of the Damaged Property Insured, Our liability shall be limited to the extra cost necessarily incurred in reinstating the Damaged Property Insured only.
- (5) The cover provided in respect of Extra Cost of Reinstatement shall not be subject to the Under Insurance Clause, which applies to the cover provided by the Reinstatement Clause.

### **Output Replacement**

Where any Damaged Property Insured consists of equipment, machinery or plant having a measurable function, capability or output and it is necessary to replace such property with a new item or items which perform a similar function or functions, then the Basis of Settlement for such property shall be as follows:

- (a) Where any property is to be replaced by an item or items which have the same or a lesser total function, capability or output, then the Basis of Settlement is the new installed cost of such replacement item or items that would give the same total function, capability or output as the property being replaced.
- (b) Where any property is to be replaced by an item or items which have a greater total function, capability or output and the new installed cost of such replacement item or items is no greater than the replacement value of the property being replaced, then the Basis of Settlement is the new installed cost of the replacement item or items.
- (c) Where any property is to be replaced by an item or items which have a greater total function, capability or output and the new installed cost of such replacement property is greater than the replacement value of the property being replaced, then the Basis of Settlement shall be that proportion of the new installed cost of the replacement item or items which the output of the property being replaced bears to the output of the replacement item or items. Provided always that the amount payable shall not be of lesser value than the new installed cost of such replacement item or items that would give the same total function, capability or output as the property being replaced.

Provided always that where any Damaged property may be properly repaired, We shall pay the cost of restoration of such Damaged property to a condition substantially the same as (but not better or more extensive than) its condition when new and Our liability shall not exceed the sum representing the cost which We could have been called upon to pay if such property had been totally destroyed.

### **Floor Space Ratio Index (Plot Ratio)**

In the event of any building(s) being Damaged and, as a result of the exercise of statutory

powers and/or authority by any Government Departments, Local Government or any other Statutory Authorities Reinstatement of such building(s) as before is prohibited and Reinstatement is only permissible subject to a reduced floor space ratio index:

We agree to pay in addition to any amount payable on Reinstatement of such building(s) the difference between:

- (a) the actual cost of Reinstatement incurred in accordance with the reduced floor space ratio index; and
- (b) the cost of Reinstatement which would have been incurred had a reduced floor space ratio index not been applicable.

In arriving at the amount payable under (a) and (b) above any payments made by Us shall include the extra cost of Reinstatement, including demolition or dismantling of the Property Insured, necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-Law or Regulation of any Municipal or other Statutory Authority.

Any payment made for the difference between (a) and (b) above shall be made as soon as the said difference is ascertained upon completion of the rebuilding works and certified by the architect acting on Your behalf in the Reinstatement of the building(s).

#### **Undamaged Foundations**

Where a building or an installation constructed on its own foundations is Damaged in circumstances for which a claim is payable under this Section but its foundations are either undamaged or not destroyed and, due to legal requirements, Reinstatement of the building has been carried out upon another site, the abandoned foundations shall be considered by Us as having been destroyed.

However, if the resale value of the original building site is increased by virtue of the presence of the abandoned foundations, then such increase in resale value shall be regarded as salvage and that amount shall be paid to Us by You upon completion of the sale of the site, or shall be deducted from the final amount of any monies payable by Us under this Section, whichever shall occur later.

#### **Playing surfaces**

We will pay, up to the greater of \$50,000 (fifty thousand dollars) or the amount shown in the current Schedule for playing surfaces, for the cost of repairing Damage to outdoor playing surfaces at the Situation, caused by:

- (a) vandals or malicious persons, other than You or Your guests, director's partners, officers, employees or members, or their guests,
- (b) fire occurring to insured property at the Situation for which we have admitted liability under this section; or
- (c) the action of the fire fighting services, police or other emergency services in attending to their duties at the Situation.

#### **Loss of Land Value**

Notwithstanding Property Exclusion 7 and Perils Exclusion 7, and subject to the following Provisions, if the requirements of any statute, regulation or any municipal or statutory authority do not allow rebuilding (or only allow partial rebuilding) at the Situation, We will also pay the difference between the land value before the Damage and the:

- (a) land value after such rebuilding, or
- (b) land value after it has been determined that rebuilding is not possible.

**Provisions**

- (1) Settlement shall be made following the ruling of the Local or Government Authority resulting in the loss of Land Value. Should settlement have been made and subsequently the ruling of the Local or Government Authority is changed prior to completion of the reconstruction, resulting in an increase in the Land Value, the part of the claim paid in excess of the revised Land Value shall be refunded to Us.
- (2) All differences relating to the Land Value arising out of the policy shall be referred to the decision of two registered valuers; one to be appointed by each of the parties and in case the two registered valuers do not agree, of a third valuer, appointed by the President of the Australian Property Institute who shall act as an expert, and not an arbitrator, whose decision shall be binding.

Our liability under this memorandum is limited to \$250,000 (two hundred and fifty thousand dollars) any one event, unless stated otherwise in the Schedule.

**Equipment Breakdown**

We will indemnify You against loss caused by or resulting from sudden and unforeseen Damage to any Insured Equipment which is in use or connected and ready for use at the Premises.

Our liability under this memorandum is limited to \$250,000 (two hundred and fifty thousand dollars) any one event, unless stated otherwise in the Schedule.

**Definitions applicable to this Equipment Breakdown memorandum**

**Boilers or Pressure Vessels means:** any boiler, economiser and/or other pressure vessel, including mountings and fittings, feed, circulating, supply or delivery pipes, valves and other apparatus thereof or thereon but shall not include:

- (a) any boiler setting, any refractory or insulating material;
- (b) any part of a boiler or fired vessel that does not contain steam or water;
- (c) any hose, buried piping, sewer piping, drainage piping, sprinkler system or its accessory equipment; or
- (d) any oven, stove, furnace or kiln but not excluding heat recovery piping or vessels used therewith.

**Electronic Data means:** the information stored on Media.

**Electronic Equipment means:** electronic equipment used:

- (a) for the generation, control, transmission, reception, recording, reproduction, playback or other use of television, radio or telephone signals,
- (b) for research, diagnostic, treatment, experimental or other medical or scientific purposes;
- (c) for computing, data processing, duplicating, inventory control, monitoring, scanning or office services; or
- (d) to start, stop or monitor one or more items of Insured Equipment;

but shall not include any anode, x-ray or video amplifier tube.

**Insured Equipment** means:

- (a) Machinery, Boilers or Pressure Vessels,
- (b) Electronic Equipment, including peripheral and ancillary equipment (including air conditioning plant associated therewith) and Media as now existing or hereafter acquired, Your own, held in trust or on commission or for which You may be liable or have accepted responsibility;

Your own, held in trust or on commission or for which You may be liable or have accepted responsibility.

**Machinery** means: any apparatus, including electronic control equipment, whether functioning independently or as part of a collection of apparatus which generates, contains, controls, transmits, receives, transforms or utilises any form or source of energy or power but shall not include:

- (a) any elevator, escalator, crane or hoist; or
- (b) any oven, stove, furnace or kiln;

but not excluding:

- (i) any pump, compressor, fan, blower, engine or turbine,
- (ii) any separate enclosed gear set connected to such Machinery by a coupling, clutch or belt;
- (iii) any electrical equipment; or
- (iv) any electronic equipment used solely to start, stop, control or monitor such Machinery;
- (c) any Vehicle, any mechanically or electrically propelled equipment, any towable equipment, power shovel, excavator, dragline or other mobile equipment, including equipment permanently mounted thereon; or
- (d) any conveyor belt.

**Media** means: material on which data is recorded, such as magnetic tapes, hard disks, floppy disks, cartridges, CDs or DVDs.

**Basis of Settlement applicable to this Equipment Breakdown memorandum**

- (a) Our liability for Insured Equipment which is Damaged is as follows:
  - (i) On Insured Equipment, the lesser of the cost:
    - (1) to repair the Damaged property; or
    - (2) to replace the Damaged property with similar property of like kind, capacity, size, quality and function that is compatible with your existing Insured Equipment.
  - (ii) On Media and Electronic Data for electronic and electro mechanical data processing and production equipment, the cost of blank material plus the cost of transcription from duplicates or from originals;
  - (iii) On exposed film, records, manuscripts, drawings and other valuable papers and records, the cost of blank material plus the cost of transcription from duplicates or from originals;



- (b) We will not be liable for:
- (i) more than the amount You actually spend in repairing or replacing Damaged Insured Equipment;
  - (ii) the cost of repairing or replacing any part or parts of a piece of equipment which is greater than the cost of repairing or replacing the entire piece of equipment; or
  - (iii) Damage to Insured Equipment which is either no longer used by You or obsolete.

If the Damaged Insured Equipment is not repaired or replaced within twelve (12) months after the date of the Damage then We will only pay for the Indemnity Value of the Damaged property.

**Additional Coverages applicable to this Equipment Breakdown memorandum**

The following additional coverages also apply to loss caused by or resulting from Damage to Insured Equipment. These coverages do not provide additional amounts of insurance, unless specifically stated otherwise:

**(a) Business Interruption**

If You have selected Section 2 - Business Interruption, We will also indemnify You under that Section following Damage which is indemnifiable under this memorandum, or would have been but for the application of an Excess.

Our limit of liability under this additional coverage is limited to \$250,000 (two hundred and fifty thousand dollars) any one event, unless stated otherwise in the Schedule, and is payable in addition to the amount of the Sub Limit of Liability stated in the Schedule for Equipment Breakdown.

**(b) Deterioration of Stock**

We hereby agree to pay You:

- (i) the amount of Your loss of food and beverage products;
- (ii) the amount of Loss to food and beverage products of others in Your care, custody or control, and for which You are legally liable; and
- (iii) that amount of additional expense which is reasonably incurred by You to reduce or avert such loss, but only to the extent that the total amount that otherwise would have been paid under clauses (a) and (b) above is thereby reduced; provided such loss or additional expense is due to spoilage resulting solely from Damage to an item of Insured Equipment, which occurs while this coverage is in effect.

With respect to this additional coverage only, "Damage" shall also be deemed to mean: the operation or failure to operate of any switch, thermostat, control, fuse, circuit breaker or overload device which is included in or forms part of the Damaged Insured Equipment, but not including the manual operation or setting of such switch, thermostat, control, fuse, circuit breaker or overload device.

As soon as practicable after any Damage, You shall utilise every available means to reduce the loss, including surplus machinery, duplicate parts, equipment, supplies and surplus or reserve Stock, which may be owned, controlled or obtainable from other sources, all to the extent that the amount for which We would otherwise be liable under this coverage is reduced.

**Exclusions applicable to the Deterioration of Stock coverage:**

We shall not be liable:

- (i) for any loss resulting from Your failure to use due diligence and dispatch and all reasonable means to protect the refrigerated food and beverage products from Damage following an insured event;
- (ii) with respect to Damaged refrigerated food and beverage products, for more than the Indemnity Value thereof at the time of the Damage, with proper deductions for depreciation, however caused.

Our limit of liability under this additional coverage is limited to \$10,000 (ten thousand dollars) any one event, unless stated otherwise in the Schedule, and is payable in addition to the amount of the Sub Limit of Liability stated in the Schedule for Equipment Breakdown.

**(c) Service Interruption**

If any Insured Equipment not owned, leased, operated or controlled by You is Damaged by an event insured against under this Policy, You will also be indemnified under Additional Coverage (a) Business Interruption and Additional Coverage (b) Deterioration of Stock of this memorandum, provided that the Damage is to an item of equipment that:

- (i) is defined in this memorandum;
- (ii) is used to supply telephone, electricity, air conditioning, heating, gas, water or steam services to You at Your location;
- (iii) is owned by the owner of the Building at the Premises or by a utility company; or by a company contracted to You to provide those services.

**(d) Hazardous Substances**

If a Hazardous Substance is involved in or released by the occurrence of an insured event, We will be liable for the increase in cost to repair, replace, clean up or dispose of affected Insured Equipment.

The "increase in cost" shall mean that cost or loss beyond that which would have been incurred had no Hazardous Substance been present.

Our limit of liability under this coverage is limited to \$25,000 (twenty five thousand dollars) any one event, unless otherwise stated in the Schedule, and is payable in addition to the amount of the Sub Limit of Liability stated in the Schedule for Equipment Breakdown.

**(e) Expediting Expenses**

Our liability under Additional Cover (m) Expediting Expenses, following a loss admissible under this Equipment Breakdown memorandum is limited to \$25,000 (twenty five thousand dollars) any one event, unless otherwise stated in the Schedule.

**(f) Temporary Hire Costs**

We will pay the cost, reasonably incurred, of hiring temporary replacement equipment of similar specification during the time taken to repair the Damaged Insured Equipment.

Our limit of liability under this coverage is limited to \$10,000 (ten thousand dollars) any one event, unless otherwise stated in the Schedule.

**(g) Media and Electronic Data Restoration**

If, as a result of Damage to Insured Equipment, Electronic Data or Media is Damaged, We shall also be liable for the additional costs of repairing or replacing such Electronic Data or Media, including the cost of gathering or assembling information.

We shall not be liable for Damage caused by or resulting from programming errors.

Our limit of liability under this coverage is limited to \$10,000 (ten thousand dollars) any one event, unless otherwise stated in the Schedule.

**(h) Demolition and Increased Cost of Construction**

We shall be liable under this coverage for the increased cost of repair or replacement of Damaged and/or undamaged Insured Equipment (including any necessary demolition and Site clearing costs) occasioned by the enforcement of any law, by-law, ordinance, Regulation, rule or ruling which is in force prior to the time of the Damage and which regulates or restricts the repair, replacement, construction or installation.

We shall also be liable under Additional Coverage (a) of this memorandum Business Interruption during the additional time required, with the exercise of due diligence and dispatch, to effect such repair or replacement as a result of the enforcement of said law, by-law or ordinance.

**Exclusions applicable to this Equipment Breakdown memorandum**

We shall not be liable for repair or replacement of any Insured Equipment where this is necessitated by:

- (a) depletion, deterioration, corrosion or erosion of material;
- (b) wear and tear;
- (c) leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
- (d) vibration or misalignment;
- (e) the breakdown of any structure or foundation supporting the Insured Equipment or any part thereof;
- (f) the functioning of any safety device or protective device; or
- (g) the cracking of any part of a gas turbine exposed to the products of combustion.

Provided always that Exclusions (a) through (g) above shall be limited to the part(s) of the Insured Equipment immediately and directly so affected and shall not apply to any other part(s) of the Insured Equipment which suffer sudden and unforeseen Damage in consequence thereof.

**Temporary Removal**

This Policy is extended to cover any of Your property (except stock) whilst temporarily removed to any place in the Commonwealth of Australia, whilst in transit to or from that place, or on the person of You or Your directors or employees, in the course of their employment. However, Our liability will not exceed the amount for which We will be liable if the Damage had occurred at the particular place from which the property is temporarily removed.

In this extension, "temporarily removed" means removed for a particular purpose, with the intention that the property be returned to the place from which it has been removed once that purpose has been served.

**Transit**

This Policy is extended to cover Property Insured (except portable electronic equipment)

whilst in transit within the Commonwealth of Australia. In respect of transit, cover is provided for theft from a securely locked motor vehicle.

In respect of any one event Our liability under this extension is limited to \$50,000 (fifty thousand dollars), unless otherwise stated in the Schedule.

### **Undamaged Property**

If, for the sole purpose of reinstating Damaged Property Insured, it is necessary to dismantle, demolish, Damage or remove any undamaged property, We will indemnify You for the cost of doing so.

We will also indemnify You for the cost of reinstating, replacing or repairing such property to a condition the same as, but not better or more extensive than, its condition immediately prior to its dismantlement, demolition Damage or removal. The indemnity provided by this extension will not increase Our liability beyond the applicable Limit or Sub Limit of Liability.

