

S U R A LABOUR
HIRE



Labour Force Liability

Insurance Policy

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Part 1 – Important Information

What You Need to Read and Understand

This document contains:

- this Part 1 – Important Information section which contains certain important notices, terms and other information;
- Part 2 – Policy Cover Sections which sets out the sections of cover this insurance can provide (subject to eligibility) and the other standard terms and conditions which will apply to the covers (including any applicable limits and exclusions). It includes General Definitions which set out the special meaning We give to certain words used in the Policy. Other words may be specially defined in a Policy Section, term or condition.

If We issue the Named Insured with a Policy, the Named Insured will be given a Schedule. The Schedule sets out certain additional terms applicable to the Policy and other matters specific to You such as the cover You have been issued and the Policy Limits of Liability.

The Schedule must be read together with this document and any other documents We agree with the Named Insured will form part of the Policy that We issue. Where We agree, documents other than this document and the Schedule will form part of the Policy, any such documents will be dated and will include a statement identifying them as part of the Policy.

Together they form the Policy/contract with Us. These are all important documents and should be carefully read together and kept in a safe place for future reference.

About SURA Labour Hire

SURA Labour Hire Pty Ltd ABN 67 604 373 088 (SURA Labour Hire) is an authorised representative (AR No. 1000385) of SURA Pty Ltd ABN 36 115 672 350 AFSL 294 313 and has developed this Labour Force Liability Insurance Policy which is underwritten by the Insurer(s) referred to below.

SURA Labour Hire will be acting as the agent of the Insurers and not as Your agent when issuing Policies.

[Our contact details are:](#)

Level 14, 141 Walker Street
North Sydney NSW 2060
PO Box 1813
North Sydney NSW 2059
Telephone: (02) 9930 9500

About the Insurers

This insurance is underwritten by Berkley Insurance Company trading as Berkley Insurance Australia Australian Business Number 53 126 559 706 AFSL 4631129 (incorporated in the USA) and Certain Underwriters at Lloyd's.

Berkley Insurance Company is the primary and largest underwriting entity in the W. R. Berkley Insurance Group and has been licensed by the Australian Prudential Regulatory Authority (APRA) to write insurance business in Australia since 2007.

Lloyd's and Lloyd's Underwriters have been involved in the insurance of Australian risks for over 150 years. Lloyd's Underwriters are authorised to carry on general insurance under the Insurance Act 1973 (Cth).

You can obtain further details of the syndicate numbers and the proportions of this insurance for which each of the Lloyd's Underwriters is liable by requesting them from SURA Labour Hire.

In the event of loss, Berkley Insurance Company and each Lloyd's Underwriter (and their Executors and Administrators) is only liable for their own share of the loss.

Refer to the Several Liability notice on page 10 for more information on the Insurers liability.

You should contact SURA Labour Hire in the first instance in relation to this insurance.

[Berkley Insurance Company contact details are:](#)

Level 7, 321 Kent Street
Sydney NSW 2000
Telephone: (02) 9275 8500

[Lloyd's contact details are:](#)

Lloyd's Australia Limited
Level 16, Suite 1603, 1 Macquarie Place
Sydney NSW 2000

Cost of this Insurance

Where We have agreed to issue the Policy We do so in return for the Named Insured paying or agreeing to pay Us the premium by the due date specified in Our invoice or Policy Schedule issued to them.

The premium also includes amounts that take into account Our obligation to pay any relevant compulsory government charges, taxes or levies (e.g. Stamp Duty and GST) in relation to the Policy. These amounts will be set out separately on Your Policy Schedule as part of the total premium payable.

Adjustments to premium may apply – See "Adjustments" in General Conditions.

Minimum premiums may apply. This is the minimum amount we require in all cases and no adjustments will be made to reduce the premium below this.

If the Named Insured fails to pay the premium by the due date We may reduce any claim payment by the amount of premium owing and/or cancel the Policy, to the extent permitted by law.

Assumed Liability and Waived Rights

If You have entered into an agreement with another party:

- where You are assuming a greater liability than would apply had You not entered into that agreement; or
- which prevents You from taking a recovery action for damages, indemnity or contribution from that other party,

it may adversely affect Your rights to cover under the Policy. See “When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim” for further information.

Claims Made and Notified Insurance

Some covers under Section Two – Management Liability and Professional Indemnity of this Labour Force Liability Insurance Policy are issued on a claims made and notified basis. This means that these covers respond:

- a) to claims first made against You during the Period of Insurance and notified to Us during that Period of Insurance, providing that You were not aware at any time prior to the Policy inception of circumstances which would have put a reasonable person in Your position on notice that a claim might be made against You; and
- b) pursuant to section 40 sub-section 3 of the Insurance Contracts Act 1984 (Cth), which states: “where the Insured gave notice in writing to the Insurer of facts that might give rise to a claim against the Insured as soon as was reasonably practicable after the insured became aware of those facts but before the insurance cover provided by the contract expired, the Insurer is not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the Period of Insurance cover provided by the contract”.

When the Policy expires, no new notification can be made on the expired Policy even though the event giving rise to the claim against You may have occurred during the Period of Insurance. You will not be entitled to indemnity under a new (or renewed) Policy in respect of any claim arising out of circumstances of which You were aware at any time prior to Policy inception that would have put a reasonable person in Your position on notice that a claim might be made against You.

Who We Cover

The Policy covers the Named Insured as defined in the “General Definitions Applicable to All Sections” on page 12. They are the persons who enter into the contract with the Insurer(s).

The Policy also extends cover to a relevant person who is not a Named Insured and:

- in relation to cover provided under Section One of the Policy and Policy terms relevant to that cover – falls within the definition of “You/Your” as defined in Section One of the Policy;
- in relation to cover provided under Section Two of the Policy and Policy terms relevant to that cover – falls within the definition of “You/Your/Insured” clause b), c) or d) in Section Two.

Such persons are third party beneficiaries who are entitled to access cover by reason of section 48 of the Insurance Contracts Act 1984 (Cth) and not contracting parties.

No insurance is provided in relation to the interest of any persons not specified as being entitled to benefit under the Policy.

For details on the rights and obligations of such third party beneficiaries see “Third Party Beneficiaries” on page 11.

Complaints and Dispute Resolution Process

If You have any concerns or wish to make a complaint in relation to the Policy, Our services or Your insurance claim, please let Us know and We will attempt to resolve Your concerns in accordance with Our Internal Dispute Resolution procedure. Please contact SURA Labour Hire in the first instance:

Complaints Officer
SURA Labour Hire
 Email: IDR@SURA.com.au
 Telephone: (02) 9930 9500
 Level 14, 141 Walker Street
 North Sydney NSW 2060

We will acknowledge receipt of Your complaint and do Our utmost to resolve the complaint to Your satisfaction within 10 business days.

If We cannot resolve Your complaint to Your satisfaction, We will escalate Your matter to Lloyd’s Australia who will determine whether it will be reviewed by their office or the Lloyd’s UK Complaints team. Lloyd’s contact details are:

Lloyd’s Australia Limited
 Email: ldraustralia@lloyds.com
 Telephone: (02) 8298 0783
 Suite 1603, Level 16, 1 Macquarie Place
 Sydney NSW 2000

A final decision will be provided to You within 30 calendar days of the date on which You first made the complaint unless certain exceptions apply.

You may refer Your complaint to the Australian Financial Complaints Authority (AFCA), if Your complaint is not resolved to Your satisfaction within 30 calendar days of the date on which You first made the complaint or at any time. AFCA can be contacted as follows:

Australian Financial Complaints Authority

GPO Box 3, Melbourne, VIC 3001

Telephone: 1800 931 678

Email: info@afca.org.au

Website: www.afca.org.au

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If Your complaint is not eligible for consideration by AFCA, You may be referred to the Financial Ombudsman Service (UK) or You can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to You.

The Insurers accepting this insurance agree that:

- a) if a dispute arises under the Policy, the Policy will be subject to Australian law and practice and the Insurers will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- b) any summons notice or process to be served upon the Insurers may be served upon:

Lloyd's Underwriters' General Representative in Australia
Suite 1603, Level 16, 1 Macquarie Place
Sydney NSW 2000

who has authority to accept service on the Insurers' behalf;
- c) if a suit is instituted against any of the Insurers, all Insurers participating in the Policy will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under the Policy immediate notice should be given to SURA Labour Hire.

Disclaimer

By entering into the Policy the Named Insured confirms and warrants that they have read the Policy documents provided to them.

Excess

If You make a claim under the Policy You may be required to pay one or more Excess(es). The descriptions of these Excess(es) and the circumstances in which they are applied are explained in this document, and the Schedule.

When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim

We may refuse to pay or reduce the amount We pay under a claim to the extent permitted by law.

The situations in which We may refuse to pay or reduce the amount We pay under a claim under the Policy include (but are not limited to):

- a) when the Named Insured applies for cover (this includes new business, variations and renewals) and You do not comply with Your obligations regarding pre contractual disclosures and representations to Us under the Insurance Contracts Act 1984 (Cth) (including where applicable the Duty of Disclosure – see Your Duty of Disclosure below); or
- b) if You do not comply with or meet a term or condition (including where an exclusion applies or other limitation) of the Policy (All referred to as “terms” when used below) – See “If You Do Not Comply with or Meet Any Policy Term” below for more detail;
- c) if You make a fraudulent claim – See “Fraudulent claims” below;
- d) where You have not or are not acting in accordance with Your duty of utmost good faith under the Insurance Contracts Act 1984 (Cth) – See “Duty of Utmost Good Faith” below.

The amount of any claim entitlement can also be affected and/or reduced by any limits (including any time limits) or Excess(es) that apply and recoveries You or We might make relevant to a loss.

If You Do Not Comply with or Meet Any Policy Term

We will only rely on any rights We have regarding the operation of or breach of a term of the Policy to the extent permitted by law (including Our right to refuse or reduce a claim noted above). We provide some key examples below. You need to seek Your own advice regarding all relevant legal rights You may have.

Terms allowing Us to refuse to pay or reduce a claim (in whole or part) by reason of an act by You or some other person that occurred after the Policy was entered into

Subject to Our rights in relation to Fraudulent claims explained below, by reason of section 54 of the Insurance Contracts Act 1984 (Cth), where the effect of the Policy (this includes all terms or conditions, including any exclusion or other limitation) is to allow Us to refuse to pay or reduce a claim (in whole or part) by reason of an act by You or some other person that occurred after the Policy was entered into, We will exercise Our rights under the Policy as explained below.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details).

Under section 54, an “act” by You or some other person includes an omission and inaction and an act or omission that has the effect of altering the state or condition of the subject-matter of the Policy or of allowing the state or condition of that subject-matter to alter.

How We exercise Our rights where section 54 applies (unless there is a Fraudulent claim)

- Where:
 - the act was necessary to protect the safety of a person or to preserve property;
 - it was not reasonably possible for You or the other person not to do the act; or
 - You prove no part of the loss that gave rise to the claim was caused by the act,

We will not refuse to pay or reduce the claim by reason only of that act.

- Where the act:
 - could not reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy; or
 - could reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy but You prove that some part of the loss that gave rise to the claim was not caused by the act, We may not refuse to pay the claim, so far as it concerns that part of the loss but,

We can reduce Our liability in respect of the claim by an amount that fairly represents the extent to which Our interests were prejudiced as a result of that act.

- Otherwise, where the act could reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy, We may refuse to pay the claim.

Terms allowing Us to refuse or reduce a claim because of pre-existing defects or imperfections existing before the Policy was entered into

Only where section 46 of the Insurance Contracts Act 1984 (Cth) is applicable to the Policy:

- where a claim is made in respect of a loss that occurred as a result, in whole or in part, of a defect or imperfection in a thing; and
- at the time when the contract was entered into You were not aware of, and a reasonable person in the circumstances could not be expected to have been aware of, the defect or imperfection,

We may not rely on any provision included in the Policy that has the effect of limiting or excluding Our liability under the contract by reference to the condition, at a time before the Policy was entered into, of the thing. This does not apply if the Policy is in an excluded class to which section 46 does not apply.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details).

Terms allowing Us to refuse or reduce a claim because of a pre-existing sickness or disability existing before the Policy was entered into

Only where section 47 of the Insurance Contracts Act 1984 (Cth) is applicable to the Policy:

- where a claim under the Policy is made in respect of a loss that occurred as a result, in whole or in part, of a sickness or disability to which a person was subject or had at any time been subject; and
- where, at the time when the contract was entered into, You were not aware of, and a reasonable person in the circumstances could not be expected to have been aware of, the sickness or disability,

We may not rely on a provision included in the Policy that has the effect of limiting or excluding our liability under the Policy by reference to the sickness or disability to which You were subject at a time before the Policy was entered into.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details).

Fraudulent claims

In all cases, where a claim is made fraudulently under:

- the Policy; or
- the Insurance Contracts Act against Us by a person who is not the insured,

We may refuse payment of the claim to the extent permitted by law. Under section 56(2) of the Insurance Contracts Act 1984 (Cth) a court may, if only a minimal or insignificant part of the claim is made fraudulently and non-payment of the remainder of the claim would be harsh and unfair, order Us to pay, in relation to the claim, such amount (if any) as is just and equitable in the circumstances.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details).

Duty of Utmost Good Faith

- Section 13 of the Insurance Contracts Act 1984 (Cth) requires each party to the Policy to act towards the other party, in respect of any matter arising under or in relation to it, with the utmost good faith.
- Section 14 of the Insurance Contracts Act 1984 (Cth) provides that if reliance by a party to the Policy on a provision of the Policy would be to fail to act with the utmost good faith, the party may not rely on the provision.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details).

Terms Apply to Extent Enforceable

A term of the Policy will be applied to the extent it is not unenforceable under relevant law.

Your Duty of Disclosure

Before the Named Insured enters into an insurance contract, they have a duty to tell Us of anything that they know, or could reasonably be expected to know, may affect Our decision to insure You and on what terms. They have this duty until We agree to insure You.

The Named Insured has the same duty before they renew, extend, vary, or reinstate an insurance contract.

The Named Insured does not need to tell Us anything that:

- reduces the risk We insure You for;
- is of common knowledge;
- We know or should know as an insurer; or
- We waive the Named Insured's duty to tell Us about.

If You do not tell Us something

If the Named Insured does not tell Us anything they are required to, We may cancel the contract or reduce the amount We will pay You if You make a claim, or both.

If the Named Insured's failure to tell Us is fraudulent, We may refuse to pay a claim and treat the contract as if it never existed.

Goods and Services Tax (GST)

The amount payable by You for the Policy includes an amount for GST.

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

The amount that We are liable to pay under the Policy will be reduced by the amount of any Input Tax Credit (ITC) that You are or may be entitled to claim for the supply of goods or services covered by that payment.

You must advise Us of Your correct Australian Business Number (ABN) and Taxable Percentage. Taxable Percentage is Your entitlement to an ITC on Your premium as a percentage of the total GST on that premium. Any GST liability arising from Your incorrect advice is payable by You.

Where the settlement of a claim is less than the applicable Limit of Liability or the other limits applicable to the Policy, We will only pay the GST (less Your ITC) applicable to the settlement. This means that if these amounts are not sufficient to cover the whole claim, We will only pay the GST relating to Our share of the settlement for the whole claim.

We will pay the claim by reference to the GST exclusive amount of any supply made by any business of Yours which is relevant to the claim.

GST and ITC have the same meaning as given to those words or expressions in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable).

Privacy Statement

In this Privacy Statement the use of "We", "Our" or "Us" means SURA Labour Hire and the insurers unless specified otherwise.

In this Privacy Statement the use of personal information includes sensitive information.

We are committed to protecting the privacy of the personal information that You provide to Us.

The Privacy Act 1988 contains the Australian Privacy Principles which require Us to tell You that We collect, handle, store and disclose Your personal and sensitive information for the specific purpose of:

- deciding whether to issue a Policy,
- determining the terms and conditions of Your Policy,
- compiling data to help develop and identify other products and services that may interest clients, and
- handling claims.

Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a) whether the information or opinion is true or not;
- b) whether the information or opinion is recorded in a material form or not.

Sensitive information includes, amongst other things, information about an individual's racial or ethnic origin, political opinions, membership of a political organisation, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal record, health information about an individual, genetic information, biometric information or templates.

You have given Us Your consent to collect, use and disclose Your personal information in order to provide You with the relevant services and/or products.

