

Combined Liability Policy



## Policy Schedule

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- 1. POLICY NUMBER:** BN-CAS-17-400778A
- 2. NAMED INSURED:** Harness Racing Australia, State Controlling Bodies (excluding New South Wales and Victoria), Tabaret Management Pty Ltd, Junction Tabaret Management Pty Ltd, Tabcorp Holdings Limited (in respect of their involvement with harness racing clubs only) for their respective rights and liabilities, Racing and Wagering Western Australia; Western Australian Trotting Association; Mundijong Thoroughbred and Standardbred Trainers Association (Inc.) in respect to standardbred training activities only, Australian Pacing Gold Ltd, Harness Racing Tasmania, Tasracing, Office of Racing Integrity (in respect of their involvement with harness racing only), Queensland Racing Integrity Commission, Harness Racing Queensland, Harness Racing SA Limited, Copper City Horse Training Society Inc., Registered Clubs and Associations, licensed drivers, licensed trainers, stable hands, stewards and veterinarian contractors in respect of advice given to registered clubs of Harness Racing Australia only at race meetings, affiliated bodies, together with experienced personal whilst licensed by the appropriate licensing authority.
- 3. PERIOD OF INSURANCE:** From: 1<sup>st</sup> September 2018 at 4pm local standard time  
To: 1<sup>st</sup> September 2019 at 4pm local standard time
- 4. POLICY WORDING:** LIU Combined Liability Policy form LIU-AUS-CAS-CL-1000010 and attached endorsement.
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## SECTION 1

### 5. INSURED'S BUSINESS:

Principally Management of the Australian Harness Racing Industry including Racing, Trialling and Training of Harness Racing Standard Bred horses by licensed Drivers, Trainers and Stablehands, State Controlling Bodies, Registered Club's operations in respect of any Harness Racing business including, but not limited to:

Operators of Raceways; Managers, Promoters and Organisers of Harness Racing in Australia; Property Owners; Totalisator Operations; Yearling Sales, and including all associated activities undertaken by the Insured.

The inclusion of coverage for Property Owners activities extends only to Registered Clubs, Associations and Nominated Registered Tracks as noted on the Policy Schedule. The Policy does not provide coverage for Licensed Trainers, Drivers or Stablehands in respect of their own personal liability as a Property Owner.

### 6. LIMIT OF INDEMNITY:

AUD50,000,000 any one Occurrence in respect of public liability and in the aggregate during the Period of Insurance in respect of Product liability.

### 7. SUB-LIMITS OF LIABILITY:

#### **Property in the Insured's Care Custody or Control**

AUD5,000,000 any one Occurrence and in the aggregate during the Period of Insurance.

#### **Crisis Management Expenses**

AUD300,000 each Claim

### 8. DEDUCTIBLES:

1. AUD1,000 each and every Occurrence (costs inclusive) in respect of claims arising out of licenced driver's harness racing activities.
2. AUD1,000 each and every Occurrence (costs inclusive) in respect to claims against any trainer.
3. AUD10,000 each and every Occurrence (costs inclusive) in respect of claims arising out of the use of club premises as public markets and the like.
4. AUD10,000 each and every Occurrence (costs inclusive) arising out of standard bred horse sales / auctions arranged by:
  - a. Australian Pacing Gold Ltd.



b. Harness Racing South Australia – Annual Yearling Sales.

5. AUD10,000 any one Claim (costs inclusive) arising out of Ambulance Officers Medical Services Liability Claims.
6. AUD1,000 each and every Occurrence (costs inclusive) in respect of mini / pony trotting claims.
7. AUD1,000 any one Claim made (costs inclusive) in respect of crisis / media management expenses.
8. AUD10,000 each and every Occurrence (costs inclusive) in respect of all other claims.

**9. AGGREGATE DEDUCTIBLE:** AUD145,000 over the 12 month Policy Period from 1 September 2018 to 1 September 2019.

Only amounts above the nine (9) Maintenance Deductibles as set out in Section 1 and Section 2 shall contribute to the exhaustion of the Aggregate Deductible of AUD145,000. If the aggregate deductible of AUD145,000 is exhausted the nine (9) Maintenance Deductibles as set out in Section 1 and Section 2 shall remain in place.

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## SECTION 2

- 10. PROFESSIONAL SERVICES:** Provision of the following:
1. Management of the Australian Harness Racing Industry Racing, Trialling and Training of Harness Racing Standard Bred horses by licensed Drivers, Trainers and Stablehands, State Controlling Bodies, Registered Club's operations in respect of any Harness Racing business
  2. Volunteer Veterinary Services
  3. Volunteer Ambulance Officers Medical Services
- 11. LIMIT OF INDEMNITY:** AUD10,000,000 any one Claim and in the aggregate during the Period of Insurance.
- 12. SUB-LIMITS OF INDEMNITY:**
- |                                       |            |
|---------------------------------------|------------|
| Extension 2.12 Loss of Documents      | AUD500,000 |
| Extension 2.15 Professional Inquiries | AUD250,000 |
| Extension 2.16 Public Relations Costs | AUD50,000  |
- 13. DEDUCTIBLE:** AUD10,000 each and every Claim (costs inclusive).