### **Undamaged Ancillary and/or Peripheral Equipment**

Where any machinery, plant or equipment is destroyed but ancillary and/or peripheral equipment, utilised in conjunction therewith, is either undamaged or not destroyed but is nevertheless rendered superfluous upon replacement of the destroyed property, then such ancillary and/or peripheral equipment will be considered as being destroyed and its salvage value (if any) shall be payable to Us upon completion of any sale or shall be deducted from the total amount otherwise payable by Us, whichever shall occur later.

### **Purchaser Clause**

If at the time of Damage to any Property Insured You have contracted to sell Your interest in such property and the sale has not been completed, the purchaser on completion of the purchase, if and to the extent that the Property Insured is not otherwise insured by or on behalf of the purchaser against such Damage, shall be entitled to the benefit of this Section so far as it relates to such Damage without prejudice to Your or Our rights and liabilities under this Section up to the date of completion of the purchase.

### **Acquired Companies**

This Policy extends to include property located in the Commonwealth of Australia:

- (a) belonging to companies and/or other entities purchased or otherwise acquired and/or over which the Insured acquires direct or indirect managerial control and/or responsibility to arrange insurance during the currency of this Policy.
- (b) For which such companies and/or other entities are legally responsible or for which they have assumed responsibility to insure prior to the occurrence of any Damage.

You shall declare details of such acquisitions or responsibility within a reasonable period following the date of acquisition of control and/or responsibility.

### **Under Insurance**

- (a) If You have declared less than eighty percent (80%) of the value of all Property Insured at the Situation (calculated in accordance with the Basis of Settlement clauses) as at the commencement of the Period of Insurance, then, in the event of a claim, the moneys otherwise payable under Section 1 of this Policy shall be reduced to the proportion that Your declaration bears to eighty percent (80%) of the value of all such property at the Situation as at the time of the commencement of the Period of Insurance calculated in accordance with the Basis of Settlement clauses.

- (b) With respect to any Property Insured which is acquired after the commencement of the Period of Insurance, if You have declared less than eighty percent (80%) of the value of such acquired property (calculated in accordance with the Basis of Settlement clauses) as at the date of acquisition, then, in the event of a claim, the moneys otherwise payable under Section 1 of this Policy shall be reduced to the proportion that Your declaration bears to eighty percent (80%) of the value of such acquired property at the Situation as at the date of its acquisition calculated in accordance with the Basis of Settlement Clauses.
- (c) Clauses (a) and (b) of this memorandum, will not apply if the amount of any Damage does not exceed ten percent (10%) of the amount of Your declaration of the value of all Property Insured at the Situation.

### **Property Valued By An Authorised Valuer**

The Under Insurance Memorandum shall not apply to property, forming part of the Property Insured, which You have insured under this Policy for its full value as stated in a Valuation; provided that a copy of such Valuation is given to Us as soon as reasonably practicable after the notification of a claim under this Policy.

### **Employee Fraud or Dishonesty**

Subject to the Sub Limit of Liability stated in the Schedule, We will (subject to the following terms, Definitions, Provisions, Specific Exclusions, and the Conditions of this Policy) indemnify the Insured for Loss discovered during the Period of Insurance or within twelve (12) months thereafter or within twelve (12) months after the termination of employment of any Employee(s), where evidence submitted reasonably establishes that the Loss was due to the Fraudulent or Dishonest Conduct of such Employee(s), whichever shall first occur.

### **For the purpose of this memorandum:**

1. The following Definitions shall apply:

**'Insured'** shall be deemed to include: the trustees, managers, officers or members of any superannuation, pension, savings or like scheme, welfare, social or sporting club, formed with the Insured's knowledge and consent.

**'Employee'** means:

- (a) any person whilst in the service of the Insured in the ordinary course of Your Business during the currency of this Policy and whom the Insured compensates by salary, wages or commission and has the right to govern and direct in the performance of such service.
- (b) any ex-employee during a period not exceeding thirty (30) days following the termination of such service.
- (c) any of the Insured's directors or trustees whilst performing acts coming within the scope of the usual duties of an Employee or member of any committee duly elected or appointed to examine or audit or have custody of or access to the Insured's Money or property.
- (d) any person assigned to perform Employee duties for the Insured by an agency furnishing personnel.
- (e) any person acting as any person acting as a fiduciary, trustee, administrator, office bearer or member of any superannuation, pension, savings or like scheme, welfare, social or sporting club formed with the Insured's knowledge and consent.

- (f) any person employed by the Insured as a Consultant, where that person's services are provided primarily or exclusively to the Insured.
- (g) any person undertaking studies, gaining work experience or similar duties with the Insured and whom the Insured has the right to govern and direct in the performance of their work.

**'Consultant'** means:

any person employed under a contract for services and shall include financial, technical or other specialists of whatsoever kind and description.

**'Loss'** means:

Loss of Money, Securities or property of whatsoever kind, being the Insured's own or for which the Insured is legally liable or has assumed responsibility, incurred by the Insured during the Period of Insurance arising out of the Fraudulent or Dishonest Conduct of any Employee(s) acting alone or in collusion with any other person(s).

**'Fraudulent or Dishonest Conduct'** includes:

- (a) fraudulent misappropriation, embezzlement, forgery, counterfeiting, data corruption, unauthorised amendment of data and erasure by electronic or non-electronic means.
- (b) the establishment or operation of or collusion with any company or other organisation, which carries on business in direct competition with the Insured, including the sale of goods or merchandise stolen from the Insured, by any Employee(s) acting alone or in collusion with any other person(s).
- (c) any other dishonest act or omission committed or made, by any Employee(s) with the knowledge that such act or omission is likely to result in financial loss being sustained by the Insured.

## **2. The following Provisions shall apply:**

### **(1) Claims Procedure**

Notice in writing must be given to Us as soon as reasonably practicable after:

- (i) any Loss, or
- (ii) reasonable cause for suspicion of Loss;

comes to the knowledge of the Insured's officer responsible for insurance.

Within a reasonable time after such notice, the Insured will deliver to Us full details in writing of the Loss and the amount claimed in respect thereof together with all such proof of the correctness of the claim as We may reasonably require.

### **(2) Application of Sub Limit of Liability**

The indemnity afforded by this memorandum shall be limited to the amount of the Sub Limit of Liability stated in the Schedule in respect of any one Employee and in respect of all Employees during any one Period of Insurance.

All Losses arising directly or indirectly from any one Employee or any number of Employees in collusion in respect of the one event or series of events arising from the one source or original cause, irrespective of whether the act or acts of Fraudulent or Dishonest Conduct were committed during more than one Period of Insurance, shall be deemed one act of Fraudulent or Dishonest Conduct.

**(3) Reimbursement of Investigation Costs**

In addition to the Sub Limit of Liability stated in the Schedule for 'Employee Fraud or Dishonesty', We agree to reimburse the Insured up to an amount not exceeding ten thousand dollars (\$10,000) or five percent (5%) of the claim actually paid (whichever is the lesser) for fees payable by the Insured to external auditors, consultants, investigators, private enquiry agents and the like, which are necessarily and reasonably incurred to substantiate a valid claim by the Insured under this Policy.

**(4) Allocation of Recoveries**

Recoveries made after Loss, less the actual cost of recovery to the extent that this is incurred by Us, shall be distributed as follows:

- (a) Firstly, You shall be reimbursed for Loss exceeding the Limit of Liability or settlement (whichever is lesser),
- (b) Secondly, We shall be reimbursed for the settlement made;
- (c) Thirdly, You shall be reimbursed for Loss equal to the amount of the Excess stated in the Schedule.

**(5) Continuity of Cover**

If the insurance provided by this Policy is in substitution for that provided under any prior policy of insurance carried by the Insured or by a predecessor in interest of the Insured (which prior policy is terminated, cancelled or allowed to expire as at the time of such substitution) We agree that this Policy applies to Loss, which is discovered during the Period of Insurance and which would otherwise have been recoverable by the Insured or such predecessor under such prior policy except for the fact that the time within which to discover and claim for Loss thereunder had expired.

Provided that:

- (a) the insurance hereunder shall form part of, and shall not be in addition to, the Sub Limit of Liability stated in the Schedule;
- (b) such Loss would have been covered under this memorandum had this Policy been in force when the Fraudulent or Dishonest Conduct took place; and
- (c) recovery under this Policy shall in no event exceed the smaller of the following amounts:
  - (i) the Sub Limit of Liability stated in the Schedule.
  - (ii) the amount(s) which would have been recoverable under the prior policy if such policy had been maintained in force until the discovery of such Loss.

**(6) Retrospective Excess Cover**

We shall indemnify the Insured for Loss discovered during the Period of Insurance arising out of Employee Fraud or Dishonesty which took place during the period of twelve (12) months preceding the commencement date of this Policy but only for the excess of the amount recoverable under any other policy of insurance.

**(7) Loss caused by unidentifiable Employee(s)**

If a loss is alleged to have been caused by the Fraudulent or Dishonest Conduct of any Employee(s) but the Insured is unable to designate the specific Employee(s) involved, the Insured shall have the benefit of this Policy.

Provided that:

- (a) the evidence submitted reasonably suggests that the loss was due to the Fraudulent or Dishonest Conduct of any Employee(s); and
- (b) Our aggregate liability for any such loss shall not exceed the Sub Limit of Liability stated in the Schedule.

**(8) Subrogation**

The memorandum applicable to all Sections - 'Subrogation Waiver' - shall not apply to the cover granted under this memorandum.

**(9) Prior Fraudulent or Dishonest Conduct**

Knowledge which any officer signing an application for this insurance for the Insured may have at the time of signature, in respect of that officer's own personal Fraudulent or Dishonest Conduct which is unknown to the Insured, shall not be imputed to the Insured.

**(10) Other Parties**

This insurance applies with respect to loss of Money or goods belonging to or in the care of one insured party arising from the Fraudulent or Dishonest Conduct of any Employee(s) of any other party insured by this Policy.

**(11) Other Interested Parties**

We will indemnify, as though they were the Insured, all parties having any financial interests in the property hereby insured by virtue of any mortgage, loan, lease, hiring, or other agreement.

**(12) Automatic Reinstatement**

Notwithstanding Provision (15) hereunder, indemnification by Us for any loss under the terms of this memorandum shall not reduce Our liability for any other losses sustained hereunder during any one Period of Insurance.

Provided that the Insured shall pay such reasonable pro rata additional premium that We may require for such Reinstatement of cover.

**(13) Change of Risk**

Every material change in the risks covered by this memorandum, existing at the commencement of this insurance or at any subsequent renewal date, shall be notified in writing to Us as soon as practicable after the Insured's officer responsible for insurance matters shall become aware of such change.

If so requested by Us, the Insured shall pay a reasonable pro rata additional premium for such material change of risk.

**(14) Non Invalidation**

Breach or non-compliance by any Employee(s) of checks, precautions or the method of conducting the Insured's business, without the knowledge or consent of the Insured's management, shall not prejudice this insurance.

**(15) Non-Accumulation of Liability**

Regardless of:

- (a) the number of years this Policy shall remain in force; or
- (b) the number of annual premiums which may be paid or payable to Us for the cover provided hereunder; or
- (c) the duration of the total period during which any Fraudulent or Dishonest



Conduct of any Employee(s) may take place;

Our liability under this memorandum with respect to any Loss or series of Losses shall not be cumulative from one Period of Insurance to another or others.

**(16) Set-off of Money owing to defalcating Employee(s)**

In the event of any claim being made under this memorandum the Insured shall (to the extent allowed by law) retain any salary, wages or commission payment(s) due to such Employee(s) in respect of whose Fraudulent or Dishonest Conduct the claim is made and shall apply such payment(s) towards making good the amount of any default due to the Fraudulent or Dishonest Conduct insured against hereunder.

**3. The following Specific Exclusions shall apply:**

We shall not be liable for:

- (a) Loss arising from any subsequent Fraudulent or Dishonest Conduct of any Employee which takes place after the Insured shall have knowledge of any Fraudulent or Dishonest Conduct on the part of such Employee.

Provided that this Specific Exclusion 4(a) shall not apply to loss of Money or property then being conveyed by such Employee outside Your Premises.

- (b) any Loss arising from the complete or partial default upon or non-payment of any loan, extension of credit or transaction in the nature of a loan, obtained from or made by the Insured or by any Employee, whether authorised or unauthorised by the Insured, unless such loss arises from the Fraudulent or Dishonest Conduct of any Employee.

- (c) any Loss or that part of any loss, the proof of which (either as to its existence or its amount) is deduced solely from an inventory or profit computation.

Provided that this Specific Exclusion 4(c) shall not apply to loss of Money or other property which the Insured can establish, through evidence wholly apart from such inventory or profit computation, was sustained due to the Fraudulent or Dishonest Conduct of any Employee.

- (d) any consequential loss of whatsoever kind arising out of the Fraudulent or Dishonest Conduct of any Employee(s).

# Section 2 — Business Interruption

## The Indemnity

In the event of any building or any other property or any part thereof used by You at the Premises for the purpose of Your Business being Damaged (by any cause or event not hereinafter excluded) during the Period of Insurance and Your Business being in consequence thereof interrupted or interfered with, We will, subject to the provisions of this Policy including the limitation on Our liability, pay to You the amount of loss resulting from such interruption or interference in accordance with the applicable Basis of Settlement.

Provided that We will not be liable for any loss under this section unless Your Damaged property is insured against such Damage (loss arising out of Damage by explosion, rupture, collapse, bursting, cracking or overheating of any boiler, economiser or other pressure vessel (including pipes, valves and other apparatus thereof) excepted) and We or the insurer or insurers by which such property is insured shall have paid for, or admitted liability in respect of, such Damage unless no such payment shall have been made or liability shall not have been admitted therefor solely owing to the operation of a provision in such insurance excluding liability for loss below a specified amount.

## Definitions Applicable to Section 2

**Annual Gross Rentals** — The Gross Rentals during the 12 months immediately before the date of the Damage

**Annual Gross Revenue** — The Gross Revenue during the 12 months immediately before the date of the Damage

**Annual Turnover** — The Turnover during the 12 months immediately before the date of the Damage.

**Gross Profit** — the amount by which:

- (a) the sum of the Turnover and the amount of the closing Stock shall exceed;
- (b) the sum of the amount of the opening Stock and the amount of the Uninsured Working Expenses.

**Notes:**

- (a) The amount of the opening and closing Stocks shall be arrived at in accordance with Your normal accounting methods, due provision being made for depreciation.
- (b) The words and expressions used in the definition shall have the meaning usually attached to them in Your books and accounts.

**Gross Rentals** — the money received or receivable by You in respect of the letting of the Premises and for any services provided by You in connection therewith.

**Gross Revenue** — the Money paid or payable to the You as fees for services rendered and/or goods sold in course of Your Business at the Premises.

**Indemnity Period** — the period beginning with the occurrence of the Damage and ending not later than the number of weeks specified in the Schedule thereafter during which the results of Your Business shall be affected in consequence of the Damage.

**Insured Payroll** — the proportion of Your Payroll represented by Your selected Dual Basis Payroll formula.

**Payroll** — the remuneration (including but not limited to payroll tax, fringe benefits tax, holiday pay, sick pay, long service leave, workers' compensation insurance premiums and/or accident compensation levies, superannuation and pension fund contributions and the like) paid to all employees.

**Rate of Gross Profit** — the proportion which the Gross Profit bears to the Turnover during the financial year immediately before the date of the Damage.

**Rate of Payroll** — the proportion which the Payroll bears to the Turnover during the financial year immediately before the date of the Damage.

**Shortage in Turnover** — the amount by which the Turnover during a period shall, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period.

**Standard Gross Rentals** — the Gross Rentals during that period in the twelve (12) months immediately before the date of the Damage which corresponds with the Indemnity Period (proportionately adjusted where the Indemnity Period exceeds twelve (12) months).

**Standard Gross Revenue** — the Gross Revenue during that period in the twelve (12) months immediately before the date of the Damage which corresponds with the Indemnity Period (proportionately adjusted where the Indemnity Period exceeds twelve (12) months).