When You give Us personal information about other individuals, We rely on You to have made or make the individual aware that You will or may provide their personal information to Us and the types of other parties and service providers We may provide it to, the relevant purposes We and the other parties and service providers will use it for, and how they can access it. If You have not done or will not do either of these things, You must tell Us before You provide the relevant personal information to Us.

We will protect Your information using physical, technical, and administrative security measures to reduce the risks of loss, misuse, unauthorised access, disclosure and alteration. Some of the safeguards that We use are firewalls and data encryption, physical access controls to Our data centres, and information access authorisation controls.

We disclose personal information to other parties and service providers whom We believe are necessary to assist Us and them in providing the relevant services and/or products. For example, in handling claims, We may have to disclose Your personal information to other parties and service providers such as Our claim management partner, other insurers, reinsurers, loss adjusters, external claims data collectors, investigators and agents, facilitators, assessors or other parties as required by law. We will limit the use and disclosure of any personal information provided by Us to them to the specific purpose for which We supplied it.

We may disclose Your personal information to Our insurers, reinsurers, related entities and service providers overseas where it is reasonably necessary for, or directly related to, the functions, services or activities We provide to You. When We transfer Your information to other countries, including countries which may not have data protection laws that provide the same level of protection that exists in Australia, We will protect the information as described in this Privacy Policy.

If You do not provide the personal information requested and/or do not provide Us with Your consent to the use and disclosure of Your personal information as set out in this Privacy Statement, Your insurance application may not be accepted, or We may not be able to administer Your Policy, or You may be in breach of Your duty of disclosure, the consequences of which are set out under the heading Duty of Disclosure in this document.

We will notify you as soon as possible if Your personal information is involved in a data breach that is likely to result in serious harm to You.

If You would like a copy of Our Privacy Policies, would like to seek access to or correct Your personal information, opt out of receiving materials We send, complain about a breach of Your privacy or You have any query on how Your personal information is collected, stored or used, or any other query relating to Our handling of Your personal information, please contact Us.

Several Liability

The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the Lloyd's Underwriters of the syndicate taken together) is shown in the Schedule.

In the case of a Lloyd's syndicate, each Lloyd's Underwriter of the syndicate (rather than the syndicate itself) is an insurer. Each Lloyd's Underwriter has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the Lloyd's Underwriters of the syndicate taken together). The liability of each Lloyd's Underwriter of the syndicate is several and not joint with any other Lloyd's Underwriter. A Lloyd's Underwriter is liable only for that Lloyd's Underwriter's proportion. A Lloyd's Underwriter is not jointly liable for any other Lloyd's Underwriter's proportion. Nor is any Lloyd's Underwriters otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each Lloyd's Underwriter is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each Lloyd's Underwriter of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various parts in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural. The insurers named hereon bind themselves each and for their own part and not one for another.

Each insurer's liability under this contract shall not exceed that percentage or amount of the risk shown against that insurer's name.

Sanctions

We shall not provide cover and We shall not be liable to pay any claim or provide any benefit under the Policy to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose Us, Our parent company or Our ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, the Commonwealth of Australia, United Kingdom or the United States of America.

Third Party Beneficiaries

The Named Insured(s) and the insurer(s) are the only parties to the Policy. No insurance is provided in relation to the interest of any persons not specified as being entitled to benefit under the Policy.

The benefit of the cover under the Policy is extended automatically to a relevant person not being a Named Insured who falls within the definition of "You/Your" as defined in Section One or clause b), c) or d) of You/Your/Insured as defined in Section Two of the Policy by reason of the operation of section 48 of the Insurance Contracts Act 1984 (Cth). They are not contracting parties.

Other persons who are not contracting parties to the Policy may be entitled to cover as third party beneficiaries, but only if specified as so entitled and limited only to the extent and interest specified.

The Named Insured must inform Us of the interests of all such third parties (e.g. financiers, lessors) they want to be covered by this insurance and if We agree, We will specify them and the interest to be covered in the Schedule.

Nothing in the Policy is intended to give any such persons (including a relevant person who falls within the definition of "You/Your" as defined in Section One or clause b), c) or d) of You/Your/Insured as defined in Section Two of the Policy) any right to enforce any term of the Policy which that person would not have had but for the Insurance Contracts Act 1984 (Cth).

Any person entitled to any benefit under the Policy that is not the Named Insured:

- has, in relation to their claim, the same obligations to Us as they would have if they were the Insured; and
- may discharge the Named Insured's obligations in relation to the loss.

We also have the same defences to an action by such persons as We would have in an action by the Named Insured including, but not limited to, defences relating to the Named Insured's conduct (whether the conduct occurred before or after the contract was entered into).

Such persons have no right to cancel or vary the Policy or its cover – only the Insured (as the contracting party) and We can do this. If We cancel or vary the Policy or its cover, We do not need to obtain such persons' consent to do so.

We also do not provide any notices in relation to this insurance to such persons as they are not a contracting party to the Policy. We only send notices to the Named Insured which is the only entity We have contractual obligations to under the Policy.

Neither We nor the Named Insured hold anything on trust for, or for the benefit or on behalf of, any such persons under this insurance arrangement. The Named Insured:

- does not act on Our behalf in relation to the insurance;
- is not authorised to provide any financial product advice, recommendations or opinions about the insurance; or
- does not receive any remuneration or other benefits from Us.

Any such person needs to read this document and other documents forming the Policy carefully to properly understand the benefits they have access to as non-contracting parties. The insurance cover is subject to the terms, conditions, limitations and exclusions of the Policy.

Any person who may be entitled to a benefit under the Policy should consider obtaining advice as to whether the benefits are appropriate or useful for their personal needs from a person who is licensed to give such advice. No advice is provided by Us or SURA Labour Hire that the benefits are appropriate or useful for any person's needs. Nothing prevents such persons from entering into other arrangements regarding insurance.

This Important Information Section Does Not Tell You All You Need to Know

The Important Information Section only provides some important information to be aware of. You must read the Policy for details of what Your and the insurer's and obligations are under this insurance.

Part 2 – Policy Cover Sections

General Definitions Applicable To All Sections

Some key words and terms used in the Policy, have a special meaning that appear below when the word starts with a capital letter in this document. Other words may be specially defined to have a meaning when used in relation to a Policy section, term or condition.

Control means the definition of control in the Corporations Act 2001 (Cth).

Damage to Property means:

- a) physical damage to or loss or destruction of tangible property including resultant loss of use of that tangible property; or
- b) loss of use of tangible property which has not been physically damaged lost or destroyed provided such loss or use is caused by physical damage of other tangible property during the Period of Insurance.

Defence Costs means “Defence Costs” as defined in Section One or Section Two as applicable and as the context so requires.

Excess means the amount(s) specified either in a Section or in the Schedule which You shall first bear in respect of any claims or losses, including claimants’ costs and Defence Costs (if applicable), before We shall be liable to make any payment under the Policy.

The Excess(es) will be advised to the Named Insured before they enter into a Policy with Us.

Limit of Liability means the limit of Our liability under the Policy and as specified in the Schedule. If more than one limit or sub-limit of liability applies, the lesser amount shall be payable. Each sub-limit of liability shall be included in, and shall not increase Our liability beyond, the Limit of Liability unless stated otherwise in the Policy.

Lloyd’s means the society of that name incorporated by the Act of the United Kingdom known as Lloyd’s Act 1871.

Lloyd’s Underwriter means an underwriting member of Lloyd’s.

Named Insured means the person(s), companies, organisations or other entities shown as the Named Insured in the Schedule. They are the contracting insured(s) with whom We enter into the Policy.

North America means the United States of America and Canada and in each case its territories and protectorates.

Period of Insurance means the period shown in the Schedule unless the Policy ends earlier in accordance with its terms or law, in which case the period of insurance ends at that earlier time.

Personal Injury means:

- a) bodily injury, death, sickness, disease, disability, shock, fright, mental injury, mental anguish or loss of consortium resulting from any of them;

- b) the effects of:
 - i. false arrest, false imprisonment, wrongful entry, wrongful eviction, wrongful detention, malicious prosecution and humiliation;
 - ii. defamation, including libel and slander or invasion of right of privacy;
 - iii. 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.

Policy means this document and any Schedule issued by Us in connection with the policy.

Schedule means the schedule, renewal schedule and any endorsement schedule issued by Us in connection with the Policy for the applicable Period of Insurance.

Subsidiary means:

- a) a subsidiary of the Named Insured as defined in the Corporations Act 2001 (Cth); or
- b) any body corporate in which the Named Insured:
 - i. Controls the composition of the board of the body corporate; or
 - ii. is in a position to cast, or Controls the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the body corporate; or
 - iii. holds more than one-half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- c) any body corporate which is a subsidiary of a body corporate described in (a) or (b) above; or
- d) any other body corporate whose accounts are consolidated into those of the Named Insured in accordance with the relevant Australian Accounting Standards.

We, Our, Us, Insurer means Berkley Insurance Company trading as Berkley Insurance Australia, and Certain Underwriters at Lloyd’s acting through their agent SURA Labour Hire Pty Ltd.

You, Your means:

- a) the Named Insured; and/or
- b) in relation to cover provided under Section One and Policy terms relevant to that cover – a person who falls within the definition of “You, Your” as defined in Section One;
- c) in relation to cover provided under Section Two and Policy terms relevant to that cover – a person who falls within the definition of “You, Your, Insured” in Section Two.

General Conditions Applicable To All Sections Of The Policy

Adjustments

If the premiums are calculated on statements and estimates furnished by the Named Insured, the Named Insured shall within a reasonable period (but no later than thirty (30) days where practicable) of the expiry of each Period of Insurance furnish to Us such information as We may require for such expired period, and the premium for such period shall thereupon be adjusted by Us and the difference be paid by or allowed to the Named Insured as the case may be subject to any minimum premium applicable.

The Named Insured must keep a record of all reasonable information requested by Us and must on reasonable notice allow Us or Our nominee to inspect and make copies of those records.

Admission of Liability

You shall not, without Our written consent (such consent not to be unreasonably withheld):

- a) make or give any admission, offer, promise or payment in respect of any claim;
- b) take any action which may be considered to be an admission, offer, promise or payment in respect of any claim; or
- c) repudiate or settle a claim,

for which You seek indemnity under the Policy.

Assignment

The Named Insured cannot assign the Policy nor transfer any interests in it without Our written consent (such consent not to be unreasonably withheld).

Cancellation

The Policy may be cancelled by the Named Insured at any point in time. Such cancellation must be made in writing and will be effective on the date We physically receive the notice.

We may cancel the Policy for any of the following reasons:

- a) a person who is or was at any time a Named Insured failed to comply with the duty of the utmost good faith;
- b) a person who was a Named Insured at the time when the contract was entered into failed to comply with the Duty of Disclosure;
- c) the person who was a Named Insured at the time when the contract was entered into made a misrepresentation to Us during the negotiations for the contract but before it was entered into;

- d) a person who is or was at any time a Named insured failed to comply with a provision of the contract, including a provision with respect to payment of the Premium;
- e) the Named Insured has made a fraudulent claim under the Policy or under some other contract of insurance (whether with Us or with some other insurer) that provides insurance cover during any part of the period during which the first mentioned contract provides insurance cover;
- f) the Named Insured failed to notify Us of any specific act or omission or failure that has occurred after the Policy is entered into where notification is required under the terms of the Policy; or
- g) the effect of the Policy is to authorise Us to refuse to pay a claim, either in whole or in part, by reason of an act or omission or failure of the Named Insured or of some other person and, after the Policy was entered into, such an act or omission or failure has occurred.

Where We cancel the Policy We will provide the Named Insured with at least three (3) business days' notice in writing of the cancellation.

If the Policy is cancelled by either the Named Insured or Us, We will refund the premium for the Policy less a pro-rata proportion of the premium to cover the period for which insurance applied less any government fees, taxes and duties We cannot recover. However, We will not refund any premium if We have paid a claim or benefit to the Named Insured or on their behalf under the Policy.

Conduct of Claim

We may take over and conduct in Your name the defence or settlement of any claim or prosecute in Your name for Our benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim.

We reserve entirely Our rights under the Policy. Our rights under the Policy are not affected if We do not conduct the defence.

We may, if We reasonably believe that any claim will not exceed the Excess, instruct You to conduct the defence of the claim, in which case We will (subject to the terms of the Policy) reimburse You for all reasonable Defence Costs and amounts You may otherwise be entitled to in accordance with the Policy terms if any payment You make to dispose of the claim exceeds the Excess.

If You object to a proposal by Us to settle or compromise any claim payable under the Policy and wish to contest or litigate the matter, then You may so elect, but Our liability in respect of any such claim so contested or litigated will not exceed the amount for which, but for such election, it could have been settled or compromised by Us, together with Defence Costs payable in accordance with the terms of the Policy and incurred up to the time of such election.

Neither You nor We will be required to contest or litigate any claim if, in the opinion of Senior Counsel, reasonable attempts should be made to settle the claim. The Senior Counsel shall be mutually agreed upon, or in the absence of such agreement, as nominated by the President of the NSW Bar Association. Senior Counsel shall provide the opinion in writing. In formulating the opinion Senior Counsel shall consider commercial matters including the amount of the claim, the actual and potential loss (including Defence Costs) that may reasonably be incurred in contesting the claim, the liability prospects and the prospect of recovering costs against the claimant in the event that the defence is successful. Senior Counsel shall also provide a settlement range within which reasonable attempts should be made to settle the claim.

If it is the opinion of Senior Counsel that reasonable attempts should be made to settle the claim, You shall not object to Our attempt to do so.

Contribution to Costs

If We have not exercised Our rights under the condition below headed 'Payment of Limit of Liability', Our liability to pay costs and expenses, where any sum or sums exceeding the appropriate Limit of Liability have to be paid to dispose of a claim or claims, shall be limited to such proportion of the said costs and expenses as such Limit of Liability bears to the amount actually so paid.

Co-Operation and Mitigation

You shall at all times and at Your own cost provide Us with all information, evidence, documentation, assistance and cooperation and will execute such documents, including signed statements and affidavits, which We reasonably request.

You shall at all times and at Your own cost use reasonable endeavours to do everything reasonably practicable to avoid or diminish any liability under the Policy, and to assist with the defence, investigation or settlement of any claim or proceedings against You.

You must not pursue a course of action which You know or ought reasonably to know will bring about any claim, unless this is undertaken to discharge Your duties under any relevant law.

You shall maintain records of all occurrences which may result in a claim being notified under the Policy.

We may make any investigation We deem reasonably necessary in relation to any claim being notified to Us under the Policy.

Governing Law

The Policy will be governed in accordance with the laws of the Commonwealth of Australia. Any disputes arising out of the Policy will be subject to determination by any Court of competent jurisdiction within the Australian State or Territory in which the Policy was issued according to the laws applicable to the jurisdiction.

Interpretation

In the Policy:

- a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- b) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - c) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - d) "includes" in any form is not a word of limitations;
 - e) a reference to "\$" or "dollar" is to Australian currency; and
 - f) a reference to a person includes bodies corporate.

Material Changes

The Named Insured must notify Us as soon as reasonably practicable of any material change in the risk insured by the Policy.

The Named Insured must notify Us immediately if the Named Insured goes into voluntary bankruptcy, receivership, liquidation or any other form of external administration or fail to pay debts or breach any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings.

Where there is any material alteration to the risk We may be entitled to cancel the Policy in accordance with the Insurance Contracts Act 1984 (Cth).

Where there is any material alteration to the risk We may be entitled to amend the terms of the Policy and/or charge an additional premium based on Our assessment of any change in the risk insured by the Policy. See the 'Important Information Section – When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim' for more information on Our rights if the Named Insured does not comply with the Policy condition.

Notices

Any communications to Us under the Policy must be sent by You to Us at Our address specified in the Schedule.

Notice to the Named Insured may be given to the Named Insured or the Named Insured's agent at the broker name and address specified in the Schedule.

Any notice by Us given to any Named Insured is deemed to be notice to each party comprising the Named Insured.

Notification

If an event occurs which may give rise to a claim under the Policy, the Named Insured shall:

- a) inform Us of such event as soon as reasonably practicable, and in regard to Section Two within the Period of Insurance in which the claim is made or the loss is discovered;
- b) provide in writing if reasonably requested, including verification on oath, such particulars, documents and information as We may reasonably require as soon as reasonably practicable;
- c) immediately:
 - i. on receipt forward to Us every letter, writ, summons and process;
 - ii. inform Us in writing of any prosecution, inquest or other proceeding of which notice is given to You; and
- d) provide all assistance which We may reasonably require.