**14. OPTIONAL EXTENSIONS:**

- |                                    |              |
|------------------------------------|--------------|
| <b>3.1 Contractual Liability</b>   | Not Included |
| <b>3.2 Proportionate Liability</b> | Not Included |
| <b>3.3 Reinstatement</b>           | Not Included |

**15. ADDITIONAL INSURANCE:** Not Included

**16. RETROACTIVE DATES:**

- 30<sup>th</sup> June 2002 – Civil Liability Professional Indemnity  
2<sup>nd</sup> March 2009 – Ambulance Officers Medical Services Liability  
2<sup>nd</sup> March 2009 – Volunteer Veterinarian Services Liability

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**17. PREMIUM:** As agreed

This Schedule attaches to and forms part of LIU Combined Liability Policy Form LIU-AUS-CAS-CL-100010 and is valid only if it is signed and dated below by a person duly authorised by Liberty International Underwriters.



24<sup>th</sup> October 2018

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For and on behalf of  
Liberty International Underwriters

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Date

## Combined Liability Policy

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In consideration of the premium being paid by the Insured to LIU and in reliance upon the written statements and declarations contained in the proposal and/or insurance broker's quotation submission, LIU agrees to indemnify the Insured in accordance with the attached Schedule, individual Section wordings and endorsements where applicable.

### Section 1 General & Products Liability

#### 1. Insuring Clause

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Subject to the terms of this Section (including any General Definitions, General Conditions and General Exclusions as applicable), LIU will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation in respect of Injury and/or Damage first happening during the Period of Insurance as a result of an Occurrence in connection with the Insured's Business.

#### 2. Definitions Applicable to Section 1

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2.1 "Asbestos" means:

2.1.1 That group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite; or

2.1.2 That group of man-made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres,

And includes Asbestos Products and Products containing Asbestos.

2.2 "Damage" means:

2.2.1 Physical damage to or destruction of tangible property including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical damage that caused it; or

2.2.2 Loss of use of tangible property that is not physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property which first happened during the Period of Insurance. All such loss of use shall be deemed to happen at the time of the physical damage or destruction that caused it.

2.3 "Employment Practices" means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, unfair contracts, harassment or discrimination (sexual or otherwise) in respect of employment by the Insured.

- 2.4 "Injury" means:
- 2.4.1 Bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
  - 2.4.2 False arrest, wrongful detention or imprisonment, malicious prosecution;
  - 2.4.3 Wrongful entry or eviction;
  - 2.4.4 Assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing Injury and/or Damage or eliminating danger; or
  - 2.4.5 Libel, slander, defamation of character or invasion of right of privacy.
- 2.5 "Insured" wherever used in this Section means the Named Insured specified in the Schedule and:
- 2.5.1 Any subsidiary company of the Insured incorporated within Australia including subsidiaries thereof; or
  - 2.5.2 Any other entity incorporated within Australia controlled by the Insured and over which the Insured assumes active management.
- 2.6 "Insured's Business" is the business shown in the Schedule in relation to Section 1.
- 2.7 "Limit of Indemnity" means the amount stated in the Schedule in relation to Section 1 pursuant to Clause 5 of this Section.
- 2.8 "Occurrence" means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury and/or Damage neither expected nor intended from the standpoint of the Insured. All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.
- 2.9 "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, noise, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

### 3. Indemnity to Others (Applicable to Section 1)

Subject to the terms of this Section (including any General Definitions, General Conditions and General Exclusions as applicable) and in accordance with Insuring Clause 1, this Section will extend to pay to or on behalf of:

- 3.1 Any principal, in respect of that principal's vicarious liability for the negligent acts or omissions of the Insured pursuant to Definition 2.5 and arising out of the Insured's Business, but this Policy does not

extend to the liability of any principal howsoever arising out of the negligence, breach of contract or breach of duty of such principal;

- 3.2 Any director, executive officer or Worker of the Insured or, where the Insured is a partnership, any partner of the Insured, but only while acting within the scope of their duties in such capacity;
- 3.3 The officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire-fighting and employee welfare organisations in their respective capacity as such; or
- 3.4 The legal personal representative of any person entitled to indemnity under this Clause 3 in circumstances giving rise to indemnity under this Section.

Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this Section in so far as they can apply as though they were the Insured.

#### 4. Cross Liabilities

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Subject at all times to the terms of this Section (including any General Definitions, General Conditions and General Exclusions as applicable), each person or party indemnified is separately indemnified in respect of claims made by any of them against any other of them provided that LIU's total liability shall not exceed the Limit of Indemnity for all claims under this Section.

#### 5. Limit of Indemnity (Applicable to Section 1)

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LIU's liability to pay compensation shall not exceed the sum stated in the Schedule in relation to this Section in respect of any one claim or series of claims arising from one Occurrence.

The total aggregate liability of LIU for any one Period of Insurance for all claims in respect of or in any way connected with the Insured's Products shall not exceed the Limit of Indemnity stated in the Schedule in relation to this Section.

#### 6. Defence Costs (Applicable to Section 1)

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In addition to the Limit of Indemnity, LIU will pay all reasonable legal costs and/or expenses incurred with LIU's prior written consent in connection with any claim for which the Insured is indemnified by this Section.

Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this Section.

Provided that LIU shall not be liable for legal costs and/or expenses for or in respect of representation at any formal legal inquiry involving an accident resulting in Injury or at any coroner's inquiry or defending any proceedings in a court of summary jurisdiction.

Provided that LIU shall not pay any legal costs and/or expenses in respect of any Occurrence after LIU has paid compensation up to the Limit of Indemnity applicable to this Section.



Provided further that the legal costs and/or expenses incurred in connection with claims made and/or actions instituted within the United States of America or Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, shall form part of the Limit of Indemnity applicable to this Section and will not be payable by LIU in addition to such Limit of Indemnity.