**Standard Turnover** — the Turnover during that period in the twelve (12) months immediately before the date of the Damage which corresponds with the Indemnity Period (proportionately adjusted where the Indemnity Period exceeds twelve (12) months).

**Turnover** —

- (i) the money paid or payable to You for goods sold and delivered and for services rendered in course of Your Business at the Premises.
- (ii) financial incentives or concessions granted to You by any Government in recognition of specific performance in the development of market opportunities or the employment of disadvantaged persons.

**Uninsured Working Expenses** — the working expenses of Your Business which You have elected not to insure under this Section, and which are listed in the Schedule.

### **Adjustments Clause**

Adjustments shall be made to the Rate of Gross Profit, Rate of Payroll, Annual Gross Rentals, Annual Gross Revenue, Annual Turnover, Standard Gross Rentals, Standard Gross Revenue and Standard Turnover as may be necessary to provide for the trend of Your Business and for variations in or other circumstances affecting Your Business either before or after the date of the Damage or which would have affected Your Business had the Damage not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Damage would have been obtained during the relative period after the Damage occurred.

## Basis of Settlement

### Item 1. Gross Profit

The insurance under this item is limited to loss of Gross Profit due to:

- (a) reduction in Turnover or
- (b) increase in cost of working.

The amount payable as indemnity under this item shall be:

- (a) **in respect of reduction in Turnover**, the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period, in consequence of the Damage, falls short of the Standard Turnover;
- (b) **in respect of increase in cost of working**, the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover which but for that expenditure would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided;

less any sum saved during the Indemnity Period in respect of such of the charges and expenses of Your Business payable out of Gross Profit as may cease or be reduced in consequence of the Damage.

Provided that if the Declared Value of Gross Profit at the commencement of each Period of Insurance is less than the sum produced by applying the Rate of Gross Profit to eighty percent (80%) of the Annual Turnover (or its proportionately increased multiple where the Indemnity Period exceeds twelve months), the amount payable will be proportionately reduced.

This provision will not apply if Your claim is for less than ten percent (10%) of the Declared Value of Gross Profit.

### Item 2. Gross Revenue

The insurance under this item is limited to loss of Gross Revenue due to:

- (a) loss of Gross Revenue or
- (b) increase in cost of working.

The amount payable as indemnity under this item shall be:

- (a) **in respect of loss of Gross Revenue**, the amount by which the Gross Revenue during the Indemnity Period, in consequence of the Damage, falls short of the Standard Gross Revenue;
- (b) **in respect of increase in cost of working**, the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Gross Revenue which but for that expenditure would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the amount of the reduction in Gross Revenue thereby avoided; less any sum saved during the Indemnity Period in respect of such of the charges and expenses of Your Business payable out of Gross Revenue as may cease or be reduced in consequence of the Damage.

### **Item 3. Gross Rentals**

The insurance under this item is limited to loss of Gross Rentals due to:

- (a) loss of Gross Rentals or
- (b) increase in cost of working.

The amount payable as indemnity under this item shall be:

- (a) **in respect of loss of Gross Rentals**, the amount by which the Gross Rentals during the Indemnity Period, in consequence of the Damage, falls short of the Standard Gross Rentals;
- (b) **in respect of increase in cost of working**, the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Gross Rentals which but for that expenditure would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the amount of the reduction in Gross Rentals thereby avoided; less any sum saved during the Indemnity Period in respect of such of the charges and expenses of Your Business payable out of Gross Rentals as may cease or be reduced in consequence of the Damage.

### **Item 4. Rent Payable and/or Insurable**

The insurance under this Item is in respect of rent and other expenses payable, or insurable, by You in accordance with the terms of any lease agreement and the amount payable as indemnity thereunder, in the event of Damage, shall be such amount(s) as You shall be legally liable to pay and/or insure or the Lessor shall be legally entitled to receive, under the terms of the lease; together with the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the amount otherwise payable under this Item.

Our liability under this item shall be limited to the Sub Limit of Liability shown in the Schedule as "Rent Payable and/or Insurable".

### **Item 5. Claims Preparation Costs**

The insurance under this item is to cover all reasonable professional fees as may be payable by You to financial advisers, accountants, loss assessors and/or business interruption claims consultants and/or valuers and such other reasonable expenses necessarily incurred by You and not otherwise recoverable, for preparation and negotiation of progress claims and/or final claims under Section 1 and/or Section 2 of this Policy and We shall indemnify You for such reasonable fees and expenses.

Our liability under this item shall be limited to the Sub Limit of Liability shown in the Schedule as "Claims Preparation Costs".

### **Item 6. Additional / Increase in Cost of Working**

The insurance under this item is limited to increase in cost of working (not otherwise recoverable under this Policy) necessarily and reasonably incurred during the Indemnity Period in consequence of the Damage for the purpose of avoiding or diminishing reduction Turnover, Gross Revenue or Gross Rentals (as the case may be) and/or resuming and/or maintaining normal business operations and/or services.

Our liability under this item shall be limited to the Sub Limit of Liability shown in the Schedule as "Additional / Increase in Cost of Working".

### **Item 7. Payroll (Dual Basis)**

The insurance under this item is limited to loss in respect of Payroll and the amount payable as indemnity under this item shall be:

- (a) **in respect of reduction in Turnover:**
  - (i) **during the Initial Period**, the sum produced by applying the Rate of Payroll to the Shortage in Turnover during such period less any saving during such period, through reduction in consequence of the Damage, in the amount of Payroll paid;
  - (ii) **during the remaining portion of the Indemnity Period**, the sum produced by applying the Rate of Payroll to the Shortage in Turnover during such period less any saving during such period, through reduction in consequence of the Damage, in the amount of Payroll paid, but not exceeding the sum produced by applying the remainder percentage of the Rate of Payroll to the Shortage in Turnover during the said remaining portion of the Indemnity Period increased by such amount as is deductible for savings under the terms of clause (i);

**NOTE:**

At Your option the **Alternative Period** stated in the Schedule may be substituted for the Initial Period, provided that the amount arrived at under the provisions of clause (a) (ii) shall not exceed such amount as is deducted under clause (a) (i) for savings effected during the Alternative Period.

- (b) **in respect of increase in cost of working**, so much of the additional expenditure described in clause (b) of Item 1 - Gross Profit as exceeds the amount payable thereunder, but not more than the additional amount which would have been payable in respect of reduction in Turnover under the provisions of clauses (a) (i) and (ii) of this item had such expenditure not been incurred.

### **Item 8. Severance Payments and Payments to Unproductive Employees**

The insurance under this item is limited to such further expenditure (not otherwise recoverable under this Policy) as You are obligated or have agreed to pay:

- (a) under any industrial awards or determinations or decisions reached under arbitration for severance payments and/or in lieu of notice to those employees whose services are terminated as a result of the Damage.
- (b) to any employees whose services cannot be utilised by You in full or in part in consequence of the Damage.

Our liability under this item shall be limited to the Sub Limit of Liability shown in the Schedule as "Severance Payments and Payments to Unproductive Employees".

### **Item 9. Accounts Receivable**

Under this item We will pay You up to the amount shown in the Schedule for all sums due to You from debtors that You are unable to collect because of Damage to records of accounts receivable. We will also pay:

- (a) all interest charges at ruling bank rates on any loan to offset impaired collections pending repayment of such amounts rendered uncollectible as a result of the Damage,

- (b) Interest lost by You in consequence of such impaired collections;
- (c) additional expenditure reasonably incurred in tracing and establishing the amounts of accounts receivable as a result of the Damage;
- (d) collection expenses, in excess of normal collection costs, incurred as a result of the Damage.

If You cannot accurately establish the total amount of accounts receivable outstanding as at the date of the Damage, the amounts will be computed as follows:

- (i) Determine the amount of all outstanding accounts receivable at the end of the same fiscal month in the year immediately preceding the year in which the Damage has occurred.
- (ii) Calculate the percentage of increase or decrease in the average monthly total of accounts receivable for the year immediately preceding the month in which the Damage has occurred, as compared with such average for the same months of the preceding year.
- (iii) The amount determined under (i), increased or decreased by the percentage calculated under (ii) above, will be deemed to be the total amount of accounts receivable outstanding at the time and date of the Damage.
- (iv) The amount determined under (iii) above will be adjusted as may be necessary to provide for any demonstrable variance from the amount so determined occurring before, but during the month in which, the Damage has occurred; due consideration shall also be given to normal monthly trends in receipts.

There shall be deducted from the total amount of accounts receivable, however established, the amounts of such accounts evidenced by records not suffering Damage, or otherwise established or collected by You, and an equitable amount to allow for probable bad debts that would normally have been uncollectible by You.

Our liability under this item shall be limited to the Sub Limit of Liability shown in the Schedule as "Accounts Receivable".

**Item 10. Contractual Fines and/or Penalties**

The insurance under this item is limited to fines and/or damages for breach of contract and the amount payable as indemnity thereunder shall be such sum(s) as You shall be legally liable to pay and shall pay in discharge of fines and/or damages incurred in consequence of the Damage for non completion, partial completion or late completion of orders, inability to meet contract specifications or cancellation of orders.

Our liability under this item shall be limited to the Sub Limit of Liability shown in the Schedule as "Contractual Fines and/or Penalties".

**Item 11. Contracted Purchases**

The insurance under this item is in respect of contractual commitments and the amount payable as indemnity thereunder shall be such sum(s) as You shall be legally liable to pay and shall pay under contracts for purchases not used during the Indemnity Period in consequence of the Damage less any sums received or receivable by You in respect of such purchases through any salvage handling operations or resale.

Our liability of under this item shall be limited to the Sub Limit of Liability shown in the Schedule as "Contracted Purchases".

**Item 12. Contractual Fines and/or Penalties (Sporting Venues)**

The insurance under this item is limited to fines and/or damages for breach of contract and the amount payable as indemnity thereunder shall be such sum(s) as You shall be legally liable to pay and shall pay in discharge of fines and/or damages incurred in consequence of the Damage for non-availability of the sporting venue and/or facilities and/or for non completion, partial completion or late completion of orders.

Our liability under this item shall be limited to the Sub Limit of Liability shown in the Schedule as "Contractual Fines and/or Penalties (Sporting Venues)".

**Item 13. Contractual Penalties (Hotel Management Agreement)**

The insurance under this item is in respect of contractual penalties and/or liquidated damages arising out of the Hotel Management Agreement between You and the hotel operator(s) and the amount payable as indemnity thereunder shall be such sum(s) as You shall be legally liable to pay and shall pay in discharge of such contractual penalties and/or liquidated damages incurred in consequence of the Damage for non performance or partial or late performance of Your obligations under such Agreement.

Our liability under this item shall be limited to the Sub Limit of Liability shown in the Schedule as "Contractual Penalties (Hotel Management Agreement)".

**Item 14. Goodwill**

The insurance under this item is limited to loss of goodwill resulting from cancellation of Your lease of the Premises as a result of insured Damage. The amount payable as indemnity shall be limited to the proportion of the Sub Limit of Liability under this item that the unexpired term of the lease at the date of the Damage bears to the term of the lease as stated in the Schedule. If You are able to obtain the same or equivalent alternative Premises under a new lease, the amount payable hereunder shall be either the sum calculated above or the actual loss sustained, whichever is the lesser.

Our liability under this item shall be limited to the Sub Limit of Liability shown in the Schedule as "Goodwill".

**Item 15. Research Expenditure**

The insurance under this item is limited to loss sustained by You in consequence of the Damage in respect of (a) Research Expenditure and (b) Increase in Cost of Working, and the amount payable as indemnity thereunder shall be:

**(a) In respect of Research Expenditure:**

for each working week of the Indemnity Period during which the activities of the Business are, in consequence of the Damage:

- (1) Totally Interrupted or totally given over to the re-working of projects affected by the Damage - the Insured Amount Per Week;
- (2) Partially Interrupted or partially given over to the re-working of projects affected by the Damage - an equitable portion of the Insured Amount Per Week based upon the time rendered ineffective by reason of the Damage;

**(b) In respect of Increase in Cost of Working:**

the additional expenditure necessarily and reasonably incurred solely in consequence of the Damage in order to minimise the interruption but the amount payable hereunder shall not exceed the additional amount payable under (a) for loss



of Research Expenditure if no such Increase in Cost of Working had been incurred; less any sum saved during the Indemnity Period in respect of any Research Expenditure as may cease or be reduced in consequence of the Damage.

The following Definitions apply with respect to this item:-

**Research Expenditure** means: the total expenditure on research by You at the Premises less the relative cost of raw materials consumed.

**Insured Amount Per Week** means: one fiftieth part of the Research Expenditure incurred during the financial year immediately before the date of the Damage.

Such adjustments shall be made to the Insured Amount Per Week as may be necessary to provide for the trend of Your Business and for variations in or other circumstances affecting Your Business either before or after the Damage or which would have affected Your Business had the Damage not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Damage would have been obtained during the relative period after the Damage.

#### **Item 16. Royalties**

The insurance under this item is limited to loss of royalties receivable and the amount payable as indemnity thereunder shall be the actual shortfall of royalties receivable, during the Indemnity Period in consequence of Damage (caused by any peril or event, Damage as result of which is insured hereunder) to property at the premises, or in the vicinity of the premises, anywhere in the World of any company or organisation which pays such royalties to You.

Provided always that We shall not be liable hereunder for loss arising out of Damage by earthquake, volcanic eruption and/or subterranean fire to any property in Japan, the United States of America, Mexico and New Zealand.

## **Memoranda to Section 2**

### **Accumulated Stocks**

In adjusting any loss under Item Nos. 1 and 7, account will be taken and equitable allowance made, if any Shortage in Turnover in consequence of the Damage is postponed by reason of the Turnover being temporarily maintained from accumulated Stocks, resulting in a shortage of stock after the Indemnity Period has expired.

### **Alternative trading**

If during the Indemnity Period, goods are sold, work is performed or services are rendered elsewhere than at Your Business Premises for the benefit of Your Business either by You or by others acting on Your behalf, the money paid or payable in respect of such sales, work or services will be brought into account in arriving at the Turnover, Gross Revenue or Gross Rentals (as the case may be) during the Indemnity Period.

### **Departments**

If Your Business is conducted in departments or divisions, the independent trading results of which are ascertainable, the provisions of clauses (a) and (b) of Item Nos. 1 and 6 shall apply separately to each department or division affected by the Damage.

### **Books of Account**

Any particulars or details contained in Your books of account or other business books or

documents which may be required by Us for the purpose of investigating or verifying any claim under Sections 1 and/or 2 of this Policy may be produced and certified by Your auditors and their certificate shall be prima facie evidence of the particulars and details to which such certificate relates.

### **New business**

In the event of Damage occurring at the Premises before the completion of the first year's trading of Your Business, the defined terms "Rate of Gross Profit", "Rate of Payroll", "Annual Gross Rentals", "Annual Gross Revenue", "Annual Turnover", "Standard Gross Rentals", "Standard Gross Revenue" and "Standard Turnover" (as the case may be) shall instead have the following meanings wherever they appear in this section:

**Rate of Gross Profit** — The proportion which the Gross Profit bears to the Turnover during the period between the date of the commencement of Your Business and the date of the Damage.

**Rate of Payroll** — The proportion which the Payroll bears to the Turnover during the period between the date of the commencement of Your Business and the date of the Damage.

**Annual Gross Rentals** — The proportional equivalent, for a period equal to the Indemnity Period, of the Gross Rentals realised during the period between the date of the commencement of Your Business and the date of the Damage.

**Annual Gross Revenue** — The proportional equivalent, for a period equal to the Indemnity Period, of the Gross Revenue realised during the period between the date of the commencement of Your Business and the date of the Damage.

**Annual Turnover** — The proportional equivalent, for a period equal to the Indemnity Period, of the Turnover realised during the period between the date of the commencement of Your Business and the date of the Damage.

**Standard Gross Rentals** — the proportional equivalent, for a period equal to the Indemnity Period, of the Gross Rentals realised during the period between the date of the commencement of Your Business and the date of the Damage (proportionately adjusted where the Indemnity Period exceeds 12 months).