Other Insurance

If, at the time any claim arises under the Policy, there is any other insurance contract in force covering the same claim, You must notify Us as soon as reasonably practicable providing full details of such other insurance contract, including the identity of the insurer, the policy number and such further information as We may reasonably require.

Payment of Limit of Liability

We may at any time pay to You the appropriate Limit of Liability (after deducting therefrom any sum or sums already paid) or any lesser amount for which a claim or claims may be settled and thereupon We shall relinquish the conduct and control of, and shall be under no further liability in connection with, such claim or claims except for Defence Costs incurred prior to the date of such payment.

Variation of the Policy

No variation of the Policy will be effective, except when made by Our issuing a written endorsement.

General Exclusions Applicable To All Sections Of The Policy

The Policy does not, and We will not, cover You for any actual or alleged liability in respect of:

Crowd Controllers, Bouncers, Security Guards or Doormen

Personal Injury and/or Damage to Property or any civil liability arising directly or indirectly out of or in connection with any crowd controllers, bouncers, security guards or doormen that are used, supplied or hired out by You or on Your behalf to perform any work whatsoever at any hotels, pubs, nightclubs, bars, adult entertainment venues, outdoor or indoor concerts.

Medical Malpractice

Personal Injury or Damage to Property or any civil liability arising directly or indirectly out of or in connection with:

- a) the rendering of or failure to render any Health Care by any Medical Practitioner or Specialist Medical Practitioner or midwife that are or have been on-hired by You to any third parties;
- b) any error, act or omission in providing any Health Care by any Medical Practitioner or Specialist Medical Practitioner or midwife that are or have been on-hired by You to any third parties;
- c) any midwifery or maternity and/or obstetrics procedures or Health Care.

For the purpose of this exclusion only:

- a) **Medical Practitioner** means a person who is registered in the medical profession under the Health Practitioner Regulation National Law (National Law) as in force in each state and/or territory of Australia including any amendments thereof similar legislation, including any amendments to, delegated legislation thereof, or successor legislation.
- b) **Specialist Medical Practitioner** means a person registered in a recognised specialty under the Health Practitioner Regulation National Law (National Law) as in force in each state and/or territory of Australia including any similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable).
- c) **Health Care** means any care, treatment, advice, service or goods provided in respect of the physical or mental health of a person.

Sexual Abuse or Molestation

Personal Injury or any civil liability arising directly or indirectly out of or in connection with any actual or alleged assault or abuse of a sexual nature or any type of molestation, indecent exposure or sexual harassment or sexual intimidation of any:

- a) patient in a hospital or medical facility;
- b) resident in a nursing home or aged care facility;
- c) person under the age of 18 who is not an Employee.

Furthermore, We shall have no duty to defend any claim, action, suit, proceeding, investigation or inquiry connected with a), b) or c) above.

For the purpose of this exclusion **Employee** means:

- a) any person engaged in the business under a contract of service or apprenticeship with You (other than with a principal of the insured), but excluding any person employed under such contract who does not satisfy the definition of 'worker' under any workers' compensation legislation; and
- b) any person engaged by You (whether remunerated or not) for the purposes of receiving training or work experience.

Terrorism

Personal Injury and/or Damage to Property and/or any civil liability directly or indirectly caused by, resulting from or in connection with any:

- a) Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to such Personal Injury or Damage to Property;
- b) action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

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) which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes or reasons with the intention to influence any government and/or to put the public, or any section of the public, in fear.

War

Personal Injury and/or Damage to Property and/or any civil liability arising directly or indirectly out of or in connection with war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

Section One Broadform Liability

Definitions Applicable To Section One

Advertising Injury means:

- a) the publication or utterance of defamation, libel or slander except such publication or utterance made prior to the commencement of the Period of Insurance or made by You or at Your direction with knowledge of the falsity thereof;
- b) infringement of copyright or of title or slogan;
- c) unfair competition, misappropriation of advertising ideas or style of doing business; or
- d) invasion of right of privacy;

related to advertising activities conducted by You or on Your behalf in the course of the Business.

Aggregate Limit of Liability means the amount shown as the aggregate limit of liability in the Schedule which is the maximum amount We will pay for all claims in the Period of Insurance. If no amount is shown, the aggregate limit of liability is no greater than the Limit of Liability.

Business means the business stated in the Schedule and also includes:

- a) the provision by You of canteen, sports, social and child care facilities or welfare organisations, and fire, first aid, medical and ambulance services for the benefit of You or Your employees; and
- b) the carrying out of repairs, maintenance, alterations or additions to, or the demolition of, Your premises to which the Policy applies.

Claim means:

- a) the receipt by You of any written, electronic, or verbal notice of demand for compensation or damages made by a third party against You; or
- b) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim or third or similar party notice issued upon You.

Defence Costs means the costs and expenses We pay under "Claims defence" as set out in this Section of the Policy.

Employee means:

- a) any person engaged in the Business under a contract of service or apprenticeship with You (other than with a principal of the Insured), but excluding any person employed under such contract who does not satisfy the definition of 'worker' under any workers' compensation legislation;
- b) any person or incorporated contractor on-hired by You to a third party on a temporary contract basis; and
- c) any person engaged by You (whether remunerated or not) for the purposes of receiving training or work experience.

Employment Practices means any employment related act, error, omission or conduct constituting actual, constructive or alleged wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual or workplace harassment (including the creation of a workplace environment conducive to such harassment) or wrongful discrimination by You.

Excess means the amount and type shown in the Schedule that You are to bear in relation to each claim resulting from an Occurrence.

The two types of Excess are:

- a) **cost inclusive**, where the Excess applies to all amounts payable under this Section of the Policy, including amounts payable for the purpose of defence and/or investigation of any Claim; and
- b) **cost exclusive**, where the Excess only applies where a compensatory damages or costs amount is to be paid on Your behalf to settle a Claim under this Section.

Host Employer means any third party to whom You have on-hired any person or incorporated contractor on a temporary contract basis.

Insured means:

- a) the Named Insured;
- b) every past or present director, partner, officer or Employee of the Named Insured, but only while acting within the scope of their duties in such capacity;
- c) all Subsidiaries (now or hereafter constituted) of the Named Insured, (including their directors, partners, officers, Employees or shareholders, but only while acting within the scope of their duties in such capacity) whose place of incorporation is within Australia or its external territories, and including any entity over which the Subsidiary company is in a position to exercise effective direction or Control;
- d) any personal representative of the Named Insured, but only in respect of liability incurred by the Named Insured;
- e) any Host Employer, or principal of the Named Insured, (or any Subsidiary under paragraph (c)), in respect of their vicarious liability arising out of or in connection with the performance of any work for them by or on behalf of the Named Insured (or by any Subsidiary of the Named Insured as provided for in paragraph (c) above);
- f) any shareholder of the Named Insured, but only for liability in respect of which the Named Insured would have been entitled to indemnity under this Section of the Policy if the Claim had been made against the Named Insured;
- g) any director, partner or senior executive of the Named Insured in respect of private work undertaken by any Employee for such director or senior executive, and any such Employee whilst actually undertaking such private work; and

- h) any office-bearer, committee or member of the Named Insured's own canteen, sports, social and child care facilities or welfare organisations and any member of the Named Insured's own fire, first aid or ambulance services in respect of Claims arising from their duties connected with the activities of any such facilities, organisations or services.

Merger or Acquisition means:

- a) the Insured consolidating with, merging into or selling all or substantially all of its assets such that the Insured is not the surviving entity; or
- b) any entity obtaining Control of the Insured.

Occurrence means an event including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury, Damage to Property or Advertising Injury neither expected nor intended by You.

All Personal Injury, Damage to Property or Advertising Injury attributable to one original source, or one original cause, or one original prepared or acquired batch, shall be deemed to be one Occurrence.

Products means anything, including any packaging or container thereof, (after it has ceased to be in Your possession or control) manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed in or from Australia or its external territories by You in the course of Your Business, and also includes:

- a) the design, formula or specification of such Products;
- b) directions, markings, instructions, warnings or advice given or omitted to be given in connection with such Products, and
- c) anything in respect of which the Insured (including all Subsidiaries, now or hereafter constituted, of the Insured, whose place of incorporation is within Australia or its external territories) is taken or deemed to be the manufacturer by operation of a law of Australia or its external territories.

Property means any tangible, material or physical property.

Property in Your Possession or Control means any land or Property (including any contents therein) or part thereof, not owned by You, but which is in Your care, custody, physical or legal control, but does not include:

- a) Your personal possessions, or those of any director, partner, executive officer, principal or personal representative of the Insured, or those of Your visitors;
- b) premises (and their contents) not owned, leased or rented by You but which are temporarily occupied by You for the purpose of carrying out work in connection with the Business;
- c) premises (including fixtures and fittings) leased or rented to You in respect of loss or damage caused other than by fire or explosion;
- d) Vehicles, not owned by You nor used in connection with the Business, whilst within a free car park provided by You for the use of customers, visitors or Employees;
- e) other Property temporarily in Your physical or legal control, including goods not belonging to You but being transported by You in a registered motor Vehicle but only to the extent that there is no indemnity for such loss or damage provided to the owner of the Vehicle. Our limit under this clause (e) will not exceed two hundred and fifty thousand Australian dollars (AUD 250,000) for any one Occurrence. To the extent that this clause (e) relates to damage to goods carried in a registered motor Vehicle, the Vehicles exclusion under this Section does not apply; and
- f) Property belonging to the Host Employer and being used as part of Your Business with the Host Employer's consent.

Territorial Limits means anywhere in the world, subject to the Jurisdiction and North American Exports exclusions in this Section of the Policy.

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

You, Your means the Insured and any other person to whom cover is expressed to be extended under Section One of the Policy.

What You Are Insured Against

We will indemnify You in respect of all sums by way of compensation which You shall become legally liable to pay, and all costs awarded against You, arising out of:

- a) Personal Injury;
- b) Damage to Property; or
- c) Advertising Injury;

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

We will indemnify You in respect of such amounts, less the Excess(es) shown in the Schedule, which is to be borne by You.

The amount payable by Us shall not exceed the Limit of Liability expressed in the Schedule for any one Occurrence.

Our total aggregate liability during any one Period of Insurance for all claims arising out of Products will not exceed the Aggregate Limit of Liability.

In the event of any claims for Personal Injury arising from a latent injury, disease or sickness, such injury, disease or sickness will be deemed to have happened on the day the injury, disease or sickness was first medically diagnosed.

Claims Defence

If We agree to cover You under the Policy for a Claim, We may take over and conduct in Your name the defence or settlement of that Claim or action against You which We have agreed to cover under the Policy, even if groundless, false or fraudulent, and shall have full discretion in the conduct of any proceedings and any settlement of the Claim or action.

We will also:

- a) pay all reasonable costs and expenses (other than loss of earnings), incurred by You with Our prior written consent, in the defence or settlement of any Claim or action against You. This does not cover any loss of earning You suffer or to compensate You for Your own time spent dealing with a Claim.
- b) pay all interest accruing after judgement is entered or settlement is reached until We have paid, tendered or deposited such part of the settlement or judgement that does not exceed the Limit of Liability;
- c) pay all reasonable expenses incurred by You for first aid to others at the time of Personal Injury (other than the payment of any medical expenses by Us which is prohibited by law);

provided that the costs and expenses are incurred in connection with Claims against You which are covered by the Policy. We will pay these Defence Costs in addition to the Limit of Liability.

Where any sum or sums exceeding the appropriate Limit of Liability have to be paid to dispose of a Claim or Claims, Our liability to pay Defence Costs shall be limited to such proportion of Defence Costs as such Limit of Liability bears to the amount actually so paid.

We shall not be obliged to pay any Claim or judgement, or defend any Claim or action, after the Limit of Liability has been exhausted by payment of judgements or settlement.

Conditions Applicable To Section One Broadform Liability

Acquisition, Merger or Winding Up of the Insured

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

- a) a Merger or Acquisition of the Named Insured; or
- b) the appointment of a receiver, controller, administrator or liquidator to the Named Insured, or the commencement of a scheme or arrangement or compromise or a winding up process in respect of the Named Insured,

then the Policy will remain in force until the expiry of the Period of Insurance.

Allocation of Loss

This condition applies to any part of any loss resulting from a Claim which is in respect:

- a) of one person insured under the Policy; or
- b) of more than one person insured under the Policy, whether jointly or severally; or
- c) of one or more persons insured under the Policy and one or more persons or entities who are not insured under the Policy, whether jointly or severally,

and which is partly covered and partly not covered under the Policy, (together loss to be allocated).

We may determine a fair and reasonable allocation of the covered part of the loss to be allocated among the relevant persons insured under the Policy and Us having regard to the extent of the comparative responsibility of each of the persons insured under the Policy for the loss to be allocated. Our consideration of what is fair and reasonable may include the following factors (as applicable):

- a) the nature of the Claim against each person insured under the Policy;
- b) the issues of fact and law in relation to each person insured under the Policy;
- c) the content and the manner of the conduct of any defence of the Claim;
- d) the relative degree of personal responsibility for the loss;
- e) the extent to which the responsibility of each person insured under the Policy for the loss is joint, several or shared;
- f) the extent to which any person or entity, other than a person insured under the Policy, would obtain a benefit from the payment by Us;
- g) the extent to which the loss is solely of that each person insured under the Policy;
- h) the extent to which the issues in the Claim against each person insured under the Policy are in common with the issues in the Claim against any other person or entity;

- i) the extent to which the loss is partly covered and partly not covered under the Policy; and
- j) in the event of a settlement, the likely comparative responsibility had the settlement not occurred.

If agreement cannot be reached on the allocation the parties agree to seek an expert determination in accordance with the Australian Disputes Centre ("ADC") Mediation Guidelines, from an expert agreed by the parties, or if the parties do not agree on an expert, an expert nominated by the then current CEO of the ADC or the CEO's nominee.

Each party agrees to sign an agreement with the expert that confirms the following:

- a) unless agreed otherwise, each party will pay an equal share of the fees for the appointed expert (to be charged at the expert's usual rate); and
- b) the expert may:
 - i. consider relevant industry practice;
 - ii. consider all information presented to the expert by either party;
 - iii. request more information from either party;
 - iv. request a meeting with the parties (to which they may bring their lawyers);
- c) the expert must decide within thirty (30) days after the agreement is signed, and need not give reasons; and
- d) the expert's decision will be binding on the parties and final; and
- e) the expert will exclude all liability of the expert to either party (including liability for negligence) to the full extent permitted by law.

This allocation applies for all purposes under this Section One of the Policy.

Any allocation of loss will not apply to or create a presumption with respect to the allocation of any other loss on account of such Claim.

Cross Liability and Non Imputation

Where there is more than one Insured it is 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; and
- c) any knowledge possessed by any Insured shall not be imputed to any other Insured.

Where more than one party comprises the Insured, each of the parties will be considered as a separate and distinct person and the word "Insured" will be considered as applying to each party in the same manner as if a separate Policy had been issued to each of the said parties. As a consequence Our total liability does not exceed the Limit of Liability applicable to the Policy.

Reasonable Care

You, at Your own expense, shall take or cause to be taken all reasonable care to:

- a) maintain premises, plant, equipment and everything used in the Business in proper repair;
- b) employ only competent Employees;
- c) prevent the manufacture, sale or supply of defective Products;
- d) prevent Personal Injury, Damage to Property and Advertising Injury;
- e) comply with all statutory obligations and regulations imposed by any authority; and
- f) remedy any defects or eliminate any dangers which may give rise to Personal Injury, Damage to Property and Advertising Injury.

Subrogation and Recoveries

You will take all necessary steps to preserve Our rights, by way of subrogation to recover from third parties any liability or loss indemnified under this Section of the Policy. You will not, without Our prior consent in writing:

- a) release, agree not to sue, waive or prejudice, any such rights; or
- b) enter into any arrangement or compromise or do any act whereby any rights to which We would be subrogated are, or may be prejudiced,

except in respect to a specific written request by a Host Employer or principal for whom You are performing work and who is entitled to cover under the Policy, and provided the specific written request was received by You prior to the Occurrence.

You agree to provide Us with all information, evidence, documentation, assistance and co-operation and to execute such documents, including signed statements and affidavits, which We reasonably request in the exercise of Your rights of recovery.

You will at all times use reasonable endeavours to do everything reasonably practicable to assist Us in the exercise of Your rights of recovery.