In the event the Insured is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this Section, the Insured and LIU will use their best efforts to agree upon a fair and proper allocation of legal costs and/or expenses or any other amount insured under this Section which relate solely to what is covered under this Section.

In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by LIU and the Insured) shall, as an expert and not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made a determination, LIU may, in its absolute discretion, pay such legal costs and/or expenses or any other amount insured under this Section as it considers appropriate.

## 7. Exclusions (Applicable to Section 1)

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This Section does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

- 7.1 The ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the Insured of any motor vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Injury, but this exclusion does not apply to:
  - 7.1.1 Injury for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law;
  - 7.1.2 Injury caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law;
  - 7.1.3 Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
  - 7.1.4 Damage to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any motor vehicle or trailer or of the load carried thereon; or
  - 7.1.5 Damage to any motor vehicle or trailer (not owned, leased or hired by, under hire purchase, on loan or rented to the Insured) temporarily in the Insured's custody or control for the purpose of parking and directly arising out of such parking.

- 7.2 Damage to property owned, leased, hired by, under hire purchase, on loan or rented to the Insured or otherwise in the Insured's care, custody or control other than:
- 7.2.1 Premises (or to contents thereof) temporarily occupied by the Insured for the purpose of carrying out works thereto or thereon, but no indemnity is granted for liability in respect of physical damage to or destruction of that part of any premises or contents on which the Insured is or has been working on if the physical damage or destruction arises from such work;
  - 7.2.2 Premises tenanted by the Insured;
  - 7.2.3 Directors', employees' and visitors' clothing and personal effects; or
  - 7.2.4 Other property not owned by the Insured but temporarily in the Insured's possession provided:
    - 7.2.4.1 No indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which the Insured is or has been working on if the physical damage or destruction arises from such work; and
    - 7.2.4.2 LIU's limit of liability under this Clause 7.2.4 does not exceed AUD100,000 each and every Occurrence and in the aggregate for any one Period of Insurance,
- Provided further that no indemnity is granted under this Policy in respect of liability assumed by the Insured under any contract or agreement which requires the Insured to effect material damage insurance on premises, property or goods not owned by the Insured.
- 7.3 Damages claimed for, and/or the costs of withdrawal, recall, inspection, repair, replacement, disposal or loss of use of the Insured's Products or of any property of which such Products form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
- 7.4 Damage to the Insured's Products if such Damage is attributable to any defect therein or harmful nature or unsuitability thereof.
- 7.5 The cost of performing, completing, correcting or improving any work undertaken by the Insured.
- 7.6 Any Product guarantee or warranty given by or on behalf of the Insured but this exclusion shall not apply to the requirements of any Federal or State legislation with respect to Product safety and information.
- 7.7 Liability assumed under the terms of a contract, agreement or warranty unless and only to the extent that the Insured would have been liable in the absence of such contract, agreement or warranty.
- 7.8 Liability assumed where the Insured may have been able to recover from another party but for an agreement between the Insured and such party where the Insured has waived, released or abandoned any right of recourse or recovery against any party.



7.9 Any Product which is incorporated into the structure, machinery or controls of any aircraft, aerial device, watercraft or hovercraft.

7.10 Injury to any Worker.

Provided that if the Insured:

7.10.1 Is required by law to insure or otherwise fund, whether through self -insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) for such Injury; or

7.10.2 Is not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not a Worker or “employee” within the meaning of the relevant Workers’ Compensation Law or the Injury is not an Injury which is subject to such Law,

Then this Section will respond to the extent that the Insured’s liability would not be covered under any such fund, scheme, policy of insurance or self-insurance arrangement had the Insured complied with its obligations pursuant to such Law.

7.11 7.11.1 Any Workers’ Compensation Law;

7.11.2 The provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination; or

7.11.3 Employment Practices.

7.12 Libel, slander and/or other defamation:

7.12.1 Made prior to the commencement of the Period of Insurance;

7.12.2 Made at the Insured’s direction or with the Insured’s authority or with knowledge of its falsity; or

7.12.3 Related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured.

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

7.13.1 A delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or

7.13.2 The failure of any Product to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured but this exclusion does not

apply to loss of use of other tangible property directly or indirectly caused by, arising out of or in any way connected with or resulting from the sudden and accidental physical damage to or destruction of the Product after such Product has been put to use by any person or organisation other than the Insured.

7.14 Any change in the nature of the Insured's Business which:

7.14.1 Occurred during the currency of this Section; and

7.14.2 Was known by the Insured, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of Injury or Damage for which indemnity is provided by this Section.

For the purposes of this exclusion, where the Insured is a corporate body, the knowledge of any director or officer of the Insured shall be deemed to be the knowledge of the Insured.

7.15 The rendering of or failure to render professional advice or service or any error or omission connected therewith given for a fee by the Insured or any person covered by Clause 3 of this Section.

Provided that this exclusion does not apply to the rendering of first aid or medical services on the Insured's premises by medical persons employed by the Insured.

7.16 Injury sustained due to the inhalation or ingestion of, or exposure to:

7.16.1 Tobacco or tobacco smoke; or

7.16.2 Any ingredient or additive present in any articles, items or goods which contain or include tobacco.

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

7.17.1 Any aircraft or aerial device;

7.17.2 Any watercraft exceeding 10 metres in length; or

7.17.3 Any hovercraft.

7.18 The Deductible and/or self-insured retention shown in the Schedule in relation to this Section.

7.19 The erection, demolition, alteration of and/or addition to buildings by or on behalf of the Insured except for contracts not exceeding in cost the sum of AUD500,000 or 10% of the Limit of Indemnity applicable to this Section, whichever is the lesser.