**Standard Gross Revenue** — the proportional equivalent, for a period equal to the Indemnity Period, of the Gross Revenue realised during the period between the date of the commencement of Your Business and the date of the Damage (proportionately adjusted where the Indemnity Period exceeds 12 months).

**Standard Turnover** — the proportional equivalent, for a period equal to the Indemnity Period, of the Turnover realised during the period between the date of the commencement of Your Business and the date of the Damage (proportionately adjusted where the Indemnity Period exceeds 12 months).

### **Public and Private Utilities**

This Policy is extended to include loss resulting from interruption of or interference with Your Business in consequence of Damage to any land-based telecommunications system or any electricity, gas or water supply systems within the Commonwealth of Australia, provided that where public supply is not at or immediately adjacent to Your premises the interruption of supply extends for greater than 48 hours.

### **Customers' / Suppliers' Premises**

This Policy is extended to include loss resulting from interruption of or interference with Your Business in consequence of Damage within the Commonwealth of Australia at any premises of suppliers of goods or services to You, or at the premises of any of Your customers.

Provided that:

- (a) Our liability under this memorandum shall be limited to twenty percent (20%) of the Declared Values for each and every item insured by Section 2 - Business Interruption, plus such costs and expenses necessarily and reasonably incurred and for which indemnity is provided by Item 5 – Claims Preparation Costs and/or Item 6 – Additional / Increase in Cost of Working, unless otherwise stated in the Schedule.
- (b) coverage under this extension does not apply to the Section 1 memorandum titled "Equipment Breakdown".

### **Storage sites / temporary removal**

This Policy is extended to include loss resulting from interruption of or interference with Your Business in consequence of Damage within the Commonwealth of Australia at any premises (not occupied by You) where Your property is being stored or processed.

Our liability under this memorandum shall be limited to twenty percent (20%) of the Declared Values for each and every item insured by Section 2 - Business Interruption, plus such costs and expenses necessarily and reasonably incurred and for which indemnity is provided by Item 5 – Claims Preparation Costs and/or Item 6 – Additional / Increase in Cost of Working, unless otherwise stated in the Schedule.

### **Prevention of Access**

This Policy is extended to include loss resulting from interruption of or interference with Your Business in consequence of:

- (a) Damage to property, or the intervention of any lawful authority resulting from threat of Damage to property within a 50 kilometre radius of the Premises, which prevents access to or hinders the use of the Premises.
- (b) Damage to property forming part of or contained in a complex of which the Situation forms a part, which results in a cessation or diminution of trade, including any cessation or diminution of trade due to temporary falling away of potential custom, whether the Premises or any of Your property therein shall be Damaged or not.

### **Special Attraction In The Vicinity Of The Premises**

Subject to the Sub Limit of liability stated in the Schedule, loss as insured by this Policy resulting from interruption of or interference with Your Business in consequence of Damage to a special attraction (being another business or facility in the immediate vicinity of the Premises that Your Business depends upon to attract people to the area) caused by any peril or event, Damage as a result of which is insured under this Policy, which results in cessation or diminution of trade, including any cessation or diminution of trade due to temporary falling away of potential custom, shall be deemed to be loss resulting from Damage to property used by You at the Premises.

### **Closure of Transport Routes, Ports or Airports**

This Policy is extended to include loss resulting from interruption of or interference with Your Business in consequence of Damage to any:

- (a) roads, bridges, tunnels or railway lines,
- (b) airports, local ports or harbours, docks, wharves, jetties and/or piers; and/or
- (c) machinery, plant and equipment associated and/or used in connection therewith for the purpose of loading and unloading of Vehicles, railway wagons, Aircraft or Watercraft.

resulting in closure; or closure by order of any authority as a result of fear of any insured Damage at any transport route, port or airport anywhere in the Commonwealth of Australia.

Our liability under this extension shall be limited to fifteen percent (15%) of the Declared Values for Gross Rentals, Gross Revenue, Gross Profit and/or Payroll (Dual Basis), whichever is applicable, plus such costs and expenses necessarily and reasonably incurred and for which indemnity is provided by Item 5 – Claims Preparation Costs and/or Item 6 – Additional / Increase in Cost of Working, unless otherwise stated in the Schedule.

### **Computers**

This Policy is extended to include loss resulting from interruption of or interference with Your Business in consequence of Damage to any computer installations, including ancillary equipment and data processing media, utilised by You anywhere in the Commonwealth of Australia.

### **Transit**

This Policy is extended to include loss resulting from interruption of or interference with Your Business in consequence of Damage to any of Your property while in transit by road, rail, sea or air within the Commonwealth of Australia and outside of the Business Premises occupied by You.

Our liability under this extension shall be limited to ten percent (10%) of the Declared Values for Gross Rentals, Gross Revenue, Gross Profit and/or Payroll (Dual Basis), whichever is applicable, plus such costs and expenses necessarily and reasonably incurred and for which indemnity is provided by Item 5 – Claims Preparation Costs and/or Item 6 – Additional / Increase in Cost of Working, unless otherwise stated in the Schedule.

### **Turnover / Output Alternative**

At Your option, the word “Output” may be substituted for “Turnover” and, for the purpose of Section 2 of this Policy, Output shall mean the sale value of goods manufactured or processed by You in the course of carrying on Your Business at the Premises. Provided that only one such meaning shall be operative in connection with any one occurrence involving Damage.

If You select the Output Option:

- (i) the memorandum titled “Alternative Trading” shall read as follows:

If during the Indemnity Period goods shall be manufactured or processed other than at the Premises for the benefit of Your Business either by You or by others on Your behalf, the sale value of the goods so manufactured or processed shall be brought into account in arriving at the Output during the Indemnity Period.

and

- (ii) the definition of “Gross Profit” shall read as follows:

the difference between sale value of production and the amount of the Uninsured Working Expenses.

and

- (iii) the memorandum titled “Accumulated Stocks” shall read as follows:

In adjusting any loss, account shall be taken and equitable allowance made if any

Shortage in Output resulting from the Damage is postponed by reason of the Output being temporarily maintained from accumulated stocks.

### **Salvage Sale**

If, following Damage giving rise to a claim under this Policy, You hold a salvage sale during the Indemnity Period:

(i) Clause (a) of Item No. 1 of this Section shall, for the purpose of such claim, read as follows:-

(a) **In respect of Reduction in Turnover:**

the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period (less the Turnover for the period of the salvage sale) shall, in consequence of the Damage, fall short of the Standard Turnover, from which shall be deducted the Gross Profit actually earned during the period of the salvage sale.

(ii) The definition of Shortage in Turnover shall, for the purpose of such claim, read as follows:

**Shortage in Turnover** shall mean: the amount by which the Turnover during a period (less the Turnover for the period of the salvage sale) shall, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period, from which shall be deducted any portion of the Pay-Roll paid out of the proceeds of the salvage sale.

### **Documents**

This Policy is extended to include loss resulting from interruption of or interference with Your Business in consequence of Damage to Documents and Electronic Data files belonging to or held in trust by You, while in transit or while at the premises not occupied by You.

Our liability under this extension shall be limited to twenty percent (20%) of the Declared Values for Gross Rentals, Gross Revenue, Gross Profit and/or Payroll (Dual Basis), whichever is applicable, plus such costs and expenses necessarily and reasonably incurred and for which indemnity is provided by Item 5 – Claims Preparation Costs and/or Item 6 – Additional / Increase in Cost of Working, unless otherwise stated in the Schedule.

### **Motor Vehicles owned or operated by You**

Notwithstanding Property Exclusion 4, this Policy is extended to include loss resulting from interruption of or interference with Your Business in consequence of Damage to any registered Vehicles or trailers owned or operated by You, while such Vehicles are at Your Premises or at other premises in the Commonwealth of Australia but not on a public thoroughfare.

### **Infectious Disease, Murder and Closure**

Notwithstanding Perils Exclusions 2(a) and 5(d), this Policy is extended to include loss resulting from interruption of or interference with Your Business due to closure or evacuation of the whole or part of the Premises during the Period of Insurance by order of a competent Government, Public or Statutory Authority as a result of:

- (a) bomb threat, vermin or pests or defects in the drains or other sanitary arrangements, occurring at Your Premises, or
- (b) an outbreak of an infectious or contagious human disease occurring within a 20-kilometre radius of Your Premises, however there is no cover for highly pathogenic Avian Influenza or any disease declared to be a quarantinable disease under the Quarantine Act 1908 (as amended) irrespective of whether discovered at the location of Your premises, or out-breaking elsewhere; or

- (c) injury, illness or disease caused by the consumption of food or drink provided and consumed on Your Premises during the Period of Insurance; or
- (d) murder or suicide occurring at Your Premises; or
- (e) shark or crocodile attack occurring within a 20-kilometre radius of Your Premises during the Period of Insurance.

Provided that:

- (i) Our liability under this extension shall be limited to fifteen percent (15%) of the Declared Values for Gross Rentals, Gross Revenue, Gross Profit and/or Payroll (Dual Basis), whichever is applicable, plus such costs and expenses necessarily and reasonably incurred and for which indemnity is provided by Item 5 – Claims Preparation Costs and/or Item 6 – Additional / Increase in Cost of Working, unless otherwise stated in the Schedule; and
- (ii) We shall not be liable for the amount of loss arising during the first seven (7) days immediately following the action taken by a public authority.

## Exclusions Applicable to Section 1 – Property Damage and Section 2 – Business Interruption

### Property Exclusions

We do not cover Damage to the following property or loss under Section 2 resulting from such Damage:-

1. Money:
  - (a) whilst being carried by professional money carriers, professional carriers or common carriers which is more specifically insured, and which insurance responds in the event of a claim to the amount of the claim, excepting the excess amount over and above such more specific insurance which excess is held to be covered hereunder.  
 Provided that where in the ordinary course of business You enter into an agreement with such carriers and such agreement provides that You shall indemnify and/or hold harmless and/or release from liability such carriers in respect of Damage which may occur as a result of any peril or event hereby insured against, this insurance shall operate as if this Property Exclusion 1(a) had been deleted.
  - (b) stolen from an unlocked and unattended vehicle;
  - (c) stolen from a safe or strongroom opened by a key or by use of details of a combination, either of which has been left at the Situation outside Business Hours, unless such key or combination details have been properly secured, except where the keys or combinations have been obtained by deception or threat.
  - (d) where the loss is not discovered within fifteen (15) working days of the event.
  - (e) where the loss arises out of a demand for the payment of Money in connection with kidnapping, bomb threat, hoax, extortion or an attempt at any of these.
2. jewellery, furs, bullion, articles containing gold and silver which are not Stock and which exceed \$10,000 (ten thousand dollars) any one item.
3. (a) any locomotive or rolling stock or watercraft other than as stock or merchandise

- of Your Business; provided always that no cover shall apply hereunder whilst any watercraft is on water;
- (b) any aircraft (including its accessories and/or spare parts) other than as stock or merchandise of Your Business; provided always that no cover shall apply hereunder during taxiing, take-off, flight or landing.
4. vehicles or trailers registered or licensed to travel on a public road (other than as stock or merchandise of Your Business); provided that this exclusion shall not apply to mobile plant and equipment (excluding cars, sedans, panel vans and trucks) not otherwise insured whilst on any premises occupied or used by You.
  5. livestock, animals, birds, fish and any other living organism (except laboratory cultures, stocks of foodstuffs, stocks of nursery plants, or stocks of a pet shop).
  6. standing timber, growing crops and pastures.
  7. land; provided that this exclusion shall not apply to structural improvements on or in the land if such structural improvements are not otherwise excluded in this Policy.
  8. bridges, canals, roadways (other than driveways, vehicle parking or manoeuvring areas and other paved areas at the Situation), tunnels, railway tracks, dams and reservoirs. Provided that this exclusion does not apply to any of the foregoing where they are on the Premises occupied or used by You.
  9. docks, wharves and piers not forming part of any building; provided that this exclusion shall not apply with respect to any such property owned by You or for which You are responsible.
  10. mining property located beneath the surface of the ground unless otherwise expressly stated in this Policy.
  11. property during the course of, and as a result of, its processing unless fire and/or explosion ensues, in which event We shall only be liable for the Damage caused by such fire and/or explosion. Provided that any Damage which may occur with respect to any property being lifted, turned, rotated, moved or lowered during the course of assembly, servicing, repair or other physical activities at the Situation shall not be deemed to have arisen whilst such property is undergoing any process or as a result of its being processed.
  12. property included in a project of construction, erection, alteration or addition, including the partial dismantlement of existing structures, where total contract value of all work to be carried out at any one Situation during such activity exceeds \$500,000 (five hundred thousand dollars). Provided that this exclusion shall apply only to the portion of the Premises or the part of any property which is the subject of any such work and this exclusion shall not apply to any other Property Insured under this Policy.
  13. empty premises undergoing demolition.
  14. oil and gas drilling and/or production rigs whilst offshore.

## Perils Exclusions

We shall not be liable under Sections 1 and/or 2 in respect of:-

1. Damage occasioned by or happening through:
  - (a) flood, which shall mean the inundation of normally dry land by water escaping or released from the normal confines of any natural watercourse or lake whether or not altered or modified or of any reservoir, canal or dam.

(b) water from or action by the sea, tidal wave or high water.

Provided that Perils Exclusions 1(a) and 1(b) shall not apply if Damage is caused by or arises out of an earthquake or seismological disturbance.

2. Damage occasioned by or happening through:

(a) the action of moths, termites or other insects, vermin, rust or oxidation, mildew, mould, wet or dry rot, corrosion, change of colour, dampness of atmosphere or other variations in temperature, evaporation, disease, inherent vice or latent defect, loss of weight, change in flavour, texture or finish, smut or smoke from industrial operations (other than sudden and unforeseen Damage resulting therefrom).

Provided that the words "inherent vice or latent defect" shall be limited to that part of the Property Insured immediately affected and shall not apply to other part(s) Damaged in consequence thereof.

(b) Pollution or Contamination of any Property Insured, except where such Pollution or Contamination results from Damage caused by fire, lightning, explosion, earthquake, subterranean fire or volcanic eruption, aircraft or other aerial devices or articles dropped or falling therefrom, storm, tempest, rainwater, hail, water and/or any other liquids or substances discharged, overflowing, spilling and/or leaking from apparatus, appliances, pipes, tanks, sprinkler and/or any other system(s) at the Situation or elsewhere, the acts of persons taking part in riots or civil commotions or the acts of strikers or locked out workers or persons taking part in labour disturbances, the acts of malicious persons, or the acts of any lawfully constituted authority in connection with any of the aforementioned acts or in connection with any conflagration or other catastrophe, impact by waterborne craft, mobile equipment (including cranes), vehicles or animals.

(c) normal wear and tear, fading, scratching or marring, gradual deterioration or developing flaws, normal upkeep or making good.

(d) error or omission in design, plan or specification or failure of design.

(e) normal settling, seepage, shrinkage or expansion in buildings or foundations, walls, pavements, roads and other structural improvements, creeping, heaving and vibration, damage caused by or attributed to tree roots.

(f) faulty materials or faulty workmanship.

Provided that this Exclusion 2(a) to (f) shall not apply to subsequent Damage to the Property Insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

3. Damage occasioned by or happening through:

(a) incorrect siting of buildings consequent upon:

(i) error in architectural design or specification;

(ii) faulty workmanship;

(iii) non compliance by You (or by anyone acting on Your behalf) with the necessary permits issued by Government, Public or Local Authorities.

(b) demolitions ordered by Government or Public or Local Authorities due to Your failure or the failure of Your agents to obtain the necessary permits required.



4. Damage occasioned by or happening through unexplained or inventory shortage, disappearance resulting from clerical or accounting errors, shortages in the supply or delivery of materials to or from the Insured; unless such loss can be reasonably attributed to theft or attempted theft.
5. Damage occasioned by or happening through:

- (a) access by any person(s) other than the Insured or the Insured's employee(s) to the Insured's computer system via data communication media that terminate in the Insured's computer system.