All recoveries obtained by You from other parties will be allocated, after the settlement of any Claim under the Policy as follows:

- a) firstly, to Your benefit to reduce or extinguish the amount of Your loss to the extent that it would have been paid under the Policy but for the fact that such loss exceeds the sum of the Limit of Liability and the Excess; and
- b) secondly, to Our benefit for all sums paid in settlement of loss arising under the Policy; and
- c) thirdly, to Your benefit for the Excess under the Policy.

All recoveries will be applied as described herein only after deduction of the reasonable cost of obtaining such recovery. All recoveries made prior to settlement of any Claim under the Policy will be held for Our benefit and applied as stated herein after settlement if any is made.

Recoveries do not include any amount recovered from insurance, suretyship, reinsurance, security or indemnity taken for Our benefit.

Exclusions Applicable To Section One Broadform Liability

This Section One of the Policy does not, and We will not cover You for any actual or alleged liability in respect of:

Advertising Injury

Advertising Injury:

- a) arising out of breach of or failure to perform contract, other than misappropriation of advertising ideas under an implied contract;
- b) arising out of the failure of Products to conform with advertised performance, description, price or quality; or
- c) incurred by You if the Host Employer's occupation or business is advertising, broadcasting, publishing or telecasting.

Aircraft and Watercraft

Personal Injury, Damage to Property or Advertising Injury directly or indirectly caused or contributed to, or arising from or in connection with:

- a) the operation, maintenance, ownership, possession or use by You or on Your behalf of any vessel or craft made or intended to be air borne;
- b) the operation, ownership, possession or use by You or on Your behalf of any vessel or craft made or intended to be water borne, other than:
 - i. a watercraft or water vessel not exceeding ten (10) metres in length which is owned or operated by others and used by You for business entertainment; or
 - ii. a hand propelled boat or pontoon;
- c) Products intended specifically for, and installed in or on, an aircraft or other aerial device, or caused by or arising out of Products which You knew would be so installed, where such Products are essential to the operation or navigation of an aircraft or other aerial device.

Asbestos

- a) Personal Injury or Advertising Injury arising directly or indirectly out of or in any way connected with the inhalation of, or fears of the consequences of exposure to or inhalation of, asbestos, asbestos fibres or derivatives of asbestos; or
- b) that part of any loss, cost or expense for the cost of cleaning up or removal of any asbestos, asbestos fibres or any derivatives of asbestos or any property contaminated with or by asbestos fibres or any derivatives of asbestos; or
- c) Damage to Property arising directly or indirectly out of or in any way connected with asbestos, asbestos fibres or derivatives of asbestos.

Assault and Battery

Personal Injury or Damage to Property directly or indirectly caused or contributed to by, or arising from or in connection with, assault and battery committed by You or at Your direction unless reasonably necessary for the protection of persons or Property.

Cyber and Data

any loss, damage, liability, Claim, fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:

- a) Cyber Act or Cyber Incident including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act or Cyber Incident; or
- b) loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any Data, including any amount pertaining to the value of such Data;

regardless of any other cause or event contributing concurrently or in any other sequence thereto, except to the extent provided below.

This exclusion shall not apply in respect of any actual or alleged liability for and/or arising out of:

- a) any ensuing third party bodily injury (other than mental injury, mental anguish or mental disease); or
- b) any ensuing physical damage to or destruction of third party property,

resulting from or arising out of a Cyber Incident, unless that Cyber Incident is caused by, contributed to by, resulting from, arising out of or in connection with a Cyber Act. Nothing contained in the foregoing shall provide any coverage for any action taken in controlling, preventing, suppressing or remediating a Cyber Incident or a Cyber Act.

Definitions applying to this exclusion:

Computer System means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

Cyber Act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

Cyber Incident means:

- a) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
- b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

Defamation

Personal Injury, Damage to Property or Advertising Injury directly or indirectly caused or contributed to by, or arising from or in connection with, the publication or utterance of a libel or slander or defamation of character:

- a) made prior to the commencement of the Period of Insurance;
- b) made by You or at Your direction with knowledge of the falsity thereof, or in deliberate disregard thereof; or
- c) related to advertising, broadcasting or telecasting activities conducted by You or on Your behalf, or by any Host Employer.

Defective Work

the cost of performing, completing, correcting or improving any work done or undertaken by You.

Employment Liability

- a) Personal Injury to any Employee, or person deemed by legislation to be employed by You, provided that if You:
 - i. are required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or part of any liability (whether limited or not) for such Personal Injury; or
 - ii. are not required by law to insure or otherwise fund such liability for such Personal Injury by reason only that the Personal Injury is to a person who is not Your worker or employee within the meaning of the relevant workers' compensation law or the Personal Injury is not a Personal Injury which is subject to such law;

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

b) any liability imposed:

- i. by any workers' compensation law to pay compensation to any person employed or deemed to be employed by You; or
- ii. by the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement in respect to any person employed or deemed to be employed by You.

Employment Practice

liability arising from or in connection with Employment Practices.

Fines, Penalties and/or Liquidated Damages

any amount by way of aggravated, exemplary or punitive damages, or any additional damages resulting from the multiplication of compensatory damages, or in respect of fines or liquidated damages, or incurred under a penalty clause.

Jurisdiction

- a) Claims or legal actions made or undertaken against You in any country, state or territory outside the Commonwealth of Australia that require insurance to be insured or secured with an insurer or organisation licensed in that country, state or territory to grant such insurance;
- b) Claims or legal actions made or undertaken against You in any country on the continent of North America, or in states or territories subject to the jurisdiction of North America;
- c) Claims or legal actions made or undertaken against You to which the laws of any country on the continent of North America apply; and
- d) Claims or legal actions made or undertaken against You arising out of the enforcement of any judgement, order or award obtained within, or determined pursuant to the laws of, any country on the continent of North America, or in the states, territories or protectorates of any such country.

However, exclusions (b), (c) and (d) above do not apply to any Claims or legal actions made or undertaken against You arising from non-manual work carried out by any of Your Employees and/or directors, partners or proprietors provided that at the time of carrying out that work such person was normally resident within Australia or its external territories.

Liability Under Agreement

any liability assumed by You under any contract or agreement except to the extent that such liability would have been implied by law in the absence of such contract or agreement.

Provided that this exclusion does not apply to:

- a) liability assumed by You under any lease of real or personal property, other than any liability arising from Your failure to effect property insurance if required under such lease;
- b) those written contracts or agreements specified in the Schedule; or
- c) liability assumed by You under a warranty of fitness or quality in respect of Products.

This exclusion does not apply to any liability arising because the proportionate liability provisions of the Civil Liability Act 2002 (NSW) or similar Acts of other States or Territories including any amendments to, delegated legislation thereof, or successor legislation (as applicable) do not apply as a result of a contract or agreement entered into by You.

Loss of Use

Claims in respect of the loss of use of tangible property which has not been physically damaged, lost or destroyed resulting from:

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

North American Exports

Personal Injury, Damage to Property or Advertising Injury:

- a) happening in any country on the continent of North America, or in states or territories incorporated in or administered from or by North America; and
- b) caused by or arising out of Products exported by You to any such country, state or territory.

Pollution

- a) Personal Injury or Damage to Property caused by or arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, the atmosphere or any watercourse or body of water (including groundwater), unless such discharge, dispersal, release or escape:
 - i. is neither reasonably expected nor intended by You; and
 - ii. is the consequence of a sudden and instantaneous cause which takes place in its entirety at a clearly identifiable place and point in time during the Period of Insurance.
- b) costs or expenses incurred in preventing, removing, nullifying or cleaning-up any discharge, dispersal, release, seepage, migration or escape as described in (a) above, however this exclusion does not apply to removal, nullifying or clean-up costs or expenses that are consequent upon an unexpected, unintended, sudden and instantaneous cause which takes place in its entirety at a clearly identifiable place and point in time during the Period of Insurance and results in Personal Injury or Damage to Property neither of which is otherwise excluded by the Policy.
- c) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants caused by any product that has been discarded, dumped, abandoned or thrown away by others.
- d) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants in the continent of North America or in any country to which the laws of the United States of America or Canada apply.

Provided that Our total aggregate liability under paragraphs (a) and (b) above for all such discharges, dispersals, releases, seepage, migration or escape during any one Period of Insurance (and for all other Claims indemnifiable under the Policy as a result of the same Occurrence(s)) shall not exceed the Limit of Liability stated in the Schedule in respect of pollution liability.

Product Defect

Damage to Products if attributed to any defect in them or their harmful nature or unsuitability.

For the purposes of this exclusion, **Damage** means physical damage, loss, destruction and loss of use.

Professional Duty

liability arising out of any breach of a 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 does not apply to:

- a) the rendering of or failure to render any first aid, medical, health or emergency advice or services by persons employed by You to provide such advice and services;
- b) Claims where such breach is in relation to advice or services given gratuitously; or
- c) Claims arising out of advice given in respect of the use or storage of Products.

Property in Possession or Control

Damage to:

- a) Property belonging to You, or leased or rented to You;
- b) Property in Your Possession or Control; or
- c) that part of Property upon which You are or have been working.

For the purposes of this exclusion, **Damage** means physical damage, loss, destruction and loss of use.

Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons

Personal Injury, Damage to Property or Advertising Injury directly or indirectly caused or contributed to by, or arising from or in connection with:

- a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion or fission of nuclear fuel;
- b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.
This exclusion will not apply to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;
- e) any chemical, biological, bio-chemical, or electromagnetic weapon.

Repair or Replacement

Claims arising out of or resulting from the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of, or from making any refund on the price paid for, Products or of any Property of which they form a part, if such Products or Property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them, provided that this exclusion does not apply to liability for physical damage to or destruction of Products caused by other Products if they were physically independent at the time of such physical damage or destruction.

Tobacco

Personal Injury caused by or contributed to or arising directly or indirectly out of or due to the inhalation or ingestion of, or exposure to:

- a) tobacco or tobacco smoke; or
- b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

Vehicles

Personal Injury or Damage to Property directly or indirectly caused or contributed to by, or arising from or in connection with the operation, ownership, possession or use by You of any Vehicle which is required to be registered or insured under any law which applies to its use (hereinafter referred to as 'Statutory Insurance').

However, this exclusion will not apply to:

- a) Personal Injury where Statutory Insurance does not provide indemnity for reasons not involving a breach by You of legislation relating to Vehicles;
- b) Personal Injury or Damage to Property caused by or arising out of the delivery or collection of goods to or from any Vehicle where such Personal Injury or Damage to Property occurs beyond the limits of any carriageway or thoroughfare;
- c) Damage to Property:
 - i. caused by or arising out of the loading or unloading of goods to or from any Vehicle;
 - ii. caused to, or caused by, Vehicles not owned by You but being operated or used in work undertaken by You or on Your behalf in the course of the Business but only to the extent that indemnity is not available to You under any other policy of insurance arranged by You or the owner of the Vehicle. In any event, the indemnity for liability under this clause (c) (ii) is limited to two hundred and fifty thousand Australian dollars (AUD 250,000) any one Occurrence;
 - iii. caused by or arising out of the use of any Vehicle as a tool of trade, or the use of plant forming part of Your Vehicle as a tool operating at any worksite, but excluding Damage to Property caused by or arising while the Vehicle is transporting or carting goods.

Section Two Management Liability And Professional Indemnity

Definitions Applicable To Section Two

Asbestos means asbestos in whatever form including, without limitation, asbestos products or products containing asbestos.

Benefits means:

- a) fringe benefits and perquisites; or
- b) amounts due or payments made in connection with superannuation or an employee benefit plan or pension scheme; or
- c) share or stock options or any other right to purchase, acquire or sell shares or stock; or
- d) bonuses, or employee or management incentive schemes or similar.

Business Crisis Consultant Fees means the reasonable costs, charges, fees and expenses of an independent management consultant engaged to minimise the effect of the Business Crisis Event, but only during the first thirty (30) days immediately following the Business Crisis Event.

Business Crisis Event means any one of the following unforeseen events which, in the reasonable opinion of the managing Director (or equivalent) of the Company, if left unmanaged has the potential to lead to an imminent decrease of thirty percent (30%) or more of the Company's consolidated annualised revenue:

- a) the loss of a major customer or contract of the Company; or
- b) the sudden and unexpected death or injury of any Insured Person; or
- c) the unexpected imposition of a tax bill; or
- d) the recall of any product manufactured, distributed or sold by You; or
- e) the illegal tampering with or contamination of any product manufactured, distributed or sold by You.

Claim means:

- a) a written communication, including electronic communications, to You, containing a demand for compensation or damages, alleging an act, error, omission, conduct, facts or circumstances that may constitute a Wrongful Act; or
- b) a civil proceeding commenced by the service of a written complaint, summons, statement of claim, writ or similar pleading or an arbitral process, cross-claim or counter claim against You alleging an act, error, omission, conduct, facts or circumstances that may constitute a Wrongful Act; or
- c) any criminal proceeding commenced by a summons or charge of an Insured Person or the Company arising from a Wrongful Act; or

- d) any official investigation, examination, inquiry or other proceedings which gives rise to Representation Expenses.

Claim does not mean an action solely for declaratory or injunctive relief where there is no demand for compensation or damages.

Company means:

- a) the Named Insured; and
- b) Subsidiaries (now or hereafter constituted whose place of incorporation is within Australia or its external territories) of the Named Insured stated in the Schedule prior to or as at the commencement of the Period of Insurance, but cover only applies in respect of Wrongful Acts or any dishonest or fraudulent act committed or alleged to have been committed subsequent to the acquisition or creation of such Subsidiary by the Named Insured.

Conflict of Interest means any actual or perceived competing professional or personal obligation or financial interest which You have in dealing with Your client(s) that includes, but is not limited to, any related but undisclosed commission, fee or other benefit payable to You.

Consumer Protection Act means any of the following:

- a) Fair Trading (Australian Consumer Law) Act 1992 (ACT)
- b) Fair Trading Act 1987 (NSW)
- c) Consumer Affairs and Fair Trading Act 1990 (NT)
- d) Fair Trading Act 1989 (QLD)
- e) Fair Trading Act 1987 (SA)
- f) Australian Consumer Law (Tasmania) Act 2010
- g) Australian Consumer Law Fair Trading Act 2012
- h) Fair Trading Act 1987 (WA)
- i) Competition and Consumer Act 2010 (Cth)

and related or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable).

Covered Property means tangible property other than Money and Securities.

Defence Costs means Your share, according to the "Allocation of loss" Claims Condition applicable to Section Two, of necessary and reasonable costs, charges, fees and expenses (other than regular or overtime wages, salaries, fees or Benefits of the Insured Persons or Trustees) incurred by You with Our prior written consent, in defending, investigating or settling covered Claims.

Director means any natural person who was prior to the Period of Insurance, or is during or after the Period of Insurance a validly appointed director (as defined in the Corporations Act 2001 (Cth) or any equivalent provision in the jurisdiction in which the Company is incorporated) of the Company.

Discovered, Discovery means when any Director, Officer, senior manager of Yours or Trustee, not in collusion with an Employee committing a dishonest or fraudulent act, first becomes aware of facts which would cause a reasonable person in the circumstances to believe that Loss covered by the Policy has occurred, or is likely to occur, regardless of when the act or acts causing or contributing to such Loss occurred and even though the exact amount or details of Loss may not then be known.

Employee means any natural person who was prior to the Period of Insurance, or is during or after the Period of Insurance, an employee of the Company, (which will include trainees, casual, part-time, seasonal, temporary, voluntary and work experience personnel) acting in such capacity, but excludes Directors and independent contractors.

Employment Wrongful Act means any employment related act, error, omission or conduct constituting actual, constructive or alleged:

- a) wrongful dismissal, discharge or termination of employment;
- b) wrongful failure to employ or promote;
- c) wrongful deprivation of career opportunity;
- d) misleading representation or advertising in respect of employment;
- e) wrongful disciplinary action;
- f) negligent employee evaluation;
- g) wrongful demotion;
- h) breach of employment contract;
- i) sexual or workplace harassment (including the creation of a workplace environment conducive to such harassment);
- j) wrongful discrimination;
- k) failure to grant tenure;
- l) invasion of privacy; or
- m) defamation, committed by You.

Excess means the sum of:

- a) the Excess specified in the Schedule; and
- b) any amount payable under a Specified Policy; and
- c) under the Outside Directorships Extension, any other indemnity available from a Non-Profit Outside Entity or Outside Entity.