7.20 7.20.1 Claims made and actions instituted within the United States of America or Canada and their respective territories and protectorates, and any other territory coming within the jurisdiction of the courts of the United States of America or Canada; or

7.20.2 Claims and actions to which the laws of the United States of America or Canada and their respective territories and protectorates apply.

Provided that this exclusion does not apply to claims and actions caused by an employee of the Insured who normally resides in Australia while such employee is temporarily travelling on behalf of the Insured outside Australia.

7.21 Fines, penalties, punitive damages, exemplary damages, multiplication of compensatory damages, liquidated damages and/or aggravated damages.

7.22 Any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the Insured or any person covered by Clause 3 of this Section.

7.23 Asbestos

7.24 7.24.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;

7.24.2 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;

7.24.3 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; or

7.24.4 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants.

Provided always that exclusions 7.24.1, 7.24.2 and 7.24.3 shall not apply to liability which is directly caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place.

The total aggregate liability of LIU for all claims covered in any one Period of Insurance in respect of the proviso above shall not exceed the Limit of Indemnity shown in the Schedule in relation to Section 1.

7.25 Claim(s), civil liability, liability, Defence Costs, costs and expenses the subject of Section 2 of this Policy. The intent being the Insured can seek cover under either Section 1 or Section 2 (to the extent applicable) but not both.

## 8. Conditions (Applicable to Section 1)

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8.1 The Insured shall give written notice to LIU as soon as possible of any claim under this Section and shall give all such additional information as LIU may require.

8.2 No admission, offer, promise, or payment shall be made or given by or on behalf of the Insured without the prior written consent of LIU who shall be entitled but not obligated to take over the conduct in the name of the Insured of the defence or settlement of any claim or to prosecute in the name of the Insured



for their own 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 and the Insured shall give all such information and assistance as LIU shall require.

- 8.3 This Section and any endorsements attached to this Section shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Section or the Schedule in relation to this Section shall bear such specific meaning wherever it may appear.
- 8.4 The amount shown within the Schedule as a Deductible and/or self-insured retention is the first amount for all claims arising out of any one Occurrence which is to be borne by the Insured or any person covered by Clause 3 of this Section.
- 8.5 LIU may at any time discharge its total liability to the Insured in respect of any one claim or series of claims arising from one Occurrence by paying to or on behalf of the Insured:

8.5.1 The total amount in respect of such claim to which the Insured is entitled to indemnity under this Section;

8.5.2 The total amount sought by the claimant for such claim; or

8.5.3 The total amount for which such claim can be settled,

And in addition to such payment LIU will pay Defence Costs incurred up to the date of payment as provided for by Clause 6 of this Section.

Upon such payment, LIU shall relinquish conduct or control of such claim and be under no further liability under this Section in connection with such claim including but not limited to Defence Costs.

- 8.6 The Insured must:
- 8.6.1 Exercise reasonable care that only competent Workers and/or employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- 8.6.2 Take all reasonable precautions to:
- 8.6.2.1 Prevent Injury and Damage;
- 8.6.2.2 Prevent the manufacture, sale or supply of defective Products; and
- 8.6.2.3 Comply and ensure that its Workers, servants and agents comply with all statutory obligations, by laws or regulations imposed by any public authority for the safety of persons or property;
- 8.6.3 At its own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect; and



8.6.4 Assist and co-operate fully and promptly with LIU in the investigation, settlement or defence of any claim or matters relating or in connection thereto.

The amount of any benefit under this Section for any liability caused or contributed to by the lack of such precautions, measures and compliances shall be reduced by the amount that fairly represents the extent to which LIU's interests have been prejudiced thereby.

8.7 Where the premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and after expiry of the Period of Insurance declare as soon as possible such details as LIU requires and the premium shall be adjusted and any difference paid by or allowed to the Insured as the case may be subject to any minimum premium that may apply.

## Section 2 Civil Liability Professional Indemnity Insurance

### **Important Notice**

Please note that this Section provides insurance on a Claims Made basis. Accordingly, LIU will only cover the Insured in respect of Claims which are first made against the Insured during the Period of Insurance and reported to LIU during the Period of Insurance.

### 1. Insuring Clause

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- 1.1 LIU will indemnify the Insured against civil liability the Insured incurs in respect of a Claim arising from the performance of Professional Services.
- 1.2 LIU will pay for Defence Costs in respect of a Claim covered under Insuring Clause 1.1 or under any applicable extension. LIU will pay for these Defence Costs as and when they are incurred prior to final resolution of the Claim.

However, each Insured shall repay to LIU all payments of Defence Costs incurred on that Insured's behalf if and to the extent it is established that such Defence Costs are not insured under this Section.

Defence Costs are subject to the Deductible and form part of the Limit of Indemnity in relation to this Section.