Provided that this exclusion shall not apply to theft consequent upon forcible and violent entry upon premises or felonious concealment upon premises committed by an employee of the Insured or theft of Money whilst in transit.

- (b) (i) the cessation of work whether total or partial,  
(ii) the cessation, interruption or retarding of any process or operation; as a result of strikes, labour disturbances or locked out workers.

Provided that Perils Exclusions 5(b)(i) and 5(b)(ii) shall not apply in respect of Damage directly caused by strikers, locked out workers or similar persons.

- (c) erosion, subsidence, earth movement or collapse resulting therefrom.
- (d) kidnapping, bomb threat, threat of contamination, hoax, extortion or any attempt thereat.

Provided that this Exclusion 5(a) to 5(d) shall not apply to subsequent Damage to the Property Insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

6. any legal liability of whatsoever nature other than as herein provided.
7. consequential loss of any kind including consequential loss due to delay, lack of performance, loss of contract or depreciation in the value of land or stock, except as herein provided in Section 2.

## Conditions Applicable to Section 1 – Property Damage and Section 2 – Business Interruption

### 1. Reinstatement of Insurance After Loss

In the event of Damage insured under Section 1 – Property Damage and/or loss insured under Section 2 - Business Interruption, the amount by which the applicable Limit(s) or Sub Limit(s) of Liability is/are reduced as a consequence of the loss or Damage will be automatically reinstated as from the date of loss or Damage provided that:

- (a) there is no written request from You or written notice by Us to the contrary, and
- (b) You pay the pro rata additional premium which We require for the Reinstatement.

### 2. Premium Adjustment

- (a) The Premium shown is provisional and is calculated on the Declared Values of:
  - (i) Property Insured,
  - (ii) Gross Profit / Insured Payroll / Gross Rentals / Gross Revenue (whichever is applicable),

On the day of commencement of each Period of Insurance.

- (b) You undertake to declare to Us within a reasonable time after the day of expiry of the Period of Insurance:
  - (i) the value of Property Insured on the day of expiry of the Period of Insurance. For the purpose of this declaration, stock-in-trade and/or merchandise shall be taken at its average value during the Period of Insurance;
  - (ii) the amount of the Gross Profit earned / Payroll paid / Gross Rentals Gross Revenue received, in accordance with the cover afforded in the respective items of Section 2, in the course of the Business during the accounting period of twelve (12) months most nearly concurrent with the Period of Insurance.
- (c) The provisional premium shall be adjusted by payment to Us of an additional premium or by allowance to You of a return premium, as the case may be, calculated at the agreed rate on:
  - (i) fifty percent (50%) of the difference between property declared in accordance with clauses (a)(i) and (b)(i);
  - (ii) the full agreed rate hereunder on the difference between the amounts declared under clauses (a)(ii) and (b)(ii).
- (d) It is agreed to make allowance for any abnormal fluctuation in values and to charge a premium commensurate with the risk, such premium to be agreed between You and Us.
- (e) The Declaration of Values at the expiry of the Period of Insurance, declared in accordance with this memorandum, shall not be reduced as the result of loss or Damage in respect of which a claim has been paid or is payable under Sections 1 and/or 2 of this Policy.

### **3. Notification of Claims**

On the discovery of any Damage giving rise to a claim under Sections 1 and/or 2 of this Policy, You shall forthwith give notice thereof in writing to Us and shall as soon as reasonably practicable deliver to Us a claim in writing containing as particular an account as may be reasonably practicable of the items of property Damaged, and of the amount of Damage having regard to their value at the time of the Damage, together with details of any other insurances on any property hereby insured.

You shall, upon becoming aware of any loss by theft or of any wilful or malicious Damage which may give rise to a claim under Sections 1 and/or 2 of this Policy, take all practicable steps to trace and recover any missing property and to discover by whom the property was stolen or Damaged, including reporting the matter to the police and any other responsible authority.

You shall use due diligence and do and concur in doing all things reasonably practicable to minimise any interruption of or interference with the Business or to avoid or diminish the loss and shall also deliver to Us a statement in writing of any claim certified by Your auditor, with all particulars and details reasonably practicable of the loss and shall produce and furnish all books of accounts and other business books, invoices, vouchers and all other documents, proofs, information, explanations and other evidence and facilities as may reasonably be required for investigation and verification of the claim together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith.

No claim under this Policy shall be payable unless You have complied with the terms of this condition.

#### **4. Termination of Cover under Section 2**

Notwithstanding anything contained herein to the contrary, if during any period in respect of which this Policy is in force:

- (a) You cease to carry on Your Business or any part of Your Business is disposed of, permanently discontinued or Your interest in the Business or such part thereof ceases otherwise than by death; or
- (b) You (being a corporation) are placed in liquidation (or provisional liquidation), are placed under Official Management, enter into a Scheme of Arrangement, have Receivers and/or Managers appointed over Your assets or undertaking(s); or
- (c) You (being a natural person) become a bankrupt or enter into a Scheme of Arrangement or Compromise or Composition with creditors;

then the insurance cover provided under Section 2 of this Policy in respect of such Business or Insured shall automatically and forthwith cease.

In the event of the Indemnity Period having begun to run in respect of any claim relating to such Business or part thereof, the Indemnity Period shall thereupon be at an end, unless its continuance be admitted by memorandum signed for or on Our behalf.

#### **5. Unoccupancy**

Unless We otherwise agree in writing, We will not pay for any Damage to Your Business Property if the occurrence happens after Your Premises have been unoccupied for more than ninety (90) consecutive days.

# Section 3 — General and Products Liability

## The Indemnity

We agree (subject to the terms, Claims Conditions, General Conditions, Exclusions, Definitions and Limits of liability incorporated herein) to pay to You or on Your behalf all amounts which You shall become legally liable to pay as Compensation for:

1. Personal Injury, and/or
2. Property Damage;

happening during the Period of Insurance within the geographical limits and caused by or arising out of an occurrence in connection with the business.

## Defence Costs and Supplementary Payments

With respect to the indemnity provided by this Policy, We will:

1. defend, in Your name and on Your behalf, any claim or suit against You alleging such Personal Injury, Property Damage and seeking damages on account thereof even if any of the allegations of such claim or suit is groundless, false or fraudulent.
2. pay all charges, expenses and legal costs incurred by Us and/or by You with Our written consent:
  - 2.1 in the investigation, defence or settlement of such claim or suit, including loss of salaries or wages because of Your attendance at hearings or trials at Our request, or
  - 2.2 in bringing or defending appeals in connection with such claim or suit.
3. pay all charges, expenses and legal costs recoverable from or awarded against You in any such claim or suit and all interest accruing on Our portion of any judgment until We have paid, tendered or deposited in court that part of such judgment which does not exceed the limit of Our liability thereon.
4. pay expenses incurred by You for:
  - 4.1 rendering first aid and/or surgical or medical relief to others at the time of any Personal Injury (other than any medical expenses, which we are prevented from paying by any law).
  - 4.2 temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or unpinning thereof.
  - 4.3 purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which You must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority.
5. pay all legal costs incurred by You with Our consent for representation of You at:
  - 5.1 any Coronial Inquest or Inquiry
  - 5.2 any proceedings in any court or tribunal in connection with liability insured against

by this Policy.

The amounts of such Defence Costs and Supplementary Payments incurred, except payments in settlement of claims and suits, are payable by Us in addition to the applicable Limit of Liability of this Policy.

However, in respect of any claims or suits originating in any court in North America, the applicable Limit of Liability shown in the Schedule shall be inclusive of all Defence Costs and Supplementary Payments.

Where We are prevented by law or otherwise from making payments on Your behalf, We will indemnify You for legal liability incurred to the extent that such liability is covered by this Policy.

In jurisdictions where We may not legally be permitted to, or cannot for any other reason, defend any claim or suit against You, We will reimburse You for the expense of such defence incurred with Our written consent.

### **Limits of Liability and Excess**

Subject to:

1. General Condition 17 - Claims Preparation Expenses,
2. the Defence Costs and Supplementary Payments clauses above, and

For General Liability - the Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims arising out of any one Occurrence.

For Products Liability - the Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims, and in the aggregate during any one Period of Insurance.

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

## **Definitions Applicable to Section 3**

For the purpose of determining the cover provided by this Policy:

### **1. Compensation means:**

monies paid or agreed to be paid by judgment, award or settlement for Personal Injury and/or Property Damage.

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

### **2. Employment Practices means:**

any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of Your employees.

### **3. Excess means:**

the first amount of each claim or series of claims, arising out of any one Occurrence, for which You are responsible.

The Excess applicable to this insurance appears in the Schedule.

### **4. General Liability means:**

Your legal liability for Personal Injury, Property Damage caused by or arising out of an

Occurrence happening in connection with the Business other than Products Liability.

**5. Geographical Limits means:**

anywhere in the World except for North America where cover shall only apply with respect to:

- 5.1 business visits to North America by any of Your directors, partners, officers, executives or employees but not where they perform manual work in North America.
- 5.2 Products exported to North America where such Products have been exported to North America without Your knowledge.

**6. Internet Operations means:**

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

**7. Medical Persons includes but is not limited to:**

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

**8. Named Insured means:**

- 8.1 the person(s), corporations and/or other organisations specified in the Schedule,
- 8.2 all existing subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured incorporated in the Commonwealth of Australia and/or any other organisations under the control of the Named Insured;
- 8.3 all subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured and/or any other organisations under the control of the Named Insured incorporated in the Commonwealth of Australia and which are constituted or acquired by the Insured after the commencement of the Period of Insurance.
- 8.4 every subsidiary and/or controlled corporation and/or other organisation of the Named Insured which is divested during the Period of Insurance, but only in respect of claims made against such divested subsidiary, related or controlled corporation or organisation caused by or arising out of Occurrences insured against by this Policy, which occurred prior to the divestment.

**9. North America means:**

- 9.1 the United States of America and the Dominion of Canada,
- 9.2 any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada; and
- 9.3 any country or territory subject to the laws of the United States of America or the Dominion of Canada.

**10. Occurrence means:**

an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage that is neither expected nor intended (except for the matters set out in sub clause 12.6 of the definition of “Personal Injury”) from Your standpoint.

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

**11. Personal Injury means :**

11.1 bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and mental injury;

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

11.3 wrongful entry or wrongful eviction;

11.4 libel, slander or defamation of character or invasion of privacy;

11.5 assault and battery not committed by You or at Your direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

In the event of Personal Injury claims arising from latent injury, latent sickness, latent disease, latent illness or latent disability: such injury, sickness, disease, illness or disability in respect of each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness or disability was first medically diagnosed.

**12. Products means:**

anything manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by You or on Your behalf (including Your predecessors in Your Business), including any packaging or containers thereof, including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such Products and anything which, by law or otherwise, You are deemed to have manufactured in the course of Your Business including discontinued Products.

Provided always that for the purpose of this insurance the term “Products” shall not be deemed to include:

12.1 food and beverages supplied by You or on Your behalf primarily to Your Employees as a staff benefit;

12.2 any vending machine or any other property rented to or located for use of others but not sold by You;

and any claims made against You in respect of Personal Injury and/or Property Damage arising out of any Occurrence in connection therewith shall be regarded as General Liability claims hereunder.

**13. Products Liability means:**

Your legal liability for Personal Injury and/or Property Damage caused by or arising out of any Products or the reliance upon a representation or warranty made at any time with

respect to such Products; but only where such Personal Injury and/or Property Damage occurs away from premises owned or leased by or rented to You and after physical possession of such Products has been relinquished to others.

**14. Property Damage means:**

14.1 physical loss, destruction of or damage to tangible property, including the loss of use thereof at any time resulting therefrom; and/or

14.2 loss of use of tangible property which has not been physically lost, destroyed or damaged; provided that such loss of use is caused by or arises out of an Occurrence.

**15. Tool of Trade means:**

a Vehicle that has tools, implements, machinery or plant attached to or towed by the Vehicle and is being used by You at Your premises or on any Work Site. Tool of Trade does not include any Vehicle whilst travelling to or from a Work Site or Vehicles that are used to carry goods to or from any premises.

**16. Work Site means:**

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

**17. You, Your, Insured**

Each of the following is an Insured to the extent specified below:

17.1 the Named Insured,

17.2 every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive or employee of the Named Insured (including the spouse of any such person while accompanying such person on any commercial trip or function in connection with Your Business) or volunteers while such persons are acting for or on behalf of the Named Insured and/or within the scope of their duties in such capacities.

17.3 any employee superannuation fund or pension scheme managed by or on behalf of the Named Insured, and the trustees and the directors of the trustee of any such employee superannuation fund or pension scheme which is not administered by corporate fund managers.

17.4 every principal in respect of the principal's liability arising out of:

17.4.1 the performance by or on behalf of the Named Insured of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and limits of liability as are provided by this Policy.

17.4.2 any Products sold or supplied by the Named Insured, but only in respect of the Named Insured's own acts or omissions in connection with such Products and in any event only for such coverage and limits of liability as are provided by this Policy.

17.5 every person, corporation, organisation, trustee or estate to whom or to which the Named Insured is obligated by reason of law, (whether written or implied) to provide insurance such as is afforded by this Policy, but only to the extent required by such law, and in any event only for such coverage and limits of liability as are provided by this Policy.



- 17.6 every officer, member, employee or voluntary helper of the Named Insured's canteen, social and/or sporting clubs, first aid, medical, ambulance or fire fighting services, charities, welfare and/or child care facilities, while acting in their respective capacities as such.
- 17.7 any director, partner, proprietor, officer or executive of the Named Insured in respect of private work undertaken by the Named Insured's employees for such person and any Employee whilst actually undertaking such work.
- 17.8 the estates, legal representatives, heirs or assigns of:
  - 17.8.1 any deceased or insolvent persons, or
  - 17.8.2 persons who are unable to manage their own affairs by reason of mental disorder or incapacity, who would otherwise be indemnified by this Policy, but only in respect of liability incurred by such persons as described in clauses 17.8.1 and 17.8.2 above.
- 17.9 every party including joint venture companies and partnerships to whom the Named Insured is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this Policy; but only to the extent required by such contract or agreement and in any event only for such coverage and limits of liability as are provided by this Policy.

**18. Your Business means:**

the business as described in the Schedule (and, where applicable, as further described in any more specific underwriting information provided to Us at the time when this insurance was negotiated) and shall include:

- 18.1 the ownership and/or tenancy of premises by You, including the maintenance of Your premises or property for which such responsibility exists.
- 18.2 sponsorships and/or participation in galas, fetes and exhibitions.
- 18.3 the provision and management of canteens, social and/or sporting clubs and welfare organisations, educational and child care facilities primarily for the benefit of Your employees.
- 18.4 the provision of first aid, medical, ambulance or fire fighting services by You or on Your behalf.

## Exclusions Applicable to Section 3

We do not cover any liability:

### 1. Property owned by You

for Property Damage to property owned by You.

### 2. Property in Your care, custody or control

for Property Damage to property in Your physical or legal care, custody or control; but this exclusion shall not apply with regard to:

- 2.1 the personal property, tools and effects of any of Your directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects of any of Your visitors.
- 2.2 premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, You for the purpose of Your Business, but no cover is provided by this Policy if You have assumed the responsibility to insure such premises.
- 2.3 (a) premises (and/or their contents) temporarily occupied by You for the purpose of carrying out work in connection with Your Business, or  
(b) any other property temporarily in Your possession for the purpose of being worked upon  

but no indemnity is granted for damage to that part of any property upon which You are or have been working if the damage arises solely out of such work.
- 2.4 any Vehicle (including its contents, spare parts and accessories while they are in or on such Vehicle) not belonging to or Used by You, whilst any such Vehicle is in a car park owned or operated by You; provided that You do not operate the car park for reward, as a principal part of Your Business.
- 2.5 any property (except property that You own) not mentioned in clauses 2.1 to 2.4 above whilst in Your physical or legal care, custody or control where You have accepted or assumed legal liability for such property. Provided that Our liability under this clause 2.5 shall not exceed \$100,000 (one hundred thousand dollars) in respect of any one claim or series of claims arising out of any one Occurrence.