Fidelity Loss means direct financial or physical loss of Money, Securities and Covered Property belonging to, leased by or in the care, custody or control of the Company, sustained by the Company caused by any dishonest or fraudulent act committed by an Employee (whether acting alone or in collusion with any other person).

Fidelity Loss does not mean:

- a) regular or overtime wages, salaries, fees or Benefits earned in the normal course of employment; or
- b) damages of any type, including but not limited to punitive, exemplary or aggravated damages.

Full Annual Premium means the annual premium payable by the Named Insured for the cover provided under this Section, including any additional premium which becomes payable in respect of the Period of Insurance in question.

Insured Person means any natural person who was prior to the Period of Insurance, or is during or after the Period of Insurance, a Director, Officer or Employee of the Company.

Labour Hire Services means the following services of the Company:

- a) placement of candidates in permanent positions, in its capacity as employment agent;
- b) temporary placement of Employees and independent contractors, apprentices and/or trainees with third parties for the provision of on-hired services;
- c) the provision of the services for which on-hired Professional Workers have been supplied to third parties;
- d) employment consulting services in the areas of occupational health and safety, human resources, human resources relations, human resources management, employment, outsourcing, and psychological testing;
- e) training and induction in all areas, including group training and/or the provision, assessing and issuing of nationally recognised qualifications as a registered training organisation (RTO); and
- f) payroll management for third party entities.

Labour Hire Services Wrongful Act means an act, error, omission, conduct, misstatement, misleading statement, neglect, defamation, infringement of rights of intellectual property or breach of duty, trust, contract, warranty of authority, statute or confidentiality, actually or allegedly committed by You in the conduct of the Labour Hire Services, but does not include an Employment Wrongful Act.

Loss means:

- a) the amount, whether determined by judgment, verdict or award for which You are legally liable to a third party for a Claim and includes damages, compensation orders, interest and claimant's costs and expenses; and
- b) a settlement of a Claim by a third party against an Insured Person, which complies with the Settlement Claims Condition applicable to Section Two; and
- c) Defence Costs; and
- d) under Insuring Clause 4, in the event that the Company is ordered to reinstate or re-employ an Employee, the cost to the Company of complying with any order to pay salary or wages, or damages calculated by reference to salary or wages, to an Employee for the period from the date of the purported dismissal or termination to the date on which the court, tribunal or similar body delivered its judgment to the Parties; and
- e) under Insuring Clause 6, Fidelity Loss; and
- f) under Insuring Clause 7, Business Crisis Consultant Fees; and
- g) under the Fraud Investigator Expenses Extension, all reasonable expenses incurred by the Company with Our prior written consent, solely to investigate, prove and substantiate the amount of the Policy Claim; and
- h) under the Lost Documents Extension, costs and expenses reasonably incurred in replacing or restoring lost or damaged documents; and
- i) under the Occupational Health and Safety Expenses, Pollution Expenses and Representation Expenses Extensions, Representation Expenses; and
- j) under the Statutory Pecuniary Penalties Extension and the Company Statutory Pecuniary Penalties Optional Extension only, statutory pecuniary penalties.

each subject to the Allocation of Loss Claims Condition applicable to Section Two.

Loss does not mean:

- a) taxes, fines and penalties imposed by law, other than those covered under the Statutory Pecuniary Penalties Extension applicable to Section Two; or
- b) punitive, exemplary or aggravated damages.

Management Liability Limit of Liability means the Management Liability Limit of Liability specified in the Schedule.

Management Wrongful Act means any act, error, omission, conduct, misstatement, misleading statement, neglect or breach of:

- a) duty; trust;
- b) contract;
- c) warranty of authority;
- d) statute or confidentiality,

actually or allegedly committed by:

- a) the Company; or
- b) any Insured Person in his or her capacity:
 - i. as an Insured Person; or
 - ii. under the Outside Directorships Extension, only, as a director or officer of, or as the holder of a position of equivalent status in, any Non-Profit Outside Entity or Outside Entity;

or any matter claimed against any Insured Person solely by reason of his or her serving in such capacities, but does not include any Employment Wrongful Act, Labour Hire Services Wrongful Act or Trustee Wrongful Act.

Merger or Acquisition means:

- a) the Insured or the Company consolidating with, merging into or selling all or substantially all of its assets such that the Insured or the Company is not the surviving entity; or
- b) any entity obtaining Control of the Insured or the Company, as applicable.

Money means, without limitation, legal tender including bank notes, coins, bullion, cheques, bills of exchange, promissory notes, and claims on bank deposits and accounts.

Non-Executive Director means any Director who, at the time of the alleged Wrongful Act, is not an Officer or Employee of any Company, or a paid consultant to the Company.

Non-Profit Outside Entity means any non-profit organisation of any kind that is exempt from the payment of income tax, other than a Subsidiary.

Officer means any natural person who was prior to the Period of Insurance, or is during or after the Period of Insurance:

- a) a company secretary of the Company; or
- b) a person:
 - i. who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company; or
 - ii. who has the capacity to affect significantly the Company's financial standing; or
 - iii. in accordance with whose instructions or wishes the Directors of the Company are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Directors or the Company);

other than:

- iv. a receiver, or receiver and manager; or
- v. an administrator or an administrator of a deed of company arrangement; or
- vi. a liquidator; or
- vii. a trustee or other person administering a compromise or arrangement made between the Company and someone else.

Outside Entity means any company specified in the Schedule or by endorsement, other than a Subsidiary.

Policy Claim means a written demand by or on behalf of the Company to Us for payment of Loss under the Policy.

Policy Committee means the management committee of the Superannuation Fund established in accordance with the basic equal representation rules of employers and members as prescribed under Part 9 of the Superannuation Industry (Supervision) Act 1993 (Cth) and related or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable).

Pollutants means any solids, liquids, gaseous or thermal irritants, contaminants, smoke, vapour, soot, fumes, odour or any other air emission, acids, alkalis, chemicals, waste materials, waste water, oil or oil products, infectious biological or medical waste, electric or magnetic or electromagnetic fields, or noise.

Pollution means:

- a) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of Pollutants into or on real or personal property, water or the atmosphere; or
- b) any direction or request to test for, monitor, clean up, treat, detoxify or neutralise Pollutants.

Products means all goods sold or supplied by You including (but not limited to) Vehicles, caravans, trailers, boats, engines, materials, accessories and spare parts.

Professional Indemnity Limit of Liability means the Professional Indemnity Limit of Liability specified in the Schedule.

Professional Worker means any person or incorporated contractor (sole practitioner only) who the Company on-hires to a third party on a temporary contract basis for roles where a tertiary degree (or equivalent including TAFE courses and training and experience of not less than five (5) years) is required in order to fulfil the requirements of the role.

For clarification, Professional Worker does not include any incorporated contractor (unless a sole practitioner), any secretarial staff, clerical staff, labourers, any blue collar workers or trades people of any description.

Related Claims means all Claims arising directly or indirectly from or in respect of the same or causally related or continuous or repeated Wrongful Acts whether committed by one or more of You and whether directed to or affecting one or more than one person or legal entity.

Representation Expenses means:

- a) the Insured Person's, Company or Trustee's; and
- b) under the Occupational Health and Safety Expenses Extension, the Company's share,

according to the Allocation of Loss Claims Condition applicable to Section Two, of necessary and reasonable costs, charges and expenses (other than regular or overtime wages, salaries, fees or Benefits of the Insured Person, Company or Trustee) incurred by:

- c) that Insured Person, Company or Trustee; and
- d) under the Occupational Health and Safety Expenses Extension, the Company;

with Our prior written consent, in preparing for, attending and being represented at any official investigation, examination, inquiry or other proceedings (other than the Company's or Superannuation Fund's own internal investigation) ordered or commissioned by any regulator, government body or authority, governmental or administrative agency, official body or institution, legally constituted industry or professional board into the affairs of the Company or the conduct of the Insured Persons in their capacity as such or as a director or officer of, or the holder of a position of equivalent status in a Non-Profit Outside Entity or Outside Entity or Trustees in their capacity as such, provided that notice of the investigation, examination, inquiry or other proceedings is first received by You during the Period of Insurance and notified to Us during the Period of Insurance.

Securities means shares, stocks, bearer instruments, derivatives, bonds, warrants, debentures, units in shares, units in trusts (including any evidence of indebtedness or other equity or debt security), rights under a depositary receipt or other securities (or interests therein) of whatever nature.

Specified Policy means:

- a) any insurance contract under which the Insured or any Insured is entitled to an indemnity and which is specified in the proposal or by endorsement; or
- b) any renewal or replacement of that insurance contract.

Spouse means a lawful spouse or any person deriving similar status by reason of the common law or statute.

Superannuation Fund means a corporate superannuation fund established for the benefit of Employees of the Company, but excludes any industry, master or self-managed superannuation fund.

Trustee means any Insured Person who:

- a) was prior to the Period of Insurance, or is during or after the Period of Insurance a:
 - i. duly appointed trustee of the Superannuation Fund; or
 - ii. member of the Policy Committee of the Superannuation Fund, to the extent that such person's activities concern the administration of that Superannuation Fund as is contemplated under the Superannuation Industry (Supervision) Act 1993 (Cth) and related or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable); or
- b) was prior to or at the commencement of the Period of Insurance a trustee of the Superannuation Fund duly appointed by a court or regulatory body or pursuant to statute.

Trustee Wrongful Act means any means any act, error, omission, conduct, misstatement, misleading statement, neglect, defamation or breach of:

- a) duty;
- b) contract;
- c) confidentiality;
- d) trust or statute,

actually or allegedly committed by any Trustee in connection with the Superannuation Fund, but does not include any Employment Wrongful Act.

Wrongful Act means:

- a) a Management Wrongful Act; or
- b) an Employment Wrongful Act; or
- c) a Labour Hire Services Wrongful Act; or
- d) a Trustee Wrongful Act.

You, Your, Insured means:

- a) the Company; and
- b) the Insured Persons;
- c) any Trustee; and
- d) for the purposes of Insuring Clause 9 only, Professional Workers.

What You Are Insured Against

Where an Insuring Clause is listed as 'Not Included' in the Schedule then there is no cover under this Section Two for that Insuring Clause nor under the Extensions to that Insuring Clause.

Management Liability

Insuring Clause 1: Directors and Officers Liability

We will pay, on Your behalf, Loss resulting from Claims first made against the Insured Persons during the Period of Insurance and notified to Us during the Period of Insurance based on Management Wrongful Acts for which the Company has not agreed to provide indemnity.

Insuring Clause 2: Company Reimbursement

We will pay, on behalf of the Company, Loss resulting from Claims first made against the Insured Persons during the Period of Insurance and notified to Us during the Period of Insurance based on Management Wrongful Acts if, and to the extent that, the Company has agreed to provide indemnity to the Insured Persons for such Loss.

Insuring Clause 3: Company Liability

We will pay on behalf of the Company, Loss resulting from Claims first made against the Company during the Period of Insurance and notified to Us during the Period of Insurance based on Management Wrongful Acts.

Insuring Clause 4: Employment Practice Liability

We will pay, on Your behalf, Loss resulting from Claims first made against You during the Period of Insurance and notified to Us during the Period of Insurance, where such Loss is in respect of or arising out of an Employment Wrongful Act.

Our total liability under this Insuring Clause will not exceed in the aggregate, the Employment Practice Liability sub-limit specified in the Schedule.

Insuring Clause 5: Trustee Liability

We will pay, on behalf of the Trustee, Loss resulting from Claims first made against the Trustee during the Period of Insurance and notified to Us during the Period of Insurance, based on Trustee Wrongful Acts in connection with the Superannuation Fund.

Insuring Clause 6: Fidelity

We will pay the Company for Policy Claims for Fidelity Loss first Discovered during the Period of Insurance and notified to Us during the Period of Insurance.

Our total liability under this Insuring Clause will not exceed in the aggregate, the Fidelity sub-limit specified in the Schedule.

Insuring Clause 7: Business Crisis Consultant Fees

We will pay on behalf of the Company, Business Crisis Consultant Fees incurred by the Company in responding to a Business Crisis Event that first occurs during the Period of Insurance.

Our total liability under this Insuring Clause will not exceed in the aggregate, the Business Crisis Consultant Fees sub-limit specified in the Schedule.

Insuring Clause 8: Tax Audit Costs

We shall pay on behalf of the Company necessary Tax Audit Costs reasonably incurred by the Company up to the completion of the audit or investigation provided that the Company first received a Tax Audit Notice from the Australian Taxation Office or other relevant authority during the Period of Insurance and notified Us of such notice during the Period of Insurance.

We shall only pay Tax Audit Costs under this Insuring Clause if:

- a) all taxation and other returns are submitted within the time limits prescribed by all relevant statutes and regulations or as required by or on behalf of the Australian Taxation Office or other relevant authority or within the extensions of time granted by the Australian Taxation Office or other relevant authority.
- b) upon the Company or any other person acting on the Company's behalf becoming aware of any error or deficiencies in any information, return of income or any other documentation furnished to the Australian Taxation Office or other relevant authority, the Australian Taxation Office or other relevant authority is notified accordingly without delay.
- c) all taxes are paid by the due date or within any extension granted by the Australian Taxation Office or other relevant authority.
- d) a full and complete disclosure of all income including capital gains as required by any legislation is made by the Company or any other person acting on the Company's behalf.
- e) all correspondence, requests and inquiries from the Australian Taxation Office or other relevant authority are dealt with within reasonable time.
- f) direct access to the Accountant or Registered Tax Agent is granted to Us and full cooperation by them is given to Us in relation to any claim under this Insuring Clause.
- g) at Our request the Company instructs all Accountants or Registered Tax Agents, lawyers or other persons or organisations engaged by the Company to produce to Us, without delay, any documents or information or advice in the Company's or their possession which We shall reasonably require in connection with any claim made under this Insuring Clause.

We are not liable to cover the Company for any Claim, Loss or loss in respect of Tax Audit Costs in connection with:

- a) any improper, unwarranted or unjustified delay, refusal or failure to comply with any request made by or on behalf of the Australian Taxation Office or other relevant authority, for the production of documents or the furnishing of information by You;
- b) inquiries from the Australian Taxation Office or other relevant authority which are not related to an identified intention to conduct an audit or likely future audit;
- c) any audit or investigation concerning income earned or where the source of income is outside Australia and its external territories, or where the services giving rise to the audit are performed by persons or any corporate entity ordinarily resident outside Australia;
- d) matters arising under customs legislation;
- e) any audit or investigations, notice of which or information as to their likely conduct, was received by You or any person acting on Your behalf, prior to the Period of Insurance. Receipt of such communication will have occurred where the Australian Taxation Office or other relevant authority makes communication with You or any other person acting on Your behalf;
- f) any fraudulent act, error, omission or fraudulent misrepresentation committed by You or on Your behalf;
- g) the imposition of or seeking to impose any tax, penalty tax, costs, interest, fine or any fees or expenses in connection with any criminal prosecution;
- h) an audit or investigation of a return of income that has not been prepared or reviewed by the Accountant or Registered Tax Agent, except where the return is a prescribed sales tax return or a prescribed payroll tax return;
- i) Tax Audit Costs incurred after the audit or investigation has been completed.

The aggregate sub-limit of Liability for all payments under this Insuring Clause shall not exceed one hundred thousand Australian dollars (AUD 100,000).

The Company will be liable for a Tax Audit Costs Excess of one thousand Australian dollars (AUD 1,000) for each and every claim.

For the purposes of this Insuring Clause **Tax Audit Costs** means any fees, charges or disbursements of an Accountant or Registered Tax Agent or any other consultant who is not an Insured Person engaged by or replacing the Accountant or Registered Tax Agent, for work undertaken in connection with the audit or investigation.

For the purposes of this Insuring Clause **Tax Audit Notice** means any notification from the Australian Taxation Office, office of state revenue, or any other Australian Commonwealth, State or Territory department, body, agency or authority, relating to the Insured's liability to pay income tax, payroll tax, fringe benefits tax, capital gains tax, A New Tax System (Goods and Services Tax), superannuation payments tax, termination payments tax, land tax, stamp duty or sales tax (including the amount of any such tax) only.

For the purposes of this Insuring Clause **Accountant or Registered Tax Agent** means a person who is not an Insured and is recognised by either the Institute of Chartered Accountants or CPA Australia, or any other person registered by the Australian Taxation Office as a tax agent, engaged by You for the purpose of preparing, or supervising the preparation of, or reviewing prior to dispatch, all returns and statements required by the Australian Taxation Office or other relevant authority, in respect of any liability to pay tax by the Company.