### 2. Extensions (Applicable to Section 2)

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Subject to all the terms, Sub-Limits of Liability, conditions and exclusions, including all definitions of this Section and to any of the General Definitions, General Conditions and General Exclusions as applicable, LIU further agrees to extend cover provided under this Section as follows:

- 2.1 LIU will indemnify the Insured against civil liability the Insured incurs in respect of a Claim arising from the performance of Professional Services alleging breach of confidentiality by the Insured.
- 2.2 If the Insured was aware of any facts that might give rise to a Claim or Professional Inquiry arising from the performance of Professional Services prior to the commencement of the Period of Insurance and had not notified LIU of such facts prior to the commencement of the Period of Insurance, then Exclusion 4.11.2 will not apply to the notification of a Claim or Professional Inquiry resulting from such facts, provided that:
  - 2.2.1 The failure to notify such facts was not a result of any fraudulent misrepresentation or fraudulent non-disclosure by the Insured;
  - 2.2.2 The Insured has been continuously insured under a professional indemnity policy issued by LIU between the time of the notification of such Claim or Professional Inquiry to LIU and the time when the Insured first became aware of such facts; and





- 2.2.3 LIU will reduce its liability to the extent of any prejudice suffered as a result of the Insured's failure to notify such facts giving rise to a Claim or Professional Inquiry prior to the commencement of the Period of Insurance.
- 2.3 The definition of Insured in Definition 7.6 is extended to include any contractor or consultant who:
- 2.3.1 Is a "deemed worker" under the Workers' Compensation Law of the State or Territory of Australia in which the contractor or consultant is performing Professional Services; and
  - 2.3.2 Has a written contract with the Named Insured or its Subsidiaries to perform Professional Services, but only in relation to the performance of Professional Services for or on behalf of the Named Insured or its Subsidiaries.
- 2.4 LIU will indemnify the Insured against civil liability the Insured incurs in respect of a Claim arising from the performance of Professional Services alleging any libel, slander, defamation or injurious falsehood by the Insured. No cover is provided under this extension for any Claim arising from any intentional libel, slander, defamation or injurious falsehood.
- 2.5 If a Change in Control occurs during the Period of Insurance then the Named Insured may request an extended Period of Insurance of up to 84 months commencing from the end of the Period of Insurance during which time the Insured may notify any claim to LIU provided it results from Professional Services performed prior to the effective date of the Change in Control.
- The Named Insured must request this extended Period of Insurance in writing before the end of the Period of Insurance. LIU will offer this extended Period of Insurance on such terms and conditions and for such additional premium as LIU may reasonably impose.
- An extended Period of Insurance granted under this extension shall be non-cancellable and any additional premium paid shall be non-refundable.
- This extension is subject to the Limit of Indemnity in respect of this Section, the Sub-Limits of Indemnity and the Deductible and does not apply if this Section is cancelled or avoided by LIU.
- 2.6 Notwithstanding Exclusion 4.5, LIU will indemnify the Insured against civil liability the Insured incurs in respect of a Claim arising from the performance of Professional Services alleging fraudulent or dishonest conduct by the Insured or their Agent.
- However, no cover is provided under this extension:
- 2.6.1 To any person, company or other entity who has committed or condoned the fraudulent or dishonest conduct; or
  - 2.6.2 In respect of a Claim arising from or in any way connected with loss of Money.

- 2.7 Notwithstanding Exclusion 4.3.1, LIU will indemnify the Insured against civil liability the Insured incurs in respect of a Claim alleging breach of warranty or condition as to merchantable quality, due skill and care or fitness for purpose implied in a contract under common law and/or the terms of the Trade Practices Act 1974 (Cth), and/or the Australian Consumer Law, as amended from time to time, or any similar Fair Trading legislation of any State or Territory of the Commonwealth of Australia, which results from the Insured's performance of Professional Services.
- 2.8 LIU will indemnify the Insured against civil liability the Insured incurs in respect of a Claim arising from the performance of Professional Services alleging infringement of Intellectual Property Rights by the Insured.

However, no cover is provided under this extension for any Claim:

2.8.1 Resulting from any intentional infringement of Intellectual Property Rights; or

2.8.2 Arising out of or in any way connected with:

2.8.2.1 Legal or regulatory proceedings brought within the United States of America and/or Canada or any of their territories or protectorates or in which the laws of those countries are applicable, even if only to a limited extent; or

2.8.2.2 The enforcement of any judgment, award or regulatory order obtained within or determined pursuant to the laws of the United States of America and/or Canada or any of their territories or protectorates.

- 2.9 LIU will indemnify the Insured against civil liability the Insured incurs in respect of a Claim arising from the performance of Professional Services alleging unlawful interference with privacy by the Insured.
- 2.10 LIU will indemnify the Insured against civil liability the Insured incurs in respect of a Claim arising from Professional Services performed by the Insured in the Insured's capacity as a joint venture partner but only to the extent of the Insured's own liability as a joint venture partner.

LIU will only pay for Defence Costs incurred by the Insured in respect of such Claim solely in respect of its own liability as a joint venture partner.

- 2.11 Notwithstanding General Condition 6.4, LIU recognises that the Insured may enter into written contracts with other parties relating to the performance of Professional Services which may exclude or limit the liability of such parties and LIU agrees that such contracts will not prejudice the Insured's right to indemnity under the Section. The cover provided under this extension does not apply to contracts (whether or not they are written contracts) entered into as a result of a dispute which involves the Insured in any way.
- 2.12 LIU will pay on behalf of the Insured the costs the Insured incurs with the prior written consent of LIU, which shall not be unreasonably withheld, for replacing or restoring any Documents which are destroyed, damaged or after diligent search cannot be found.



Such destruction, damage or loss must result solely from the performance of Professional Services by the Insured and be discovered for the first time during the Period of Insurance and reported to LIU during the Period of Insurance.

LIU will not pay for any destruction, damage or loss resulting from:

- 2.12.1 Wear and tear or gradual deterioration;
- 2.12.2 Any computer virus; or
- 2.12.3 Any act or omission by any person who is not a director, partner or employee of the Insured at the time the destruction, damage or loss of such Documents is first discovered.