### 3. Vehicles

for Personal Injury or Property Damage arising out of the ownership, possession or use by You of any Vehicle:

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

But Exclusions 3.1 and 3.2 shall not apply to:

- 3.3 Personal Injury where:
  - (a) that compulsory liability insurance or statutory indemnity does not provide indemnity, and
  - (b) the reason or reasons why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles.

- 3.4 any Vehicle (including any tool or plant forming part of or attached to or used in connection with such vehicle) whilst being operated or used by You or on Your behalf as a Tool of Trade at Your premises or on any Worksite.
  - 3.5 the delivery or collection of goods to or from any Vehicle.
  - 3.6 the loading or unloading of any Vehicle.
  - 3.7 any Vehicle temporarily in Your custody for the purpose of parking.
- 4. Aircraft, Hovercraft or Watercraft**  
for Personal Injury and/or Property Damage arising from:
- 4.1 the ownership, maintenance, operation or use by You of any Aircraft or Hovercraft.
  - 4.2 the ownership maintenance, operation or use by You of any Watercraft exceeding eight (8) metres in length, whilst such Watercraft is afloat.  
Provided that Exclusion 4.2 shall not apply with regard to claims arising out of:
    - (a) Watercraft used in operations carried out by any independent contractors for whose conduct You may be held liable.
    - (b) Watercraft owned by others and used by You for business entertainment.
- 5. Aircraft Products**  
Arising out of any Products which, with Your knowledge, are intended for incorporation into the structure, machinery or controls of any Aircraft.
- 6. Damage to Products**  
for Property Damage to any Products where such damage is directly caused by a fault or defect in such Products; but this exclusion shall be interpreted to apply with respect to damage to the specific part and only that part of such product to which the damage is directly attributable.
- 7. Faulty Workmanship**  
for the cost of performing, completing, correcting or improving any work undertaken by You.
- 8. Loss of Use**  
for loss of use of tangible property, which has not been physically lost, destroyed or damaged, directly arising out of:
- 8.1 a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
  - 8.2 failure of any Products or work performed by You or on Your behalf to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You; but this Exclusion 8.2 shall not apply to Your liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any Products or work performed by You or on Your behalf after such products or work have been put to use by any person or organisation other than You.
- 9. Product Guarantee**  
for any Products warranty or guarantee given by You or on Your behalf, but this exclusion shall not apply to the requirements of any Federal or State legislation as to product safety and information.

## **10. Product Recall**

for damages, costs or expenses arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any Products where such Products are withdrawn or recalled from the market or from use by You or any person or organisation because of any known, alleged or suspected defect or deficiency in such Products.

## **11. Asbestos**

for Personal Injury, Property Damage (including loss of use of property) or Advertising Injury directly or indirectly caused by or arising from exposure to asbestos or materials containing asbestos.

## **12. Breach of Professional Duty**

arising out of any breach of duty owed in a professional capacity by You and/or any person(s) for whose breaches You may be held legally liable, but this exclusion shall not apply to claims:

12.1 for Personal Injury and/or Property Damage arising from such breach of duty.

12.2 arising out of the rendering of or failure to render professional medical advice by Medical Persons employed by You to provide first aid and other medical services on Your premises.

12.3 arising out of advice which is not given by You for a fee.

12.4 arising out of advice given in respect to the use or storage of Your Products.

## **13. Contractual Liability**

assumed by You under any contract or agreement but this exclusion does not apply to:

13.1 the extent that liability would have been implied by law.

13.2 liability assumed by You under a warranty of fitness or quality.

## **14. Employers Liability**

14.1 for personal Injury to any Worker in respect of which You are or would be entitled to indemnity under any policy of insurance, fund, scheme or self insurance pursuant to or required by any legislation relating to Workers' Compensation or Accident Compensation whether or not such policy, fund, scheme or self insurance has been effected.

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

14.2 imposed by:

(a) the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement.

(b) any law relating to Employment Practices.

For the purpose of Exclusions 14.2(a) and 14.2(b):

(i) the term 'Worker' means any person deemed to be employed by You pursuant to any Workers' Compensation Law. Voluntary workers secondes and work experience students (if any) shall not be deemed to be your workers.

**15. Fines, Penalties, Punitive, Exemplary or Aggravated Damages**

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

**16. Information Technology, Computer Data, Programme and Storage Media**

16.1 for Personal Injury or Property Damage arising directly or indirectly out of, or in any way involving Your Internet Operations, or

16.2 for Property Damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:

- (a) the use of any computer hardware or software,
- (b) the provision of computer or telecommunication services by You or on Your behalf;
- (c) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus;

but this exclusion does not apply to:

16.3 Personal Injury or Property Damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its web site, or

16.4 liability which arises irrespective of the involvement of Your Internet Operations, and nothing in this exclusion will be construed to extend coverage under this Policy to any liability which would not have been covered in the absence of this exclusion.

**17. Libel and Slander**

for libel and slander:

17.1 resulting from statements made prior to the commencement of the Period of Insurance.

17.2 resulting from statements made at Your direction with knowledge that such statements are false.

17.3 related to advertising, broadcasting, publishing or telecasting actives conducted by You or on Your behalf.

**18. Liquidated Damages**

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

**19. Pollution**

19.1 for Personal Injury and/or Property Damage directly or indirectly arising out of the discharge, dispersal, release or escape of any Pollutant into or upon land, the atmosphere or any water course or body of water.

19.2 for the cost of removing, nullifying, or cleaning up of any Pollutant.

Provided that, with respect to any such liability which may be incurred anywhere other

than North America, Exclusions 19.1 and 19.2 shall not apply where such discharge, dispersal, release or escape is caused by a sudden, identifiable, unintended and unexpected event from Your standpoint which takes place in its entirety at a specific time and place.

## Conditions Applicable to Section 3

### 1. Notification of Occurrence, claim or suit

You shall give:

- 1.1 written notice to Us, as soon as reasonably practicable, of any claim made against You or any Occurrence that may give rise to a claim being made against You and which is covered by this Policy.
- 1.2 all such additional information that We may reasonably require and every demand, writ, summons, proceedings, impending prosecution or inquest and all documents relating to the claim or Occurrence shall be forwarded to Us as soon as practicable after they are received by You.
- 1.3 Written notice (including facsimile transmission) must be given to Us via Your Insurance Broker.

### 2. Your duties in the event of an Occurrence, claim or suit

- 2.1 You shall not, without Our written consent, make any admission, offer, promise or payment in connection with any Occurrence or claim.
- 2.2 You shall use the best endeavours to preserve all property, products, appliances, plant, and all other things which may assist in the investigation or defence of a claim or suit or in the exercise of rights of subrogation and, so far as may be reasonably practicable, no alteration or repair shall be effected without Our consent until We have had an opportunity of inspection.
- 2.3 You shall, when so requested, provide Us with details of any other insurances current at the time of any Occurrence, and/or Personal Injury and/or Property Damage and/or Advertising Injury and covering any of the liability insured by this Policy.

### 3. Our rights regarding claims

- 3.1 Following the happening of any Occurrence in respect of which a claim is, or may be, made under this Policy, We shall have full discretion in the conduct of any proceedings in connection with any claim. You shall give such information and assistance that We may reasonably require in the prosecution, defence or settlement of any claim.
- 3.2 We may at any time pay to You, in respect of all claims against You arising directly or indirectly from one source or original cause:
  - (a) the amount of the Limit of Liability or such other amount specified in respect thereof (after deduction of any sum(s) already paid by Us, which sum(s) would reduce the amount of Our unfulfilled liability in respect thereof); or
  - (b) any lesser sum for which the claim(s) can be settled.
- 3.3 Upon making such payment, We shall relinquish conduct and control of, and be under no further liability under this Policy in connection with, such claim(s) except for Defence Costs and Supplementary Payments:

- (a) recoverable from You in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently); or
- (b) incurred by Us, or by You with Our written consent, prior to the date of such payment.

**4. Premium Adjustment**

If the first premium or any renewal premium for this Policy or any part thereof shall have been calculated on estimates provided by You, You shall keep an accurate record containing all particulars relative thereto and shall at all reasonable times allow Us to inspect such record.

You shall, where requested by Us after the expiry of each Period of Insurance, provide to Us such particulars and information as We may require as soon as reasonably practicable. The premium for such period shall thereupon be adjusted and any difference paid by or allowed to You, as the case may be, subject to retention by Us of any minimum premium that may have been agreed upon between Us and You at inception or the last renewal date of this Policy.

**5. Alteration of Risk**

Every change which substantially varies any of the material facts or circumstances existing at the commencement of each Period of Insurance, that shall come to the knowledge of Your officer responsible for insurance matters, shall be notified to Us as soon as reasonably practicable thereafter and You shall (if so requested) pay such reasonable additional premium as We may require.

**6. Cross Liabilities**

This insurance extends to indemnify:

- 6.1 each of the parties comprising the Named Insured, and
- 6.2 each of the Insureds hereunder,

separately in the same manner and to a like extent as though policies had been issued in their separate names.

In particular, but without limiting the foregoing, this insurance shall indemnify each of the parties described in clauses 6.1 and 6.2 in respect of claims made by any other of such parties.

Provided always that:

- 6.3 each of such parties shall be separately subject to the terms, Claims Conditions, General Conditions, Conditions applicable to Section 3, Exclusions and Definitions of this Policy in the same manner and to a like extent as though separate policies had been issued, and
- 6.4 in no case shall the amount payable by Us in respect of any one claim or series of claims arising out of any one Occurrence or in the aggregate, as the case may be, exceed the applicable Limit of Liability as specified in the Schedule.

# Section 4 — Management Liability

## Insuring Clauses

### 1. **Directors and Officers Liability**

We will pay on behalf of each Insured Person all Loss for which the Insured Person may not be legally indemnified by the Corporation, arising from any Claim alleging a Wrongful Act first made against such Insured Person, individually or otherwise, during the Period of Insurance, and which is notified to Us during the Period of Insurance.

### 2. **Special Excess Limit - for all Insured Persons of the Corporation**

We will pay the unindemnified Loss of any Insured Person of the Corporation, up to the Special Excess Limit, due to a Claim which would otherwise be payable under Insuring Clause 1 when:

- (i) the Limit of Liability; and
- (ii) all other indemnification for Loss available to such Insured Person has been exhausted.

### 3. **Corporate Reimbursement**

We will pay on behalf of the Corporation all Loss for which the Corporation grants indemnification to an Insured Person, which is legally permitted or required by law, arising from any Claim alleging a Wrongful Act first made against such Insured Person, individually or otherwise, during the Period of Insurance, and which is notified to Us during the Period of Insurance.

### 4. **Entity**

We will pay on behalf of the Corporation all Loss arising out of any Claim by reason of a Wrongful Act first made against the Corporation during the Period of Insurance and notified to Us during the Period of Insurance.

### 5. **Employment Practices Liability**

We will pay on behalf of each Insured Person and the Corporation all Loss which the Insured is legally obliged, as an employer, to pay, arising from any Claim for an Employment Practices Breach first made against an Insured during the Period of Insurance, and which is notified to Us during the Period of Insurance. Our aggregate liability for all claims under this extension will not exceed \$250,000 (two hundred and fifty thousand dollars) in excess of the deductible as stated in the Schedule.

### 6. **Superannuation Trustees Liability Cover**

We will pay on behalf of the Insured that Loss which the Insured Person is legally obliged to pay by reason of any Claim for a Trustee Responsibility Breach first made against the Insured Person during the Period of Insurance and which is notified to Us during the Period of Insurance.

### 7. **Corporation Crisis Cover**

We will pay on behalf of the Corporation any Crisis Loss which the Corporation incurs by reason of a Crisis which first occurs during the Period of Insurance and is notified to Us during the Period of Insurance.



Our aggregate liability for all Claims under this Insuring Clause 7 will not exceed \$250,000 (two hundred and fifty thousand dollars) in excess of the Deductible.

#### **8. Statutory Liability Cover**

Notwithstanding Exclusion 9 ("Fines and Penalties") we will pay on behalf of the Insured any Penalty resulting from a Claim where the Claim is first made against the Insured and notified in writing to Us during the Period of Insurance in respect of a Wrongful Breach.

Our aggregate liability for all Claims under this Insuring Clause 8 will not exceed \$500,000 (five hundred and fifty thousand dollars) in excess of the Deductible.

### **Automatic Extensions**

We agree to provide indemnity as stated in this Section PROVIDED ALWAYS THAT:

- (a) each Extension is subject to all other terms and conditions of this Section 4 and General Conditions 5 and 6 of this Policy (unless specifically stated to the contrary);
- (b) the inclusion of any Extension will not increase the Limit of Indemnity available under this Section 4.

#### **1. Advancement of Defence Costs**

We agree that in relation to any Claim under this Policy:

- (a) where indemnity under this Policy has been confirmed by Us in writing, then We will pay Defence Costs arising from such Claim as they are incurred.
- (b) Where indemnity has not been confirmed in writing by Us then:
  - (i) where We elect to conduct the defence or settlement of such Claim, We will pay Defence Costs arising from such a Claim as they are incurred.
  - (ii) In any other case We will pay Defence Costs arising from such Claim until such time that any fraudulent, dishonest, criminal or malicious conduct has been admitted by an Insured or determined by a court of law;

PROVIDED ALWAYS THAT in the event that the Claim is withdrawn or that indemnity under this Policy is subsequently withdrawn or denied, We will cease to advance Defence Costs and the Insured will refund any Defence Costs advanced by Us to the extent that it is established that the Insured was not entitled to such Defence Costs.

#### **2. Retirement Cover**

If the Corporation does not renew this Policy or replace it with any other insurance providing directors and officers liability coverage and does not purchase the Bilateral Extended Reporting Period detailed in Automatic Extension 3 then any Insured Person who retired from all employment or office prior to the expiry of the Period of Insurance will be automatically entitled to a once only extension of the Policy for a period of 12 months, immediately following the Period of Insurance, but only for Wrongful Acts committed or alleged to have been committed by them prior to the date of retirement.

#### **3. Bilateral Extended Reporting Period**

If this Policy is neither renewed nor replaced with similar cover during the Period of Insurance the Corporation and any Insured Person shall jointly have the right upon payment of an amount equal to one hundred percent (100%) of the total expiring annual premium stated in the Schedule to a once only extension of the Policy for a further

12 months immediately following the expiry of the Period of Insurance with respect to:

- (a) Insuring Clause 1 (Directors and Officers Liability),
- (b) Insuring Clause 3 (Corporate Reimbursement);
- (c) Insuring Clause 4 (Entity);

but only for any Wrongful Act committed or alleged to have been committed or attempted prior to the expiry of the Period of Insurance

#### **4. Official Investigations and Enquiries**

We agree to pay Defence Costs arising out of any attendance by an Insured Person at any official investigation, examination, enquiry or other proceedings ordered or commissioned by any official body or institution empowered to investigate the affairs of the Corporation where such investigation, examination, enquiry or proceedings may lead to a Claim under this Policy PROVIDED ALWAYS THAT:

- (a) We will be entitled, at Our absolute discretion, to appoint legal representation to represent the Insured Person or Persons involved in the investigation, examination, enquiry or proceeding;
- (b) the investigation, examination, enquiry or proceeding, or notice of intended investigation, examination, enquiry or proceeding is made during the Period of Insurance and is notified to Us during the Period of Insurance;
- (c) in the event that a claim for payment of Defence Costs is withdrawn or that indemnity under this Policy is subsequently withdrawn or denied, We will cease to advance Defence Costs and the Insured will refund any Defence Costs advanced by Us to the extent that it is established that the Insured was not entitled to such Defence Costs.