Subject otherwise to all other terms, conditions, exclusions and limitations of this insurance.

Professional Indemnity Cover

Insuring Clause 9: Professional Indemnity

We will pay on Your behalf, Loss resulting from Claims first made against You during the Period of Insurance and notified to Us during the Period of Insurance based on liability at law for Labour Hire Services Wrongful Acts in the conduct of the Labour Hire Services.

Limits of Liability and Excess

If the Insured is comprised of more than one entity, the Management Liability Limit of Liability, Professional Indemnity Limit of Liability and Excess applies to the group of such entities as a whole.

Excess

You are liable for the amount of Loss up to the amount of the Excess for each:

- a) Claim; and
- b) Policy Claim.

The Excess is deducted from Loss payable before the application of the Management Liability Limit of Liability, Professional Indemnity Limit of Liability or sub-limit of liability.

We have no liability for the amount of Loss that is less than the Excess.

You agree that the Excess specified in the Schedule must be retained by You and is not insured by the Policy.

The Excess will not apply to the Fraud Investigator Expenses Extension, the Lost Documents Extension, Insuring Clause 7 – Business Crisis Consultant Fees or any Loss directly payable by any Insured who is a natural person.

Management Liability Limit of Liability

Our liability to You under Insuring Clauses 1, 2, 3, 4, 5, 6, 7 and 8 of the Policy will not exceed the Management Liability Limit of Liability in the aggregate for all:

- a) Loss resulting from all Claims first made during the Period of Insurance and notified to Us during the Period of Insurance; and
- b) Policy Claims for Fidelity Loss first Discovered during the Period of Insurance and notified to Us during the Period of Insurance; and
- c) Business Crisis Consultant Fees incurred in responding to a Business Crisis Event first occurring during the Period of Insurance.

We have no liability under Insuring Clauses 1, 2, 3, 4, 5, 6, 7 and 8 of the Policy for any amount above the Management Liability Limit of Liability.

The purchase of any extended reporting period will not increase or reinstate the Management Liability Limit of Liability or any sub-limit of Liability, which will be Our maximum liability for the Period of Insurance and extended reporting period, combined.

Professional Indemnity Limit of Liability

Our liability to You under Insuring Clause 9 of the Policy will not exceed the Professional Indemnity Limit of Liability in the aggregate for all:

- a) Loss resulting from all Claims first made during the Period of Insurance and notified to Us during the Period of Insurance; and
- b) Policy Claims for costs and expenses reasonably incurred in replacing or restoring lost or damaged documents for loss or damage first discovered by You during the Period of Insurance and notified to Us during the Period of Insurance as provided under the Lost Documents Extension.

We have no liability under Insuring Clause 9 of the Policy for any amount above the Professional Indemnity Limit of Liability.

The purchase of any extended reporting period will not increase or reinstate the Professional Indemnity Limit of Liability or any sub-limit of Liability, which will be Our maximum liability for the Period of Insurance and extended reporting period, combined.

Related Claims

For the purpose of the calculation of the Management Liability Limit of Liability, Professional Indemnity Limit of Liability, any sub-limit of liability or Excess, all Related Claims will be deemed to be one Claim and cover for all Related Claims will be provided as follows:

- a) if the first Related Claim is first made during the Period of Insurance and notified to Us during the Period of Insurance or any applicable extended reporting period, then cover for all subsequent Related Claims will only be provided under the Policy; and
- b) if the first Related Claim was first made and notified to Us during a period prior to the current Period of Insurance, during which You had cover with Us, then cover for all Related Claims will only be provided under that earlier policy with Us, subject to the terms, excess and limit of liability of that earlier policy; and
- c) if the first Related Claim was first made during a period prior to the current Period of Insurance, during which You did not have cover with Us, then no cover for any Related Claim will be provided under the Policy.

Related Fidelity Loss

For the purpose of the calculation of the Fidelity sub-limit or Excess, all Policy Claims for Fidelity Loss sustained as a result of the same or causally related acts, causes or events will be deemed to be one Policy Claim regardless of when during the Period of Insurance or prior thereto such acts occurred.

Retroactive Date

The Policy shall only provide cover with respect to Wrongful Acts committed after the Retroactive Date specified in the Schedule.

Extensions Applicable To Section Two

Unless otherwise stated, any payment made under each of these Extensions will be part of and not in addition to the Professional Indemnity Limit of Liability or the Management Liability Limit of Liability as applicable to the stated Insuring Clause in relation to which the payment is made pursuant to the Extension. These Extensions only extend the stated Insuring Clauses.

Acquisition or Creation of New Subsidiaries

Insuring Clauses 1, 2, 3, 4, 5, 6 and 9 are extended as follows:

If, during the Period of Insurance, the Company acquires or creates a new Subsidiary that has total assets (by reference to the new Subsidiary's most recent financial statements as at the time of acquisition or creation) that are no greater than the total assets of the Company (by reference to the Company's most recent financial statements as at the time of acquisition or creation), then the definition of Company will be extended to include the new Subsidiary, but cover only applies in respect of Wrongful Acts or any dishonest or fraudulent act committed or alleged to have been committed subsequent to the acquisition or creation of such Subsidiary.

The inclusion of such new Subsidiary does not extend or apply to the definition of Company where this is used in the definition of Labour Hire Services.

The definition of Company will not be extended to include any new Subsidiary acquired or created by the Company that:

- a) has any of its Securities listed on any exchange in North America; or
- b) is domiciled or incorporated in North America.

Advancement of Defence Costs and Representation Expenses

Insuring Clauses 1, 2, 3, 4, 5 and 9 and the Representation Expenses Extension, Occupational Health and Safety Expenses Extension and Pollution Expenses Extension are extended as follows:

We will advance Defence Costs and, under the Representation Expenses Extension, Occupational Health and Safety Expenses Extension and Pollution Expenses Extension, Representation Expenses. However, if and to the extent that You are not entitled to cover for Loss under the terms of the Policy, then We will cease to advance Defence Costs and Representation Expenses and any amounts previously advanced shall be repaid to Us by You within thirty (30) days or such other reasonable timeframe We agree with You following a request by Us for such repayment.

If a Claim alleges a Wrongful Act or illegal or improper conduct as described in the Dishonest or Criminal Intent/Improper Conduct Exclusion, then We will advance Defence Costs and Representation Expenses in respect of such Claim until it is found by way of an admission by You, judgment or adjudication that such Insured did in fact commit such Wrongful Act or engage in such excluded illegal or improper conduct and any amounts previously advanced shall be repaid to Us by You within thirty (30) days or such other reasonable timeframe We agree with You following a request by Us for such repayment.

Company Statutory Pecuniary Penalties

Insuring Clauses 3, 4 and 9 are extended to cover, to the extent permitted by law, any statutory pecuniary penalties imposed upon the Company based on Wrongful Acts, except for any statutory pecuniary penalties imposed:

- a) pursuant to any Consumer Protection Act; or
- b) pursuant to any law regulating air, marine or vehicular traffic; or
- c) directly or indirectly as a result of or in connection with a requirement to pay taxes, duties, rates, levies, charges, fees or any other governmental revenue raising measure;
- d) where the Company knew, or where a reasonable person in the circumstances ought reasonably to have known, prior to the Period of Insurance that the Company had contravened a law and committed an offence pursuant to that law; or
- e) as a result of further Wrongful Acts committed after the Company first knew, or where a reasonable person in the circumstances ought reasonably to have known, that the Company had contravened a law and committed an offence pursuant to that law, and which led to the imposition of increased or additional statutory pecuniary penalties.

The cover provided under this Extension will only apply to such statutory pecuniary penalties imposed in the jurisdiction of Australia and pursuant to the laws of Australia.

Our total liability under this Extension will not exceed in the aggregate, the Company Statutory Pecuniary Penalties sub-limit specified in the Schedule.

In the event of any conflict between this Extension and the Bodily Injury and Property Damage Exclusion or the Occupational Health and Safety Law Exclusion, this Extension shall apply.

In the event of any conflict between this Extension and the Pollution Exclusion, this Extension shall apply, except where Pollution arises directly or indirectly from or in respect of the Insured's liability as owner or operator of any aircraft, marine craft or motor vehicle of any kind.

Continuity

Insuring Clauses 1, 2, 3, 4, 5 and 9 are extended as follows:

In the absence of fraudulent non-disclosure or fraudulent misrepresentation, where a Claim that would otherwise be covered by the Policy is excluded by the Known Claims and Circumstances Exclusion, then cover is provided under the Policy, provided that:

- a) You first became aware of the fact, event, circumstance or Wrongful Act that gave rise to the Claim after the Continuity Date specified in the Schedule; and
- b) You were insured against the Wrongful Act by Us at the time when You first became aware of such fact, event, circumstance or Wrongful Act and have since been insured continuously by Us, under a policy of which the Policy is a replacement or renewed Policy; and
- c) no Related Claim has been made against You prior to the Period of Insurance; and
- d) the cover provided under this Extension will be in accordance with the Policy, except that:
 - i. if the excess applicable to the policy in force at the time when You first became aware of such fact, event, circumstance or Wrongful Act is higher than the Excess specified in the Schedule, then that higher amount will be deemed to be the Excess specified in the Schedule in respect of such Claim; and
 - ii. if the amount of the limit of liability applicable to the policy in force at the time when You first became aware of such fact, event, circumstance or Wrongful Act is lower than the amount of the Professional Indemnity Limit of Liability or Management Liability Limit of Liability, as applicable, then that lower amount will be deemed to be the amount of the Professional Indemnity Limit of Liability or Management Liability Limit of Liability, as applicable, in respect of such Claim.

Extended Reporting Period

Insuring Clauses 1, 2, 3, 4, 5, 6 and 9 are extended as follows:

In the event that the Policy is neither renewed nor replaced at the end of the Period of Insurance with insurance that covers substantially the same risk exposure as the Policy, the Named Insured will be entitled to purchase an extended reporting period of ninety (90) days.

The extended reporting period begins immediately following the expiry of the Period of Insurance and ends on the earlier of 4.p.m. Local Standard Time on the ninetieth (90th) day thereafter, or at the time on the effective date on which You obtain insurance that covers substantially the same risk exposure as the Policy.

The additional premium for the extended reporting period will be twenty five percent (25%) of the Full Annual Premium.

The entitlement to purchase the extended reporting period lapses upon expiry of the Period of Insurance.

The application to purchase the extended reporting period must be received by Us prior to the expiry of the Period of Insurance, and payment of the additional premium must be made to Us within thirty (30) days of the same date unless We agree otherwise.

In the event that a Merger or Acquisition takes place, the Named Insured will not be entitled to purchase the extended reporting period.

During the extended reporting period You may continue to notify Us of:

- a) Claims, but only Claims based on Wrongful Acts committed or alleged to have been committed prior to expiry of the Period of Insurance.
- b) Policy Claims, but only Policy Claims for Fidelity Loss caused by dishonest or fraudulent acts committed prior to expiry of the Period of Insurance.

Any notification to Us during the extended reporting period will be deemed to have been first notified to Us during the Period of Insurance.

Extended Reporting Period for Retiring Directors and Officers

Insuring Clauses 1, 2 and 4 are extended as follows:

In the event that the Policy is neither renewed nor replaced at the end of the Period of Insurance with insurance covering at least substantially the same risk exposure as Insuring Clauses 1 and 2, then any Director or Officer who retires from all paid employment and office with You during the Period of Insurance, but prior to a Merger or Acquisition, shall be entitled to an extended reporting period of three hundred and sixty five (365) days immediately following expiry of the Period of Insurance.

During the extended reporting period the Director or Officer may continue to notify Claims to Us, but only Claims based on Wrongful Acts committed or alleged to have been committed prior to their date of retirement.

Any Claim made and notified to Us during this extended reporting period will be deemed to have been first made and notified to Us during the immediately preceding Period of Insurance.

Fraud Investigator Expenses

If Insuring Clause 6 is noted as included in the Schedule it is extended to cover all reasonable expenses (excluding overtime wages, salaries, fees and other internal costs incurred in the normal course of business) incurred by the Company with Our prior written consent, solely to investigate, prove and substantiate the amount of the Policy Claim.

Our total liability under this Extension will not exceed in the aggregate the Fraud Investigator Expenses sub-limit specified in the Schedule.

Legal Representatives

Insuring Clauses 1, 2, 4, 5 and 9 are extended as follows:

If an Insured Person or Trustee dies or becomes legally incapable or bankrupt, then the Policy will afford cover for Loss resulting from Claims:

- a) first made against such Insured Person's or Trustee's estate, heirs, executors or other legal representatives; and
- b) notified to Us,

during the Period of Insurance based on Wrongful Acts by such Insured Person or Trustee. However, the estate, heirs, executors or other legal representatives must comply with the terms of the Policy.

Lost Documents

Insuring Clause 9 is extended as follows:

We will pay the Company for Policy Claims for costs and expenses reasonably incurred by them in replacing or restoring lost or damaged documents where such loss or damage is first discovered by You during the Period of Insurance and notified to Us during the Period of Insurance, provided that:

- a) such loss or damage is sustained while the documents are either in transit or in the care, custody or under the control of the Insured or of any person to whom You have entrusted them; and
- b) where the documents are in electronic format, You or any person to whom You have entrusted them, have in place sufficient and proper procedures for the security and the daily back-up of the documents.

Our total liability under this Extension will not exceed one hundred thousand dollars (AUD 100,000) in the aggregate.

The Excess does not apply to this Extension.

Occupational Health and Safety Expenses

Subject to the provisions of the Advancement of Defence Costs and Representation Expenses Extension, Insuring Clauses 1, 2, and 3 are extended as follows:

Notwithstanding the Bodily Injury and Property Damage Exclusion or the Occupational Health and Safety Law Exclusion We will pay, on behalf of You:

- a) Defence Costs incurred in defending Claims (other than a civil claim for compensation or damages) first made against You during the Period of Insurance and notified to Us during the Period of Insurance, based upon occupational health and safety law which results from a Wrongful Act; and
- b) Representation Expenses, where the subject matter of the official investigation, examination, inquiry or other proceedings is occupational health and safety law.

Under this Extension, Representation Expenses also includes necessary and reasonable costs, charges and expenses (other than regular or overtime wages, salaries, fees or Benefits of the Insured Person) incurred with Our prior consent, in representing and assisting You at a visit from an inspector of a workplace health and safety authority in connection with and following a workplace safety incident, provided that notice of the visit is given to You during the Period of Insurance and is notified to Us during the Period of Insurance.

The cover provided under this Extension will only apply to Claims made in the jurisdictions of Australia and New Zealand and pursuant to the laws of Australia or New Zealand (as applicable).

Our total liability under this Extension will not exceed in the aggregate, the Company Occupational Health and Safety Expenses sub-limit specified in the Schedule.

If there is an entitlement to payment under the Pollution Expenses Extension then there is no entitlement to payment under this Extension.

Outside Directorships

Insuring Clauses 1, 2 and 4 are extended to include as an Insured Person a person who, at the written request of the Company was prior to the Period of Insurance, or is during or after the Period of Insurance a director or officer of, or occupies a position of equivalent status in, any Non-Profit Outside Entity or Outside Entity.

Any cover afforded by this Extension will be specifically excess of:

- a) any indemnity; or
- b) any insurance contract specified in the Schedule or by endorsement;

available from or through the Non-Profit Outside Entity or Outside Entity.

The Company must notify Us of any insurance contract under which any Insured Person is entitled to an indemnity in respect of any Non-Profit Outside Entity or Outside Entity as soon as reasonably practicable, providing full details of such other insurance contract, including the identity of the insurer, the policy number and such further information as We may reasonably require.

We will not be liable under this Extension for Loss resulting from any Claim by a Non-Profit Outside Entity or Outside Entity, or any director or officer of, or any person of equivalent status in a Non-Profit Outside Entity or Outside Entity, except for any Claim:

- a) resulting from an Employment Wrongful Act; or
- b) solely for a contribution or indemnity in respect of a Claim which is brought against another Insured Person and is covered under the Policy; or
- c) by that Non-Profit Outside Entity or Outside Entity as a statutory derivative action, but not voluntarily solicited or assisted by that Non-Profit Outside Entity or Outside Entity or by a director or officer of, or a person of equivalent status in, that Non-Profit Outside Entity or Outside Entity; or
- d) by a liquidator, administrator or receiver or equivalent in any jurisdiction, but not voluntarily solicited or assisted by that Non-Profit Outside Entity or Outside Entity or by a director or officer of, or a person of equivalent status in, that Non-Profit Outside Entity or Outside Entity; or
- e) by a Non-Profit Outside Entity or Outside Entity pursuant to Section 50 of the Australian Securities and Investments Commission Act 2001 (Cth).