The maximum amount payable by LIU under this extension is the applicable Sub-Limit of Indemnity.

2.13 The definition of Subsidiary in Definition 7.12 is extended to include any company which, according to the laws of the Commonwealth of Australia or the Australian State or Territory in which the Policy is issued, becomes a subsidiary of the Named Insured during the Period of Insurance provided that:

- 2.13.1 In the case of an acquisition, the revenue of the new subsidiary for the 12 months preceding the date of its acquisition does not exceed 10% of the consolidated revenue of the Named Insured and its Subsidiaries for the 12 months preceding the commencement of the Period of Insurance;
- 2.13.2 The new subsidiary is not incorporated in the United States of America and/or Canada or any of their territories or protectorates;
- 2.13.3 The new subsidiary does not perform Professional Services within the United States of America and/or Canada or any of their territories or protectorates; and
- 2.13.4 The new subsidiary has no paid or incurred professional indemnity claims against it for the 5 years preceding the date of its acquisition.

In respect of any other new subsidiary to which any of 2.13.1 to 2.13.4 do not apply, LIU will provide cover for a period of 45 days (but not beyond the end of the Period of Insurance) from the effective date of the new subsidiary being acquired or created. Upon provision to LIU by the Named Insured of full details of the new subsidiary, LIU will consider providing cover for the new subsidiary for a further period on such terms and conditions and for such additional premium as may be agreed.

Cover in respect of any such new subsidiary applies only in respect of Professional Services performed whilst the subsidiary is a subsidiary of the Named Insured.

2.14 If this Section is neither renewed nor replaced by the Named Insured with a policy or policies providing similar cover then the Named Insured is entitled to an automatic extended Period of Insurance of 30 days commencing from the end of the Period of Insurance during which time the Insured may notify



any claim under this Section to LIU provided it results from Professional Services performed prior to end of the Period of Insurance.

2.15 LIU will pay on behalf of the Insured the reasonable and necessary costs and expenses incurred by the Insured (but excluding the Insured's salaries, wages, fees, allowances, travel and accommodation expenses) in preparing for and attending a Professional Inquiry provided that:

2.15.1 Such costs and expenses were incurred with the prior written consent of LIU which shall not be unreasonably withheld; and

2.15.2 The notice requiring the Insured to attend the Professional Inquiry is first served upon the Insured during the Period of Insurance and reported to LIU during the Period of Insurance.

The Insured shall repay to LIU all payments of Professional Inquiry representation costs and expenses incurred on the Insured's behalf if and to the extent it is established that such Professional Inquiry representation costs and expenses are not insured under this Section.

The maximum amount payable by LIU under this extension is the applicable Sub-Limit of Indemnity.

2.16 LIU will pay on behalf of the Insured the reasonable and necessary costs and expenses incurred by an Insured with LIU's prior written consent (which shall not be unreasonably withheld) in seeking advice from a public relations consultant solely for the benefit of protecting the Insured's professional reputation as a result of Professional Services performed by the Insured which have or could reasonably lead to a Claim being made against the Insured.

This extension is not subject to any Deductible, however, the Insured will bear uninsured 50% of any such costs and expenses. LIU will pay the remaining 50% up to the applicable Sub-Limit of Indemnity.

2.17 LIU will cover:

2.17.1 In the event of the death, incapacity or bankruptcy of an Insured, any Claim brought against his or her estate, heirs, executors, administrators or legal representatives; or

2.17.2 Any Claim brought against the lawful spouse or domestic partner of an Insured,

As if the Claim had been brought against that Insured.

No cover is provided under this extension for any actual or alleged act or omission by such estate, heirs, executors, administrators, legal representatives, lawful spouse or domestic partner.

2.18 LIU will indemnify the Insured against civil liability the Insured incurs in respect of a Claim arising from the performance of Professional Services under the terms of the Trade Practices Act 1974 (Cth) and/or the Australian Consumer Law, as amended from time to time, or any Fair Trading legislation of any State or Territory of the Commonwealth of Australia.

- 2.19 LIU will indemnify the Insured against civil liability the Insured incurs in respect of a Claim arising from Professional Services performed by an Agent of the Insured.

LIU will not be liable under this extension for the Agent's own liability, nor will LIU be prevented from seeking recovery from any Agent.

### 3. Optional Extensions (Applicable to Section 2)

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The following extensions are subject to all the terms, conditions and exclusions, including all definitions of this Section, and to any of the General Definitions, General Conditions and General Exclusions as applicable, and shall apply only if they are specifically included in the Schedule in relation to this Section.

- 3.1 Notwithstanding Exclusion 4.3.1, LIU will indemnify the Insured against civil liability the Insured incurs in respect of a Claim under an indemnity and/or hold harmless term of a contract to the extent such civil liability results from the Insured's performance of Professional Services.
- 3.2 Exclusion 4.3.1 will not apply to a liability which the Insured has assumed under a contract by reason of having contracted out of the operation of Proportionate Liability Legislation.
- 3.3 LIU will provide a single reinstatement of the Limit of Indemnity if the Limit of Indemnity is exhausted due to payment of amounts insured under this Section, but LIU will only provide such reinstatement if the limit of liability available under any policy or policies in excess of this Section has or have been exhausted and provided always that LIU will pay no more than a single Limit of Indemnity in respect of each Claim and associated Defence Costs and each claim for any other amounts insured under this Section.

The cover provided under this extension shall not apply to any extensions or optional extensions to which a Sub-Limit of Indemnity applies.