#### **5. Occupational Health and Safety**

Notwithstanding Exclusion 6 (Insured V Insured) and Exclusion 7 (Bodily Injury and Property Damage), in respect of any Claim made against the Insured where such Claim arises from a breach or alleged breach of any Commonwealth, State or Territory occupational health and safety laws We agree to pay Defence Costs PROVIDED ALWAYS THAT such coverage will not extend to costs and expenses incurred in relation to any proceeding or civil claim for damages or compensation arising from that breach or any other Claim otherwise excluded under this Policy.

#### **6. New Subsidiaries**

We agree to provide indemnity to the Insured in respect of any Subsidiary, which is created or acquired by the Corporation PROVIDED ALWAYS THAT:

- (a) such coverage will only apply in respect of a Wrongful Act actually or allegedly occurring subsequent to the date of creation or acquisition by the Corporation;
- (b) in respect to any Subsidiary whose asset values exceed forty percent (40%) of the total consolidated assets of the Corporation at the date of creation or last balance date prior to acquisition:
  - (i) indemnity under this Extension is only valid for sixty (60) days;
  - (ii) notification shall be given in writing to Us within sixty (60) days after such creation or acquisition;

- (iii) We may at Our absolute discretion provide cover for such Subsidiary subject to additional premiums and/or conditions.

**7. Subsidiary Run-Off**

We agree that where an entity ceases to be a Subsidiary prior to or during the Period of Insurance We will provide indemnity to the Insured in respect to such Subsidiary PROVIDED ALWAYS THAT such indemnity will only apply in respect of a Wrongful Act occurring between the date of creation or acquisition by the Corporation and the date such entity ceased to be a Subsidiary.

**8. Preservation of Indemnity**

We agree that if an Insured Person is unable to satisfy a right to indemnity against the Corporation, solely by reason of the Corporation having insufficient funds to indemnify the Insured Person or refusing to do so, then We will provide indemnity in respect of such Insured Person against Loss to the extent that the Corporation could have granted indemnity, as legally permitted or required by law PROVIDED ALWAYS THAT any payment by Us under this Extension will be subject to the deductible for Insuring Clause 3 (Corporate Reimbursement).

**9. Estates and Legal Representatives**

We agree to provide indemnity to the estate, heirs, legal representatives or assigns of any deceased, incompetent, bankrupt or insolvent Insured Person PROVIDED ALWAYS THAT such estate, heirs, legal representatives or assigns will be subject to all the terms and conditions of this Policy insofar as they apply.

**10. Spousal Liability**

We agree to provide indemnity to the lawful spouse of an Insured Person for any Claim against an Insured Person PROVIDED ALWAYS THAT indemnity is limited to Loss arising from any Claim which:

- (a) is made against the spouse only because they are the lawful spouse of the insured Person;
- (b) relates to property jointly held by or is legitimately and legally transferred between the Insured Person and their spouse.

**11. Outside Directorships**

We will provide indemnity in respect of any Outside Directorship held by an Insured Person in a Non-Profit Organisation or Organisation at the commencement of the Period of Insurance or which is assumed by an Insured Person during the Period of Insurance PROVIDED ALWAYS THAT:

- (a) such indemnity will not be available under Insuring Clause 3 (Corporate Reimbursement) to the Non-Profit Organisation or Organisation in which such Outside Directorship is held or under Insuring Clause 1 (Directors and Officers Liability) to any other director or officer (by whatever name) of such Non-Profit Organisation or Organisation who is not also an Insured Person of the Corporation; and
- (b) such indemnity will be specifically in excess of any other indemnity available to such Insured Person by reason of serving in such Outside Directorship or under any other similar insurance; and
- (c) such indemnity will only apply in respect of a Wrongful Act occurring during the period for which such Outside Directorship was held; and

(d) such indemnity will be non-cumulative with any other insurance issued by Us.

## **12. Outside Directorship Run-off**

We will provide indemnity in respect of any Outside Directorship held by an Insured Person in a Non-Profit Organisation or Organisation and which the Insured Person ceased or ceases to hold prior to or during the Period of Insurance PROVIDED ALWAYS THAT:

- (a) such indemnity will only apply in respect of a Wrongful Act occurring between the date of such Outside Directorship being assumed and the date such Outside Directorship ceased; and
- (b) such Outside Directorship was previously indemnified by Us under this Policy or any previous policy; and
- (c) all such indemnity under this Extension will be subject to the terms and conditions of Extension 11 (Outside Directorships).

## **13. Continuity of Cover**

Notwithstanding Exclusion 3 (Prior or Pending) of this Policy, We will indemnify any Insured Person and/or the Corporation for any Claim otherwise covered by this Policy, arising from a Known Circumstance if:

- (1) There has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such Known Circumstance; and
- (2) We were the Directors and Officers Liability insurer of the Insured Person and the Corporation when the Insured Person or the Corporation first knew of such Known Circumstance (whichever be the earlier); and
- (3) We continued thereafter, without interruption, to be the Directors and Officers Liability insurer of the Insured Person and the Corporation up until this Policy came into effect; and
- (4) Had we been notified by the Insured Person or Corporation of the Known Circumstance when the Insured Person or Corporation first knew of it, the Insured Person or Corporation would have been relevantly indemnified under the policy in force at that time but is now not entitled to be covered by that Policy and the Insured Person or Corporation would have otherwise been covered by this Policy; and
- (5) Neither the Claim nor Known Circumstance have previously been notified to Us or to any other insurer.

If the Insured Person or Corporation 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 Continuity of Cover extension does not apply to provide indemnity under this Policy subject to the provisions of the Insurance Contracts Act 1984.

The limit of liability provided by Us under this provision is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph (2) above or under this Policy. The terms of this Policy otherwise apply.

There is no indemnification provided pursuant to this clause in relation Insuring Clause 7 (Corporation Crisis Cover).

## Exclusions

### Exclusions applicable to all Insuring Clauses

We will not be liable under this Policy for any Loss arising out of any Claim against an Insured Person or the Corporation, or for Defence Costs incurred pursuant to an inquiry covered under this Policy, or for any Crisis Loss or Fidelity Loss or for any payment under any extension:

**1. Breach of Professional Duty**

arising directly or indirectly from:

- (a) the rendering or failure to render professional services and/or professional advice; or
- (b) a breach of or alleged breach of any contract for the provision of professional services and/or professional advice.

**2. Major Shareholders – Fifteen Percent (15%)**

brought or maintained by or on behalf of any Major Shareholder PROVIDED ALWAYS THAT this Exclusion shall only apply where the Wrongful Act was committed or was alleged to have been committed at any time after the date on which the Major Shareholder of the Corporation first became a Major Shareholder of the Corporation.

For the purposes of this Exclusion:

- (a) Major Shareholder shall mean any person, body corporate, or other entity who is or was entitled to fifteen percent (15%) or more of the voting shares in the Corporation.
- (b) A person, body corporate, or other entity shall be taken to be entitled to a voting share if that person, body corporate or other entity has any direct or indirect, legal or beneficial interest in the share or any direct or indirect power to vote the share or to dispose of the share and whether or not the interest or power is held through any interposed body corporate or other entities or is held jointly with others.

**3. Prior or Pending**

- (a) made, threatened or intimated against an Insured prior to the Period of Insurance;
- (b) directly or indirectly based upon, attributable to, or in consequence of any fact or circumstance;
  - (i) of which written notice has been given, or ought reasonably to have been given, under any previous policy; or
  - (ii) of which any Insured first became aware prior to the Period of Insurance, and which the Insured knew or ought reasonably to have known had the potential to give rise to a Claim under this Policy.

**4. Prospectus**

arising directly or indirectly from the issue of initial public offering of securities but not including rights issues, bonus share issues, employee share plans, dividend reinvestment, convertible notes or redeemable preference shares.

**5. Fraud and Dishonesty**

arising directly or indirectly from:

- (a) (i) any dishonest, fraudulent, criminal or malicious act or omission or other act or omission committed with criminal intent; or
- (ii) any wilful breach of any statute or regulation, or any wilful breach of any

- contract; by any Insured, where such act, omission or breach is established in fact.
- (b) such Insured having improperly benefited in fact from securities transactions as a result of information that was not available to other sellers or purchasers of such securities;
  - (c) such Insured having gained any personal profit, remuneration or advantage to which such Insured was not legally entitled.

## **6. Insured V Insured**

- (a) brought or maintained by or on behalf of an Insured Person or their estate, heirs, legal representatives or assigns however, this Exclusion will not apply to any Claim brought by an Insured Person for:
  - (i) contribution or indemnity if such Claim directly results from another Claim covered under this Policy;
  - (ii)
    - a) discrimination against any Insured Person on any legally prohibited basis;
    - b) wrongful dismissal, either actual or constructive, of any Insured Person;
    - c) workplace harassment (whether sexual or otherwise) of an Insured Person, including the alleged creation or permission of a harassing workplace environment;
    - d) breach of any express or implied term of any oral or written employment contract;
    - e) any misleading representation or advertising in respect to conditions of employment;
    - f)
      - i Failure to employ or promote;
      - ii wrongful demotion;
      - iii failure to grant tenure;
      - iv wrongful discipline;
      - v negligent employee evaluation;
      - vi wrongful deprivation of career opportunity.
    - g) denial of natural justice, defamation or invasion of privacy arising from employment related matters.
- (b) brought or maintained by or on behalf of the Corporation, however this Exclusion will not apply to any such Claim that is caused to be brought in the name of the Corporation:
  - (i) as a shareholder derivative action, provided that such shareholder is was not also an Insured Person of the Corporation at the time of the Wrongful Act and is acting without any direct or indirect solicitation or enticement of or with any other Insured;
  - (ii) by any regulatory authority, provided that such regulatory authority is acting without any direct or indirect solicitation or enticement of or with any other Insured;
  - (iii) at the instigation of a receiver, a receiver and manager, an administrator or liquidator, or trustee formally appointed by a court to administer a compromise or scheme of arrangement of the Corporation.

## **7. Bodily Injury and Property Damage**

arising directly or indirectly from:

- (a) bodily injury, sickness, disease or death of any person, however this Exclusion will not apply to mental injury, mental anguish, nervous shock or emotional distress not associated with bodily injury;
- (b) physical loss of, damage to, or destruction of, any tangible property, including loss of use thereof or any consequential loss.

## **8. Pollution, Nuclear Events, War and Terrorism**

arising directly or indirectly from:

- (a) (i) the actual, alleged or threatened discharge, release, escape or disposal of Pollutants into or upon land, the atmosphere, or any watercourse or body of water; or
- (ii) any enforcement, action or proceeding in connection with the containment, clean up, removal, or treatment of such Pollutants;

OTHER THAN the payment of Defence Costs associated with any such Claim;

- (b) ionising, radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel PROVIDED ALWAYS THAT this Exclusion will not apply to any Claim arising from radio-isotopes or radium or radium compounds when used away from the place where these are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research activities;
- (c) directly or indirectly based upon, attributable to, or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or Usurped power or confiscation or nationalisation or requisition of or damage to property by or under the order of any government or public local authority;
- (d) arising directly or indirectly from any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Loss.

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

This exclusion also excludes loss, damage, costs or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If We allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this Policy the burden of proving the contrary shall be upon the Insured. In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

**9. Fines and Penalties**

arising from or by reason of or directly or indirectly caused by or arising from fines and penalties imposed by law, punitive, exemplary or aggravated or multiple damages, income tax, customs duties, excise duty, stamp duty, sales tax or any other State or Federal tax or duty.

**10. Insolvency Exclusion**

arising directly or indirectly from the insolvency of the Insured and/or any company or entity.

**11. Additional Exclusions Applicable to Insuring Clause 4 (Entity Cover)**

For any Loss arising out of any Claim:

**(a) Contractual Liability**

based upon, arising from or in consequence of any actual or alleged liability of the Corporation for or in respect of any written or verbal contract or agreement. However, this exclusion does not apply to a contractual obligation of the Corporation to indemnify an Insured Person against a Loss for which the Insurer has provided cover under Insuring Clause 3 (Corporate Reimbursement).

**(b) Intellectual Property Rights**

based upon, arising from or in consequence of any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights.

**(c) Trade Practices**

based upon, arising from or in consequence of any actual or alleged violation of the Trade Practices Act 1974 or any State Fair Trading Acts or similar legislation in any other jurisdiction.

**12. Additional Exclusions applying to Insuring Clause 5 (Employment Practices Liability Cover) and Exclusion 6 (Insured V Insured).**

(a) For or in respect of:

- (i) a contract of employment alleged to be unfair;
  - (ii) The seeking of relief pursuant to Section 127A of the Workplace Relations Act (Commonwealth) or Section 106 of the Industrial Relations Act (NSW) 1996 or Section 276 of the Industrial Relations Act (Queensland) 1999 or similar legislation in the other states or territories of the Commonwealth of Australia or in New Zealand.
- (b) in relation to any Workers' Compensation or Occupational Health and Safety Acts or similar legislation.
- (c) for the cost of physical modifications to premises, plant or equipment owned or occupied by the Corporation.
- (d) brought about by, contributed to by or which involves industrial disputes (whether between the Corporation or the Insured Persons or between employees or their union or generally), strike, picket, lockout, go slow or work to rule.



### **13. Additional Exclusions Applicable to Insuring Clause 8 (Statutory Liability)**

For or in respect of:

- (a) any Wilful, intentional or deliberate Wrongful Breach;
- (b) a Wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act;
- (c) any Wrongful Breach caused by the gross negligence or recklessness of the Insured;
- (d) a fraudulent act, malicious act or malicious omission of the Insured;
- (e) a Wrongful Breach of any Consumer Protection Act. This Exclusion does not apply to Officers and Employees for Claims arising in the performance of their duties as Officers and Employees PROVIDED ALWAYS THAT this Exclusion will apply to Claims by Officers and Employees based upon, attributable to or in any way connected with a Wrongful Breach of Part VB of the Trade Practices Act;
- (f) a Wrongful Breach related to or in any way connected with a tax, rate, duty, levy, charge, fee or any other revenue charge or impost;
- (g) a Wrongful Breach relating to the regulation of vehicular, air or marine traffic;
- (h) any Defence Costs incurred or paid before the consent of the Insurer has been given in accordance with the provisions of this Policy.
- (i) any contravention of Sections 182, 183, 601FD, 601FE or 601JD of the Corporations Law and any amendment, consolidation or re-enactment of any of those Sections.
- (j) any Loss recoverable under any other Section of this Policy whether insured or not.

## **Conditions Applicable to Section 4**

### **1. Severability and Non-Imputation**

We agree that where this Policy insures more than one party,

- (a) the written proposal form will be construed as being a separate application by each of the Insured persons and no statement or representation in or within respect to the proposal by an Insured Person will be imputed to any other Insured Person.
- (b) this Policy shall, subject to Policy Condition 18 (Non-Accumulation), be construed to be a separate policy between Us and each Insured Person and no breach of any condition of this Policy, fact or knowledge possessed by one Insured Person or misconduct by any Insured Person will be imputed to any other Insured Person.

PROVIDED ALWAYS THAT where there has been a fraudulent misrepresentation, this Condition will only apply when such remaining parties:

- (i) are entirely innocent of and have no prior knowledge of any such conduct; and
- (ii) notify Us in writing of all known facts in relation to any such conduct as soon as reasonably practicable upon becoming aware of such conduct.

### **2. Reporting and Notice**

The Insured will give to Us written notice as soon as practicable of any Claim made against any Insured Person for a Wrongful Act PROVIDED ALWAYS THAT such written notice is given to Us during the same Period of Insurance or within thirty (30) days after its expiry.

Notice of any Claim will be given in writing to Us, and delivered to:

**Miramar Underwriting Agency Pty Ltd**  
PO Box A2016  
Sydney South NSW 1235

**3. Limit of Indemnity**

Our total amount payable under this Policy for Loss in respect of any one Claim and in the aggregate will not exceed the Limit of Indemnity as specified in the Schedule OTHER THAN in the case of Insuring Clause 2 (Special Excess Limit – for all Insured Persons of the Corporation).