Pollution Expenses

Subject to the provisions of the Advancement of Defence Costs and Representation Expenses Extension, Insuring Clauses 1, 2 and 3 are extended as follows:

Notwithstanding the Bodily Injury and Property Damage Exclusion, the Occupational Health and Safety Law Exclusion or the Pollution Exclusion, We will pay:

- a) on Your behalf, Defence Costs incurred in defending Claims (other than a civil claim for compensation or damages) first made against You and notified to Us during the Period of Insurance, based on Pollution which results from a Wrongful Act; and

- b) on behalf of the Insured Person or Company, Representation Expenses, where the subject matter of the official investigation, examination, inquiry or other proceedings is Pollution.

The cover provided under this Extension will only apply to Claims made in the jurisdictions of Australia and New Zealand and pursuant to the laws of Australia or New Zealand (as applicable).

Our total liability under this Extension will not exceed in the aggregate, the Pollution Expenses sub-limit specified in the Schedule.

Representation Expenses

Insuring Clauses 1, 2, 3, 4, 5 and 9 are extended as follows:

We will pay Representation Expenses on behalf of the Insured Person, Company or Trustee(s) subject to the provisions of the Advancement of Defence Costs and Representation Expenses Extension.

If there is an entitlement to payment under the Occupational Health and Safety Expenses Extension or the Pollution Expenses Extension, then there is no entitlement to payment under this Extension.

Our total liability under this Extension will not exceed in the aggregate, the Labour Hire Representation Expenses sub-limit specified in the Schedule.

Spouses

Insuring Clauses 1, 2, 4, 5 and 9 are extended as follows:

If a Claim against an Insured Person or Trustee includes a claim against such Insured Person's or Trustee's Spouse solely by reason of

- i. such Spouse's legal status as a Spouse of such Insured Person or Trustee; or
- ii. such Spouse's ownership interest in property which the claimant seeks as recovery for Claims made against such Insured Person or Trustee,

then all loss which such Spouse becomes legally liable to pay resulting from such Claim will be treated for the purposes of the Policy as Loss.

This Extension does not apply to the extent the Claim alleges any act, error or omission by such Insured Person's or Trustee's Spouse.

Statutory Pecuniary Penalties

Insuring Clauses 1, 2, 4, 5 and 9 are extended to cover, to the extent permitted by law, any statutory pecuniary penalties imposed upon the Insured Person or Trustee based on Wrongful Acts.

In the event of any conflict between this Extension and the Bodily Injury and Property Damage Exclusion or the Occupational Health and Safety Law Exclusion, this Extension shall apply.

In the event of any conflict between this Extension and the Pollution Exclusion, this Extension shall apply, except where Pollution arises directly or indirectly from or in respect of Your liability as owner or operator of any aircraft, marine craft or motor vehicle of any kind.

The cover provided under this Extension will only apply to such statutory pecuniary penalties imposed in the jurisdictions of Australia and New Zealand and pursuant to the laws of Australia or New Zealand (as applicable).

Our total liability under this Extension will not exceed in the aggregate, the Statutory Pecuniary Penalties sub-limit specified in the Schedule.

Sub-contractors and Consultants

Insuring Clause 9 is extended as follows:

Insuring Clause 9 covers the acts, errors or omissions of subcontractors and consultants, but only in respect of Your liability at law for Labour Hire Services Wrongful Acts in the conduct of the Labour Hire Services provided by the sub-contractor and/or consultant on Your behalf.

Subsidiary Run-off Cover

Insuring Clauses 1, 2, 3, 4, 5, 6, and 9 are extended as follows:

If a Subsidiary ceases to be a Subsidiary during the Period of Insurance, then the Policy will remain in force in respect of the Subsidiary until the expiry of the Period of Insurance as follows:

- a) under Insuring Clauses 1, 2, 3, 4, 5 and 9, only in respect of Loss resulting from Claims based on Wrongful Acts committed or alleged to have been committed; and
- b) under Insuring Clause 6, only in respect of Fidelity Loss sustained,

prior to the time such Subsidiary ceases to be a Subsidiary.

There shall be no cover in respect of such Subsidiary under Insuring Clause 7 for Business Crisis Consultant Fees in responding to a Business Crisis Event occurring after the time such Subsidiary ceases to be a Subsidiary.

Conditions Applicable To Section Two

Acquisition, Merger or Winding Up of the Insured

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

- a) a Merger or Acquisition of the Named Insured; or
- b) the appointment of a receiver, controller, administrator or liquidator to the Named Insured, or the commencement of a scheme or arrangement or compromise or a winding up process in respect of the Named Insured;

then the Policy will remain in force until the expiry of the Period of Insurance:

- c) under Insuring Clauses 1, 2, 3, 4, 5 and 9, only in respect of Loss resulting from Claims based on Wrongful Acts committed or alleged to have been committed; or
- d) under Insuring Clause 6, only in respect of Fidelity Loss sustained,

prior to the events described in (a) or (b) above.

There shall be no cover under Insuring Clause 7 for Business Crisis Consultant Fees in responding to a Business Crisis Event or Insuring Clause 8 for Tax Audit Costs occurring as a result of, or after, the events described in (a) or (b) above.

Company Failure to Indemnify

Where Insuring Clause 2 applies and the Company is in liquidation (other than voluntary liquidation) and has insufficient funds available to indemnify the Insured Persons for Loss as agreed, then the Excess applicable to the Company specified in the Schedule is not payable to Us.

Confidentiality

You must not disclose the existence or terms of the Policy, including without limitation the Limit of Liability, the nature of the insurance or the premium payable under the Policy to any person who is not an Insured except where:

- a) You are required by law or stock exchange rules to do so;
- b) disclosure is made to Your professional advisors, such as Your accountant, insurance broker or legal advisors, when acting in a professional capacity on Your behalf; or
- c) We provide Our prior written consent to such disclosure.

Disclosure

Each Insured represents that the information about that Insured supplied to Us before the Period of Insurance in respect of the Policy is correct, true and complete. You acknowledge that We rely on this information and this representation.

No breach of the Policy or knowledge or information possessed by the Company or any Insured Person shall be imputed to another except as provided for above.

Jurisdiction

Except where otherwise provided, the Policy provides cover for Claims made anywhere in the world except for those Claims:

- a) brought in a court of law, arbitration, tribunal forum or other body entitled to impose enforceable orders against You in North America; or
- b) arising from the enforcement of any judgment, order or award in respect of any action brought in any court of law in North America.

Other Notices

Any communications to Us under this Section Two of the Policy, including any application to purchase an extended reporting period, must be sent by You to Us at Our address specified in the Schedule.

Notice to the Insured may be given to You or Your agent at the broker name and address specified in the Schedule.

Severability and Imputation

For the purposes of the Policy, any knowledge or information possessed by any past, present or future chief executive officer, chief operating officer, chief financial officer, chief legal officer (or similar positions) or chairman of the board of Directors shall be imputed to the Company.

The proposal made to Us prior to entering into the Policy shall be construed as separate applications for cover by the Company and each Insured Person and, except as provided for above, no information provided by or representation made by one, shall be imputed to another.

Exclusions Applicable To Section Two

These exclusions apply to all the terms of this Section Two of the Policy unless otherwise stated. Where an exclusion applies to a particular Insuring Clause then it also applies to the Extensions to that Insuring Clause.

We will not be liable for:

Asbestos

Loss resulting from Claims or Policy Claims arising directly or indirectly from or in respect of Asbestos, Asbestos fibres or derivatives of Asbestos.

Benefits

Loss resulting from Claims arising directly or indirectly from or in respect of an actual or alleged violation of the responsibilities, obligations or duties imposed by any law relating to workers compensation, unemployment insurance, retirement benefits, social security or disability benefits.

This exclusion will not apply to Insuring Clauses 1, 2 or 9.

Bodily Injury and Property Damage

- a) under Insuring Clauses 1, 2, 3, 4 and 5, We will not be liable for Loss resulting from Claims for bodily injury, any form of psychiatric, psychological or mental injury, illness, disease or death of any person, or damage to or destruction of any tangible property, including any consequent loss of use thereof except that this exclusion will not apply in respect of any actual or alleged psychiatric, psychological or mental injury alleged in any Claim by any Insured Person resulting from any Employment Wrongful Act; and
- b) under Insuring Clause 9, We will not be liable for Loss resulting from Claims arising directly or indirectly from or in respect of:
 - i. bodily injury, illness or disease or death of any person, provided that this exclusion does not apply to any form of purely psychiatric, psychological or mental injury sustained by any person; or
 - ii. damage or destruction of any tangible property, including any consequent loss of use thereof or any consequential loss;

unless as a result of breach of professional duty by You.

Capital Raising

Loss resulting from Claims arising directly or indirectly from or in respect of any offer for the raising of capital by debt or equity, including but not limited to any prospectus.

Cyber and Data

any actual or alleged Loss, damage, liability, Claim, fine, penalty, cost (including, but not limited to, defence cost and mitigation cost) or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with:

- a) a Cyber Incident, unless stated otherwise below;
- b) a Cyber Act; or
- c) a breach of Data Protection Law by the Insured, or parties acting for the Insured, involving access to, processing of, use of or operation of any Computer System or Data, including notification costs, crisis consultancy costs, credit monitoring expenses, replacement of actual credit or payment cards, forensic expenses, public relations expenses or legal advice and services.

Any cover for the costs of reconstituting or recovering lost or damaged documents owned or controlled by You in the Policy shall not apply to Data.

Definitions applying to this exclusion:

Cyber Act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

Cyber Incident means:

- a) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
- b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

Computer System means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

Data Protection Law means all applicable data protection and privacy legislation, regulations in any country, province, state, territory or jurisdiction which governs the use, confidentiality, integrity, security and protection of personal data, and any guidance or codes of practice issued by any data protection regulator or authority from time to time all as amended, updated or re-enacted from time to time).

Dishonest or Criminal Intent/Improper Conduct

Loss resulting from Claims against any Insured arising directly or indirectly from or in respect of:

- a) any Wrongful Act committed by that Insured with wilful, reckless, dishonest, fraudulent, malicious or criminal intent; or
- b) that Insured improperly using their position to gain an advantage for that Insured or someone else or to cause a detriment to the Company; or
- c) that Insured improperly using information obtained as a result of their position to gain an advantage for that Insured or someone else or to cause a detriment to the Company;

in each case only if established by any admission by the Insured, judgment, or other adjudication.

For the purpose of this exclusion, the fact that one Insured has committed or is alleged to have committed the conduct described in (a), (b) or (c) above will not be imputed to any other Insured.

Fading and Mould

We will not be liable under the Lost Documents Extension, for Policy Claims for costs and expenses incurred in replacing or restoring lost or damaged documents where such loss or damage arises directly or indirectly from or in respect of wear, tear, fading, mould or any other gradually operating cause.

Industrial Relations

Loss resulting from Claims arising directly or indirectly from or in respect of collective industrial or labour relations including but not limited to strikes, lock-outs, demarcation disputes, negotiating awards or enterprise agreements, collective redundancies, obligations to consult representatives and Employees in relation to redundancies and other actions that arise, other than Claims based on an individual employment relationship.

This exclusion will not apply to Insuring Clauses 1 or 2.

Insolvency

- a) Loss resulting from Claims; or
- b) Business Crisis Consultant Fees

arising directly or indirectly from or in respect of the insolvency (whether actual, deemed or otherwise) of the Company including but not limited to:

- a) the Company continuing to trade whilst insolvent; or
- b) the failure of the Company to enter into voluntary administration as and when the Insured Persons knew or reasonably ought to have known that the Company was insolvent or likely to become insolvent; or
- c) the incurring of debt by the Company when the Company was insolvent or became insolvent by incurring that debt, or by incurring at that time debts including that debt; or
- d) the failure of the Company to meet its financial commitments as and when they fall due; or
- e) any breach by any Insured Persons of any duty (whether imposed by common law, statute or by reason of the Insured Person being a fiduciary or otherwise) in allowing the Company to become insolvent; or
- f) any omission or decision made, or course of action taken by any Insured Person that results in the Company becoming insolvent or continuing to trade whilst insolvent; or
- g) any representation made by an Insured Person as to the solvency or future prospects of the Company at a time when the Company was insolvent or likely to become insolvent; or
- h) the Company entering into a transaction that is voidable; or
- i) the appointment of a liquidator or receiver.

Insured v Insured

Loss, other than Defence Costs, resulting from any Claim by the Company except for any Claim:

- a) by the Company as a statutory derivative action, but not voluntarily solicited or assisted by the Company or an Insured Person; or
- b) by a liquidator, administrator, or receiver or equivalent in any jurisdiction, but not voluntarily solicited or assisted by an Insured Person; or
- c) by the Company pursuant to Section 50 of the Australian Securities and Investments Commission Act 2001 (Cth).

Known Claims and Circumstances

Loss resulting from Claims arising directly or indirectly from or in respect of any fact, event, circumstance or Wrongful Act:

- a) known to any Insured at the inception of the Policy and which a reasonable person in the circumstances might reasonably expect to give rise to a Claim; or
- b) which has been or should reasonably have been the subject of any written notice given under any policy of which the Policy is a direct or indirect renewal or replacement; or
- c) alleged in, discovered in, relating to or underlying any Claim made against any Insured prior to the inception of the Policy.

Major Shareholder

Loss resulting from Claims (whether in the name of the Company or not) by any shareholder having directly or indirectly Control of fifteen per cent (15%) or more of the Company.

Motor, Marine, Aircraft

Loss resulting from Claims that are claims for compensation or damages arising directly or indirectly from or in respect of Your liability as owner or operator of any aircraft, marine craft or motor vehicle of any kind.

Nuclear, Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons

Loss resulting from Claims or Policy Claims directly or indirectly caused or contributed to by, or arising from or in connection with:

- a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion or fission of nuclear fuel;
- b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.
This exclusion will not apply to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;
- e) any chemical, biological, bio-chemical, or electromagnetic weapon.

Occupational Health and Safety Law

Loss resulting from Claims arising directly or indirectly from or in respect of any breach of occupational health and safety law.

Occupiers Liability

Loss resulting from Claims that are claims for compensation or damages arising directly or indirectly from or in respect of the actual or alleged occupation of land or buildings by You.

Pollution

Loss resulting from Claims arising directly or indirectly from or in respect of Pollution including without limitation any Claim for financial loss to the Company arising directly or indirectly from Pollution, except to the extent provided otherwise under the Pollution Expenses Extension.

Product Liability and Product Recall

Loss resulting from Claims arising directly or indirectly from or in respect of:

- a) Your manufacture, distribution and/or sale of Products; or
- b) the recall of any Products manufactured, distributed and/or sold by You.

Professional Services

Loss resulting from Claims arising directly or indirectly from or in respect of:

- a) any breach of duty in respect of any professional services or professional advice by You; or
 - b) any breach of any contract for the provision of professional services or professional advice by You;
- except that this exclusion will not apply:
- i. under Insuring Clauses 1, 2 or 5 in respect of any actual or alleged professional services or professional advice which is provided by an Insured Person when acting solely in their capacity as an Insured Person, or as a Trustee and in circumstances where such professional services or professional advice is provided to the Insured and not to third parties in the course of the Company's professional business; or
 - ii. under Insuring Clause 9, to professional services or professional advice to the extent that they are included within Labour Hire Services.

Underpayment of Wages, Benefits or entitlements to any Employee

Loss resulting from any Claim arising directly or indirectly out of or in connection with any actual or alleged underpayment of wages, Benefits or entitlements to any Employee.

Additional Exclusions Applicable To Insuring Clause 3: Company Liability

Under Insuring Clause 3, We will not be liable for:

Contractual Liability

Loss resulting from Claims arising directly or indirectly from or in respect of any actual or alleged breach of any term of any contract, whether express or implied.

Intellectual Property Rights

Loss resulting from Claims arising directly or indirectly from or in respect of any alleged or actual breach of any other party's intellectual property rights, or infringement or violation of any trade secret.

Privacy Rights

Loss resulting from Claims arising directly or indirectly from or in respect of any alleged or actual breach of any other party's privacy rights.

Restrictive Trade Practices

Loss resulting from Claims arising directly or indirectly from or in respect of any alleged or actual restrictive trade practices including but not limited to any Consumer Protection Act or similar legislation in other jurisdictions, or tortious interference with any other party's business or contractual relationships.