### 4. Exclusions (Applicable to Section 2)

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This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

- 4.1 Professional Services performed prior to the Retroactive Date shown in the Schedule.
- 4.2 Any contravention of the provisions in Part IV, IVA and IVB of the Trade Practices Act 1974 (Cth), the equivalent provisions of the Australian Consumer Law, the Federal Trade Commission Act (USA), the Sherman Anti-Trust Act (USA), or the Clayton Act (USA), all as amended from time to time, or any similar law anywhere in the world regulating monopolisation, anti-trust, price fixing, price discrimination, predatory pricing, restraint of trade or similar activities.
- 4.3 4.3.1 A liability which the Insured has assumed under a contract unless such liability would have attached in the absence of such contract;
- 4.3.2 The insolvency, receivership, administration, bankruptcy or liquidation of the Insured;

- 4.3.3 Any trading debt incurred by the Insured;
  - 4.3.4 The refund of professional fees; or
  - 4.3.5 Any guarantee given by the Insured for a debt.
- 4.4 Death, bodily or mental injury, sickness or disease, emotional distress or mental anguish of any Worker.
- 4.5 Any fraudulent, wilful, grossly reckless, malicious or dishonest conduct including any intentional breach of any law or regulation committed by the Insured or their Agent.
- This exclusion will only apply where it is established by an admission of such Insured or their Agent or by a judgment, award, finding or other adjudication of a court, tribunal, commission or arbitrator that such conduct did in fact occur.
- 4.6 GST imposed or payable in respect of the Premium or any payment of insured amounts made under this Section.
- 4.7 Any prosecution, inquiry, hearing, commission or other investigation in relation to the Insured failing to be properly licensed, registered or accredited to provide Professional Services as required by any law or other regulation including industry codes of practice.
- 4.8 The Insured acting in the capacity of a director or officer of a company or other legal entity.
- 4.9 The ownership, management, control or occupation of real property by or on behalf of the Insured.
- 4.10 4.10.1 Any fines or other penalties; or
- 4.10.2 Any exemplary, aggravated, multiple or punitive damages.
- 4.11 4.11.1 Any written demand or legal proceedings for compensation or Professional Inquiry made, threatened, intimated against or involving the Insured prior to the commencement of the Period of Insurance;
- 4.11.2 Any facts that, before the commencement of the Period of Insurance, the Insured was aware, or a reasonable person would have been aware, might give rise to a claim under this Section;
- 4.11.3 Any facts that might give rise to a claim under this Section which have been reported, or which can be or could have been reported, to an insurer under any insurance policy entered into before the commencement of the Period of Insurance;
- 4.11.4 Any facts that might give rise to a claim under this Section which have been disclosed to any insurer in any proposal for insurance before the commencement of the Period of Insurance;  
or



- 4.11.5 Any facts that might give rise to a claim under this Section which were disclosed to LIU in the proposal.
- 4.12 Any Claim made by or on behalf of:
  - 4.12.1 One or more Insured against another Insured other than a Claim for contribution or indemnity which results directly from another Claim which would be covered under this Section if made directly against such other Insured;
  - 4.12.2 A child, sibling, spouse, partner or parent of an Insured or a parent of a spouse or partner of an Insured;
  - 4.12.3 Any entity which is owned, controlled or managed by any Insured; or
  - 4.12.4 Any parent company or other entity which owns, controls or manages any Insured.
- 4.13 Amounts uninsurable at law.
- 4.14 The ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the Insured of any watercraft, aircraft, motor vehicle or trailer.
- 4.15 Any Injury, Damage, Occurrence, liability, compensation, legal costs or expenses, the subject of Section 1 of this Policy. The intent being the Insured can seek cover under either Section 1 or Section 2 (to the extent applicable) but not both.

## 5. Claims Conditions (Applicable to Section 2)

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- 5.1 As soon as the Insured becomes aware of a Claim or Professional Inquiry during the Period of Insurance (or the extended Period of Insurance under Extension 2.5, if applicable) the Insured must:
  - 5.1.1 Notify LIU in writing of the Claim or Professional Inquiry. The notification must be sent to:

The Claims Department  
Liberty International Underwriters  
Level 38, Governor Phillip Tower  
1 Farrer Place  
Sydney, New South Wales, Australia 2000  
Tel: 61-2-8298 5800  
Fax: 61-2-8298 5887
  - 5.1.2 Give LIU such information and co-operation as it may reasonably require including but not limited to:
    - 5.1.2.1 A description of the Claim or Professional Inquiry;

- 5.1.2.2 The nature of the allegation;
- 5.1.2.3 The nature of the alleged or potential loss;
- 5.1.2.4 The names of actual or potential claimants; and
- 5.1.2.5 The manner in which the Insured first became aware of the Claim or Professional Inquiry.

If any amounts insured under this Section are also potentially insured under any other insurance policy or policies, then the Insured must advise LIU within a reasonable time of making a Claim under this Section and provide LIU with details of such other insurance.

- 5.2 LIU may, in its absolute discretion, take over the conduct of any investigation, settlement or defence of any Claim.

The Insured must:

- 5.2.1 Take all reasonable steps to mitigate loss;
- 5.2.2 Not agree to any waiver, limitation or delay as to their legal rights of recovery against any other party;
- 5.2.3 Not admit liability, negotiate any settlement, enter into any settlement agreement or incur any Defence Costs without the prior written consent of LIU which shall not be unreasonably withheld; and
- 5.2.4 Give LIU all the information and assistance that LIU requires for the purpose of investigating:
  - 5.2.4.1 The cause and consequences of any Claim;
  - 5.2.4.2 The Insured's liability to any party in respect of any Claim; and
  - 5.2.4.3 Whether LIU has any liability to the Insured under the Section and, if so, the extent of its liability,

and, where applicable, conducting the defence of any Claim.