The above mentioned Special Excess Limit is a separate aggregate limit of Our liability to all Insured Persons of the Corporation under Insuring Clause 2 and it is in addition to, and not part of, the Limit of Indemnity. Sub-limits of liability and Extensions are part of that amount and are not payable in addition to the Limit of Indemnity.

The total amounts payable by Us under any Extensions subject to a Sub-limit of Liability shall not exceed the applicable amount specified as such for that Extension. The inclusion of more than one Insured under this policy does not increase the total amount payable by Us under this policy.

Any indemnity provided under any Extension of this Policy and/or Defence Costs incurred are part of and not in addition to the Limit of Indemnity applicable to any one Claim. Any amount paid by Us in settlement of a dispute which may otherwise become a Claim will be deemed to be a Loss for the purposes of this Policy.

**4. Deductible**

Our liability under each and/or every Insuring Clause will only apply to that part of each Loss in respect of each Claim which is in excess of the relevant Deductible as stated in the Schedule and such Deductible will be borne by the Insured Person and/or the Corporation (as the case may be) at their own risk.

The Deductible applies to Defence Costs and Investigation Costs.

A single Deductible shall apply to Loss arising from all Claims alleging the same Wrongful Act or Direct Financial Loss arising from the same Dishonest Acts.

**5. Multiple Claims**

Where a single Wrongful Act gives rise to more than one Claim, all such Claims will jointly constitute one Claim under this Policy, and only one Deductible will be applicable in respect of such Claim.

Where a Claim is based on causally connected or interrelated Wrongful Acts these will jointly constitute a single Wrongful Act under this Policy.

**6. Additional Notification Period**

We agree that the Insured may notify a Claim (in accordance with Condition 2 (Reporting and Notice) either during the Period of Insurance or within thirty (30) days after its expiry PROVIDED ALWAYS THAT such Claim was made against the Insured Person during the Period of Insurance.

**7. Authorisation**

The Corporation as specified in the Schedule, agrees to act on behalf of all Insured

Persons under this Policy and each Insured Person agrees that the Corporation will act on their behalf with respect to the giving and receiving of notice of any Claim, the giving and receiving of notice of cancellation or expiry of this Policy, the payment of Premium and the return of any Premium that may become due under this Policy, the negotiation, agreement to and acceptance of endorsements, and the giving and receiving of any notice provided for in this Policy.

**8. Defence and Settlement**

Subject to the conditions of the Insurance Contracts Act 1984, as a condition precedent to the right to indemnity under this Policy the Insured agrees not to settle any Claim, incur any costs or expenses in connection therewith, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any Claim without Our written consent.

We will be entitled at any time to take over and conduct, in the name of the Insured, the defence or settlement of any Claim. Any amount incurred by Us on behalf of the Insured will be deemed to be part of the Loss.

**9. Insured's Right to Contest**

In the event that We recommend settlement in respect of any Claim and the Insured does not agree that such Claim should be settled or refuses to consent to such settlement, then the Insured may elect to continue any legal proceedings connected therewith or contest such Claim PROVIDED ALWAYS THAT our liability for all Loss in connection with such claim will not exceed the amount for which the Claim could have been so settled plus the Defence Costs incurred with our written consent up to the date of such election.

**10. Queen's Counsel Clause**

Neither an Insured Person nor Us will be required to contest any Claim unless a Queen's Counsel or Senior Counsel (to be mutually agreed upon by the Insured and Us) shall advise that such Claim should be contested. In formulating such advice, Counsel will take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely Defence Costs and the prospects of the Insured successfully defending the Claim.

The cost of such Counsel's opinion will be regarded as part of the Defence Costs.

**11. Claims Mitigation and Co-Operation**

The Insured will Use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any Loss hereunder and will frankly and honestly disclose to Us all relevant information and will immediately provide assistance to Us as We may require to enable Us to investigate and to defend any Claim under this Policy and/or to enable Us to determine Our liability under this Policy.

On request from the Insured for indemnity under this Policy We may provide assistance and take whatever actions We may consider necessary to mitigate any Loss or protect the Insured's interests and position in respect to the Claim which in no way will prejudice Our position under this Policy and will in no way be an admission of the Insured's entitlement to indemnity under this Policy.

**12. Subrogation**

In the event of any payment under this Policy, We will be subrogated to the extent of such payment to all the Insured's rights of recovery, and the Insured will execute all papers

required and will do everything necessary to secure and preserve such rights, including the execution of documents necessary to enable Us effectively to bring suit in the name of the Insured except to the extent that all right of subrogation is waived in respect to:

- (a) the Corporation unless indemnity has been provided under Extension 8 (Preservation of Indemnity) of this Policy;
- (b) any Insured Person in respect to whom indemnity has been provided under this Policy PROVIDED ALWAYS THAT if any such Loss is covered by any other insurance policy the right of subrogation is maintained to the extent of the amount collectable under such other insurance policy.

Nothing in this Clause shall be deemed to constitute the waiver of rights to collect the Deductible as stated in the Schedule and applied in accordance with the terms and conditions of this Policy.

### **13. Allocation**

If a Claim against an Insured Person includes both covered and uncovered matters or such Claim is made, and others (including the Corporation) are a party to the proceedings or demand to which the Claim relates then We will use Our best efforts to agree upon a fair and proper allocation of such amount between covered Loss and uncovered Loss.

We will advance Defence Costs which We believe to be covered under this Policy based upon the above noted allocation until a different allocation is negotiated, arbitrated or judicially determined. Any negotiated, arbitrated or judicially determined allocation of Defence Costs on account of a Claim will be applied retrospectively to all Defence Costs on account of such Claim.

### **14. Takeover or Acquisition**

If the Corporation, during the Period of Insurance, is acquired by, merged into, or becomes a subsidiary of any other entity then the cover provided by this Policy will only apply in respect of a Wrongful Act occurring prior to the effective date on which the Corporation was acquired by, merged into, or became a subsidiary of such other entity.

### **15. Territory and Jurisdiction**

- (a) The indemnity provided under this Policy will extend to a Wrongful Act occurring anywhere in the world excluding the United States of America or the Dominion of Canada or their territories or protectorates.
- (b) The Indemnity provided under this Policy will extend to any Claim made anywhere in the world except:
  - (i) any Claim made in, or determined pursuant to the law of the United States of America or the Dominion of Canada or their territories or protectorates; or
  - (ii) any Claim arising out of the enforcement of judgments, orders or awards obtained within, or determined pursuant to the law of, the United States of America or the Dominion of Canada or their territories or protectorates.

### **16. Confidentiality**

The Insured shall not disclose the nature or extent of the liability indemnified by this Policy, the Limit of Indemnity or the amount of the premium paid, to any third party except to the extent that they are required to do so by law.

### **17. Policy Construction and Interpretation**

- (a) The construction, interpretation and meaning of the provisions of this Policy will be determined in accordance with the law of the state, territory or country in which

this Policy is issued and any disputes relating thereto will be submitted to the exclusive jurisdiction of the courts of such state, territory or country.

- (b) The marginal notes and titles of paragraphs in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.
- (c) For the purposes of this Policy, the masculine includes the feminine, and the singular includes the plural and vice versa unless the context otherwise requires it.

#### **18. Non-Accumulation**

The inclusion of more than one Insured Person under this Policy will not operate to increase the Limit of Liability as stated in the Schedule.

## Definitions Applicable to Section 4

**Claim** — any writ, summons, application or other originating legal (criminal, civil or otherwise) or arbitral proceedings, cross claim or counter-claim alleging any Wrongful Act which is both issued and served upon an Insured entitled to indemnity under this Policy including any written or oral demand for compensation received by the Insured alleging any Wrongful Act which a reasonable person may believe might result in a claim for compensation, damages or other relief against an Insured.

For the purpose of Insuring Clause 8 (Statutory Liability) only Claims means any written notice received by the Insured which alleges a Wrongful Breach and claims that the Insured may be liable to pay a Penalty.

**Corporation** — the entity specified in the Schedule and is deemed to include all Subsidiaries.

**Crisis** — any one of the following unforeseen events which in the reasonable professional opinion of the managing director or chief executive officer of the Corporation has the potential to cause an imminent decrease of greater than thirty percent (30%) of the total consolidated annual revenues of the Corporation if left unmanaged:

- (a) the loss of the Corporation's intellectual property rights including patents, trademarks, or copyrights that were previously acquired by the Corporation;
- (b) the loss of a major customer or major contract of the Corporation;
- (c) the recall of any product which has been manufactured, produced, packaged or distributed by the Corporation due to its potential to cause property damage or bodily injury to others;
- (d) any act on the premises of the Corporation that causes death or injury of an Insured Person or causes emotional distress to an Insured Person or customers of the Corporation from witnessing such an act;
- (e) any destruction or damage to tangible property belonging to the Corporation not caused by a natural disaster.

"Crisis" does not include an event that affects a Corporation's industry in general rather than a Corporation, specifically.

**Crisis Loss** — the reasonable and necessary fees, costs and expenses paid by the Corporation for external crisis management services provided in response to a Crisis event within the first thirty (30) days after the event.

**Deductible** — the amount of deductible as specified in the Schedule.

**Defence Costs** — all reasonable costs, charges and expenses (other than regular or overtime wages, salaries or fees of any Insured Person) incurred by Us or with Our prior written

consent incurred:

- (a) in defending, investigating or monitoring any Claim, or proceeding and appeals there from together with the costs of appeal;
- (b) in relation to any legally compellable attendance by an Insured Person at any official investigation, examination or enquiry pursuant to Extension 4 (Official Investigations and Enquiries).

Provided that where proceedings are commenced to impose a Penalty and those proceedings are also in respect of other matters, then the Insurer will not be liable for that proportion of the Defence Costs and associated expenses that may be reasonably attributed to the proceedings in relation to those other matters.

**Employee** — any natural person who is a past, present or future full-time, part-time, seasonal or temporary employee; or

**Employment Practices Breach** —

- (a) discrimination against any Insured Person on any legally prohibited basis;
- (b) wrongful dismissal, either actual or constructive, of any Insured Person;
- (c) workplace harassment (whether sexual or otherwise) of an Insured Person, including the alleged creation or permission of a harassing workplace environment;
- (d) breach of any express or implied term of any oral or written employment contract;
- (e) any misleading representation or advertising in respect to conditions of employment;
- (f) Failure to employ or promote;
- (g) wrongful demotion;
- (h) failure to grant tenure;
- (i) wrongful discipline;
- (j) negligent employee evaluation;
- (k) wrongful deprivation of career opportunity.
- (l) denial of natural justice, defamation or invasion of privacy arising from employment related matters.

PROVIDED ALWAYS THAT for the purposes of Insuring Clause 5 (Employment Practices Liability):

- (i) the definition of "Loss" will include damages, judgments, settlements, interest, costs Defence Costs and back pay where reinstatement is order by the courts but excludes any amounts imposed under a specific obligation of a contract of employment, implied or otherwise;
- (ii) We will not be liable under this Extension to make any payment for Loss arising from any Claim:
  - i Arising directly or indirectly from or involving strikes, lock-outs, acts committed during or in connection with any industrial dispute between any parties including any picket, go slow or work to rule;
  - ii For the costs of any physical modifications to building or property and/or plant or equipment owned or occupied by the Insured;
  - iii In relation to matters involving workers compensation and/or occupational health and safety issues or any similar or related legislation;
  - iv In relation to matters involving insolvency, appointment of a receiver or

manager, official manager, administrator or trustee appointed to administer a compromise or scheme of arrangement;

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

**Executive** — any natural person who is a past, present or future:

- (a) duly elected or appointed director or trustee (other than a trustee of an insolvent entity);
- (b) executive officer or senior manager; or
- (c) any other person with duties equivalent to those of the positions listed in (a) or (b) above.

**Investigation** — any investigation, examination or inquiry by any regulator, government authority or official trade body into the affairs of the Corporation or conduct of an Insured Person as an Executive or Employee of a Corporation or an Outside Directorship.

**Insured** — either in the singular or plural, the Corporation and any Insured Person.

**Insured Person** — any natural person who is or was or may hereafter become a director, secretary, officer or Employee of the Corporation, or any natural person who by virtue of any applicable legislation or law is deemed to be a director or officer of the Corporation.

Insured Person does not include:

- (a) a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made between the Corporation and any other person or persons;
- (b) a trustee or administrator of any superannuation, pension, welfare or other employee benefit plan or scheme or employees of such organisations;
- (c) any company, organisation or other body corporate.

**Known Circumstance** — any fact, situation or circumstance which:

- (a) any Insured Person was aware of prior to this Policy inception, or
- (b) a reasonable Insured Person would have considered at any time prior to the Period of Insurance might result in someone making an allegation against an Insured Person in respect of a Loss that might be covered under this Policy.

**Limit of Indemnity** — the limit of Our liability under this Policy as specified in the Schedule.

**Loss** — the total amount payable by an Insured Person in respect of a Claim made against such Insured Person for a Wrongful Act and includes damages, judgments, settlements, legal costs and expenses awarded against an Insured Person and Defence Costs.

“Loss” does not include punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law, including but not limited to, civil penalties.

For the purpose of Insuring Clause 1.8 (Statutory Liability) only Loss means any Penalty and/or Defence Costs.

**Non-Profit Organisation** — any company, entity, body, committee, council, club, association, trust or other enterprise whether incorporated or unincorporated that is exempt from the payment of income tax under State or Federal law and is not a Subsidiary.

**Outside Directorship** — the position of director, officer, trustee, governor, councillor, secretary or equivalent position held by an Insured Person in an Organisation or Non-Profit Organisation, which position is held at the request or direction of the Corporation.

**Organisation** — any company, entity, body, committee, council, club, association, trust (other than a TRUST) or other enterprise, whether incorporated or unincorporated, provided that it is not a Subsidiary Company and/or a company listed on any stock exchange.

**Penalty** — any monetary sum payable by the Insured to any Regulatory Authority pursuant to any Act for a Wrongful Breach by the Insured but excluding:

- (a) any amounts payable as compensation;
- (b) any compliance, remedial, reparation or restitution costs;
- (c) any damages, including any exemplary or punitive damages;
- (d) any consequential economic loss;
- (e) any Defence Costs and associated expenses.

Notwithstanding paragraph (e) above, the Insurer will pay any reasonable Defence Costs and associated expenses payable by the Insured to any Regulatory Authority upon the imposition of a Penalty covered by this Policy PROVIDED ALWAYS THAT where the proceedings that lead to the imposition of the Penalty also include proceedings in respect of any of the matters set out in paragraphs (a) – (d) above, the Insurer will not be liable for that proportion of the defence costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in paragraphs (a) – (d) above.

**Queen’s Counsel or Senior Counsel** — a barrister in active practice who is entitled to use the post-nominals Q.C. or S.C. in any one or more superior courts in Australia or New Zealand.

**Regulatory Authority** — a person or entity acting pursuant to any Act of the Commonwealth of Australia or the States or Territories of the Commonwealth of Australia for the purposes of enforcement of such Act or any other Act.

**Trust** — a trust in respect of a superannuation or pension fund, as specified in the Schedule, administered by the Trustee for the benefit of the employees of the Corporation.

**Trustee** — any natural person who was or now is or may hereafter become a trustee of a Trust.

**Trustee Responsibility Breach** — any actual or alleged wrongful act or omission committed by a Trustee in their or its capacity as a Trustee but only in respect of the administration of the Trust

**Wilful** — acting with intentional or reckless disregard for the consequences of the act or failure.

**Wrongful Act** — an actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or attempted by an Insured Person, individually or otherwise, in the course of his duties to the Corporation.

**Wrongful Breach** — any act, error or omission whereby:

- (a) the Insured contravenes an Act or is involved in the contravention of an Act;
- (b) the Insured commits an offence pursuant to an Act; or
- (c) such conduct is prohibited under an Act or is the subject of the imposition of a Penalty under an Act.









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