Superannuation Funds

Loss resulting from Claims arising directly or indirectly from or in respect of any alleged or actual Wrongful Act in connection with any Superannuation Fund.

Additional Exclusions Applicable To Insuring

Clause 4: Employment Practice Liability

Under Insuring Clause 4, We will not be liable for:

Employee Entitlements

Loss payable for, or in respect of, or calculated by reference to:

- a) salary or wages earned prior to the date of termination; or
- b) Benefits; or
- c) any amount not indemnified by the Company for which any Insured is absolved for payment by reason of any covenant, agreement or court order; or
- d) payment for time in lieu of notice, severance or redundancy.

Injunctive Relief or Accommodation

Loss payable for, or in respect of, or calculated by reference to:

- a) the cost of complying with any injunctive or other non-monetary relief or any agreement to provide any such relief; or
- b) costs incurred by any Insured to make any accommodation in respect of working practices or otherwise on the basis of a person's disability or family responsibilities or as may be required under any law relating to anti-discrimination.

In the event of an inconsistency between this exclusion and the definition of Claim, the provisions of this exclusion shall prevail.

Liability of Others

Loss resulting from Claims arising directly or indirectly from or in respect of the liability of others assumed by any Insured under any contract or agreement unless such liability would have attached in the absence of such contract or agreement.

Specified Period Employment Contract

- a) Loss, other than Defence Costs and claimant's costs and expenses, resulting from Claims arising directly or indirectly from or in respect of a breach of a specified period employment contract; and
- b) Defence Costs and claimant's costs and expenses resulting from Claims arising directly or indirectly from or in respect of a breach of a specified period employment contract:
 - i. unless and until You have received legal advice based on the facts as they existed as at the time of the actual or alleged breach from a legal adviser stating that You have reasonable legal grounds to amend or terminate such specified period employment contract; and
 - ii. provided that You have not received legal advice from a legal adviser stating that You do not have reasonable legal grounds to terminate specified period employment contract.

For the purposes of this exclusion a specified period employment contract will be a specified period employment contract irrespective of whether or not such contract provides for a qualified or unqualified right to terminate the contract on notice prior to its expiry date.

Unfair Employment Contract

Loss resulting from Claims arising directly or indirectly from or in respect of:

- a) a contract of employment that is alleged to be unfair; or
- b) the seeking of relief pursuant to Section 106 of the Industrial Relations Act 1996 (NSW) or Section 276 of the Industrial Relations Act 2016 (QLD) and related or similar legislation (including in other jurisdictions as applicable), including any amendments to, delegated legislation thereof, or successor legislation (as applicable).

Additional Exclusions Applicable To Insuring Clause 6: Fidelity

Under Insuring Clause 6, We will not be liable for Policy Claims for:

Confidential Information

Fidelity Loss arising directly or indirectly from or in respect of the accessing or disclosure of any confidential information, including but not limited to trade secret information, computer programs, confidential processing methods or other confidential information of any kind except where such accessing or disclosure enables the commission of any act otherwise covered under Insuring Clause 6.

Damage to Premises

Fidelity Loss arising directly or indirectly from or in respect of damage or destruction to Your premises.

Discovery Outside the Period of Insurance

Fidelity Loss first Discovered prior to the commencement of the Period of Insurance or after the expiry of the Period of Insurance.

Dishonesty or Fraud of Director or Employee Shareholder

Fidelity Loss arising directly or indirectly from or in respect of any dishonest or fraudulent act committed by:

- a) a Director or Trustee; or
- b) an Employee acting in collusion with a Director or Trustee; or
- c) an Employee having at any time more than five percent (5%) shareholding or interest in the Company.

Indirect or Consequential Loss

indirect or consequential loss of any kind, including but not limited to loss of income, potential income, interest, profits or dividends, whether or not earned or accrued.

Loss of Records

Loss of or damage to records, manuscripts, accounts, microfilms, tapes or other records or the cost of reproducing any information contained in such lost or damaged records.

Loss Sustained After Discovery

Fidelity Loss, or that part of any Fidelity Loss, caused by an Employee, which is sustained after Discovery of any dishonest or fraudulent act committed by such Employee.

Profit and Loss Computation and Inventory Comparison

Fidelity Loss or that part of any Fidelity Loss, the proof of which is dependent solely upon:

- a) a profit and loss computation or comparison; or
- b) a comparison of inventory records with an actual physical count, provided that where the Company establishes wholly apart from such computation or comparison that it has sustained Fidelity Loss caused by an identified Employee, then it may offer its inventory records and actual physical count of inventory in support of the amount of Fidelity Loss claimed.

Retroactive Date

Fidelity Loss sustained prior to the Retroactive Date specified in the Schedule.

Territory

Fidelity Loss arising directly or indirectly from or in respect of any dishonest or fraudulent act committed in whole or part outside of Australia or New Zealand.

Trading Loss

Fidelity Loss arising directly or indirectly from or in respect of any authorised or unauthorised trading in Money, Securities or Covered Property by an Employee, whether acting alone or in collusion with any other person and whether or not such trading is in the name of the Company and whether or not such trading is in a genuine or fictitious account.

Additional Exclusions Applicable To Insuring Clause 9: Professional Indemnity

Under Insuring Clause 9, We will not be liable for Loss resulting from Claims:

Assumed Liability

arising directly or indirectly from or in respect of any liability assumed by You under any express warranty, guarantee, hold harmless agreement, indemnity clause or the like unless such liability would have attached to You in the absence of such agreement.

This exclusion does not apply to any liability arising because the proportionate liability provisions of the Civil Liability Act 2002 (NSW) or similar provisions of Acts of other States or Territories including any amendments to, delegated legislation thereof, or successor legislation (as applicable) do not apply as a result of a contract or agreement entered into by You.

Conflict of Interest

arising directly or indirectly from, or in respect of, any Conflict of Interest in connection with the provision of the Labour Hire Services which You have failed to disclose.

Defective Workmanship

arising directly or indirectly from or in respect of the rectification of defective or faulty workmanship or the replacement of defective or faulty Products in connection with the Labour Hire Services.

Employment Agents – Dishonesty of Staff Supplied

arising directly or indirectly from or in respect of the dishonesty of any person supplied to a client by You occurring or allegedly occurring during the course of any secondment, employment, placement or contract with such client.

Employment Agents – Persons Supplied

arising directly or indirectly from or in respect of acts, errors or omissions of any person who has been placed in a permanent position by You in Your capacity as employment agent.

Financial Product and Services

arising directly or indirectly from or in respect of providing:

- a) financial product advice, issuing, dealing or arranging for others to deal in financial products; or
- b) a financial service;

except that this exclusion will not apply to such activities to the extent that they are included within Labour Hire Services.

For the purposes of this exclusion, “financial product advice”, “issuing”, “dealing”, “financial product” and “financial service” have the meaning set out in Part 7.1 of the Corporations Act 2001 (Cth).

Geotechnical Engineers, Geotechnicians, Building Certifiers and Building Surveyors

arising directly or indirectly from or in respect of or in connection with any Labour Hire Services Wrongful Act actually or allegedly committed by any on-hired geotechnical engineers, geotechnicians, building certifiers and/or building surveyors.

Midwifery and Maternity/Obstetrics Procedures

in connection with midwifery or maternity/obstetrics procedures.

Related Parties or Financial Interests

by:

- a) any Insured, or;
- b) any entity that is a Subsidiary or parent company of an Insured; or
- c) any entity of which an Insured has or has held at least a twenty percent (20%) financial interest and has had or has board representation on that entity; or
- d) by members of an Insured’s family, which means the estates, heirs, legal representatives, assigns or relatives (whether related by consanguinity or affinity) or trustees or beneficiaries of any trust created or maintained by or for the benefit of such individuals.

Trading Debts

arising directly or indirectly from or in respect of any liability for any trading debt incurred, or any guarantee in respect of such debt given, by You.

Claims Conditions Applicable To Section Two

Allocation of Loss

This Claims Condition applies to any part of any Loss resulting from a Claim which is in respect of:

- a) one Insured only; or
- b) more than one Insured, whether jointly or severally; or
- c) one or more Insured and one or more persons or entities who is or are not an Insured, whether jointly or severally, and which is partly covered and partly not covered under the Policy, (together 'Loss to be allocated').

We may determine a fair and reasonable allocation of the covered part of the Loss to be allocated among the relevant Insured's and Us having regard to the extent of each Insured's comparative responsibility for the Loss to be allocated. Our consideration of what is fair and reasonable may include without limitation, the following factors (as applicable):

- a) the nature of the Claim against each Insured;
- b) the issues of fact and law in relation to each Insured;
- c) the content and the manner of the conduct of any defence of the Claim;
- d) the relative degree of personal responsibility for the Loss;
- e) the extent to which Your responsibility for the Loss is joint, several or shared;
- f) the extent to which any person or entity, other than that Insured, would obtain a benefit from the payment by Us;
- g) the extent to which the Loss is solely of that Insured;
- h) the extent to which the issues in the Claim against that Insured are in common with the issues in the Claim against any other person or entity;
- i) the extent to which the Loss is partly covered and partly not covered under the Policy;
- j) in the event of a settlement, the likely comparative responsibility had the settlement not occurred.

If agreement cannot be reached on the allocation the parties agree to seek an expert determination in accordance with the Australian Disputes Centre ("ADC") Mediation Guidelines, from an expert agreed by the parties, or if the parties do not agree on an expert, an expert nominated by the then current CEO of the ADC or the CEO's nominee.

Each party agrees to sign an agreement with the expert that confirms the following:

- a) unless agreed otherwise, each party will pay an equal share of the fees for the appointed expert (to be charged at the expert's usual rate); and

- b) the expert may:
 - i. consider relevant industry practice;
 - ii. consider all information presented to the expert by either party;
 - iii. request more information from either party;
 request a meeting with the parties (to which they may bring their lawyers); and
- c) the expert must decide within thirty (30) days after the agreement is signed, and need not give reasons; and
- d) the expert's decision will be binding on the parties and final; and
- e) the expert will exclude all liability of the expert to either party (including liability for negligence) to the full extent permitted by law.

This allocation applies for all purposes under this Section Two of the Policy including the Advancement of Defence Costs and Representation Expenses Extension and the Subrogation and Recoveries Claims Condition.

Any allocation of Loss will not apply to or create a presumption with respect to the allocation of any other Loss on account of such Claim.

Claims Conduct

We are entitled to take over and conduct in Your name the defence or settlement of any Claim and will have full discretion in the conduct of any proceedings and in the settlement of any Claim.

We reserve entirely Our rights under the Policy. Our rights under the Policy are not affected if We do not conduct the defence.

Neither You nor Us will be required to contest or litigate any Claim if, in the opinion of Senior Counsel, reasonable attempts should be made to settle the Claim. The Senior Counsel shall be mutually agreed upon, or in the absence of such agreement, as nominated by the President of the NSW Bar Association. The cost to obtain the opinion will be advanced by Us and treated as Defence Costs.

Senior Counsel shall provide the opinion in writing. In formulating the opinion Senior Counsel shall consider commercial matters including the amount of the Claim, the actual and potential Loss (including Defence Costs) that may reasonably be incurred in contesting the Claim, the liability prospects and the prospect of recovering costs against the claimant in the event that the defence is successful. Senior Counsel shall also provide a settlement range within which reasonable attempts should be made to settle the Claim.

If it is the opinion of Senior Counsel that reasonable attempts should be made to settle the Claim, You shall not object to Our attempt to do so.

Co-Operation

In the event of a Claim, Policy Claim, Business Crisis Event or Loss, You will at all times and at Your own cost provide Us with all information, evidence, documentation, assistance and cooperation and will execute such documents, including signed statements and affidavits, which We reasonably request.

You will at all times and at Your own cost use reasonable endeavours to do everything reasonably practicable to avoid or diminish Loss and to assist with the defence, investigation or settlement of any Claim, Policy Claim or Business Crisis Event.

We may make any investigation We reasonably deem necessary in relation to the defence or settlement of any Claim, Policy Claim or Business Crisis Event.

Covered Property

In respect of Loss of Covered Property, We will not be liable for more than the actual cash value of Covered Property at the time of Loss or the actual cost of repairing or replacing the Covered Property with property of similar quality or value whichever is the lesser.

Notification

You must give to Us notification of any Claim made against any Insured, Discovery of any Fidelity Loss, any Business Crisis Event or any Loss, as soon as reasonably practicable within the Period of Insurance or within any applicable extended reporting period at the Claims Notification address specified in the Schedule.

Each notification of a Claim must include so far as practicable:

- a) the identity of the claimant or potential claimant; and
- b) the nature of the Claim; and
- c) the likely quantum of the Claim.

Each notification of a Policy Claim must include affirmative proof duly sworn, with full particulars of the Money, Securities or Covered Property involved.

You must provide Us with such further information and documentation as We may reasonably require.

Securities

In respect of Loss of Securities, We will not be liable for more than the actual market value of the Securities at the close of business on the business day immediately preceding the day on which the Loss was Discovered or the actual cost of replacing the Securities, whichever is less, plus the cost of posting any required lost instrument bond (such cost will be paid by Us on Your behalf).

The Indirect or Consequential Loss Exclusion does not apply to the calculation of Loss of Securities.

Settlement

You must not settle or offer to settle any Claim, incur any Defence Costs or Representation Expenses or otherwise assume any contractual obligation or admit any liability in respect of any Claim without Our prior written consent (such consent not to be unreasonably withheld).

If You object to a proposal by Us to settle or compromise any Claim payable under the Policy and wish to contest or litigate the matter, then You may so elect, but Our liability in respect of any such Claim so contested or litigated will not exceed the amount for which, but for such election, it could have been settled or compromised by Us, together with Defence Costs payable in accordance with the terms of the Policy and incurred up to the time of such election.

Subrogation and Recoveries

All Recoveries

All recoveries obtained by You from other parties will be allocated, after the settlement of any Claim or Policy Claim under the Policy as follows:

- a) firstly, to Your benefit to reduce or extinguish the amount of Your Loss to the extent that it would have been paid under the Policy but for the fact that such Loss exceeds the sum of the Limit of Liability or the Fidelity sub-limit, and the Excess where applicable; and
- b) secondly, to Our benefit for all sums paid in settlement of Loss arising under the Policy; and
- c) thirdly, to Your benefit for the Excess under the Policy.

All recoveries will be applied as herein only after deduction of the reasonable cost of obtaining such recovery. All recoveries made prior to settlement of any Claim or Policy Claim under the Policy will be held for Our benefit and applied as stated herein after settlement if any is made.

Recoveries do not include any amount recovered from insurance, suretyship, reinsurance, security or indemnity taken for Our benefit.

Fidelity recoveries

In the event of any payment in respect of a Policy Claim:

- a) the Company must, if requested by Us, take all reasonable steps to make recovery from any person committing or condoning the dishonest or fraudulent act or from the legal representatives of such person; and

-
- b) to the extent allowed by law, the insurer will deduct the following from any amount payable in respect of Fidelity Loss caused by or resulting from a dishonest or fraudulent act:
- i. any monies which but for such dishonest or fraudulent act would be due from the Company to the person committing or condoning such act; and
 - ii. any monies held by the Company and belonging to such person; and
 - iii. any monies recovered under (a) above; and

all such monies will be applied towards reducing the amount of the Loss.

Preservation of rights of recovery

You will take all reasonable and necessary steps to preserve Your rights of recovery. You will not, without Our prior consent in writing (such consent not to be unreasonably withheld):

- a) release, agree not to sue on, waive or prejudice, any such rights; or
- b) enter into any arrangement or compromise or do any act whereby any rights or remedies to which We would be subrogated are or may be prejudiced.

Provision of information and assistance

You agree to provide Us with all information, evidence, documentation, assistance and co-operation and to execute such documents, including signed statements and affidavits, which We reasonably request in the exercise of Our rights of recovery.

You will at all times use reasonable endeavours to do everything reasonably practicable to assist in the exercise of Your rights of recovery.

NSW

Level 14, 141 Walker Street
North Sydney NSW 2060
Telephone: (02) 9930 9500

SURA Labour Hire Pty Ltd ABN 67 604 373 088 acts as an agent for Berkley Insurance Company trading as Berkley Insurance Australia and Certain Underwriters at Lloyd's and is authorised to arrange, enter into/ bind and administer this insurance on their behalf.

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SURA Labour Hire Ltd supports positive initiatives for our environment.