- 5.3 The Policy is in excess of any Additional Insurance specified in the Schedule in relation to this Section.
- 5.4 In the event the Insured is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this Section, the Insured and LIU will use their best efforts to agree upon a fair and proper allocation of amounts insured under the Section which relate solely to what is covered under this Section.



In the event that an agreement cannot be reached Senior Counsel shall determine, as an expert but not an arbitrator, a fair and proper allocation. Until Senior Counsel has made his or her determination, LIU may, in its absolute discretion, pay such amount insured under this Section as it considers appropriate.

- 5.5 LIU shall not require the Insured to contest any Claim unless Senior Counsel advises that such Claim should be contested. In formulating such advice, Senior Counsel shall take into consideration the economics of the matter (including potential amounts insured under this Section) and the prospects of the Insured successfully defending the Claim.

In the event that Senior Counsel recommends settlement in respect of a Claim and the Insured does not agree that such Claim should be settled, the Insured may elect to contest such Claim provided always that the liability of LIU shall not exceed the amount for which the Claim could have been settled plus Defence Costs incurred with LIU's prior written consent up to the date of such election.

## 6. Conditions (Applicable to Section 2)

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- 6.1 If a Change in Control occurs during the Period of Insurance, this Section will continue to provide cover but only in respect of civil liability the Insured incurs in respect of a Claim arising from Professional Services performed prior to the effective date of the Change in Control.
- 6.2 The maximum amount payable by LIU under this Section is the Limit of Indemnity. The Limit of Indemnity is inclusive of Sub-Limits of Indemnity and any other amounts insured under this Section.
- 6.3 LIU will only pay in respect of a Claim and associated Defence Costs and other amounts insured under this Section, the amount which is above the Deductible. The Deductible shall be the first amount borne by the Insured and shall remain uninsured.
- 6.4 If LIU grants indemnity under this Section, then LIU shall be subrogated to the Insured's rights of recovery against any person or entity whether or not payment has in fact been made and whether or not the Insured has been compensated in full for their loss. Each Insured must, at its own cost, provide all reasonable assistance to LIU (including, but not limited to giving information, signing documents and giving evidence) to help enforce those rights.

The Insured must not do anything (including but not limited to excluding or limiting the liability of other parties in contracts, whether or not they are written contracts) that may prejudice LIU's position or its potential or actual rights of recovery against any party.

Any amounts recovered by LIU in excess of LIU's total payment to the Insured (including Defence Costs) shall be restored to the Insured less the cost to LIU of such recovery.

## 7. Definitions (Applicable to Section 2)

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In this Section:



- 7.1 “Agent” means a natural person, company or other entity who has or had a written contract with the Named Insured or its Subsidiaries to perform Professional Services, but only in relation to the performance of Professional Services for or on behalf of the Named Insured or its Subsidiaries.
- 7.2 “Change in Control” means any one of the following events:
- 7.2.1 The Named Insured consolidates or merges with, or sells all or substantially all of its assets to a person, entity or group of persons or entities acting in concert;
  - 7.2.2 The Named Insured becomes a subsidiary of another entity or becomes controlled by another entity; or
  - 7.2.3 A trustee, administrator, receiver or liquidator including any provisional liquidator is appointed to the Named Insured.
- 7.3 “Claim” means any written demand or legal proceedings for compensation first made or brought against the Insured during the Period of Insurance (or the extended Period of Insurance under Extension 2.5, if applicable), and reported to LIU during the Period of Insurance (or the extended Period of Insurance under Extension 2.5, if applicable), which may result in the payment of any amounts insured under this Section.
- All Claims attributable to one source or originating cause shall be deemed to be a single Claim and one Deductible shall apply.
- 7.4 “Defence Costs” means:
- 7.4.1 Reasonable and necessary costs and expenses incurred by LIU, or by the Insured but only with LIU’s prior written consent which shall not be unreasonably withheld, solely for the benefit of the Insured in the investigation, settlement, defence or appeal of any Claim covered under this Section; and
  - 7.4.2 The costs of obtaining Senior Counsel’s advice or determination under this Section pursuant to Claims Condition 5.4 and 5.5.
- Defence Costs does not include salaries, wages, allowances, travel or accommodation expenses incurred by the Insured in assessing, investigating, dealing with and assisting others to deal with any Claim.
- 7.5 “Document” means a document of any nature whether written, printed or reproduced by any method, including computer records or electronic data, in the possession or control of the Insured or the property of the Insured but does not include Money.
- 7.6 “Insured” means each of the following:
- 7.6.1 The Named Insured specified in the Schedule in relation to this Section and its Subsidiaries; and

- 7.6.2 Any past, present or future director, partner or employee of such Named Insured or its Subsidiaries but only in relation to Professional Services performed for or on behalf of such Named Insured or its Subsidiaries whilst they are a director, partner or employee of such Named Insured or its Subsidiaries.
- 7.7 “Intellectual Property Rights” means all existing and future intellectual property rights throughout the world in whatever media, whether registered or unregistered and whether or not capable of registration, including but not limited to all copyright, patents, trademarks, trade names, domain names, brand names, slogans, logos, emblems and designs (and all applications or renewals for the protection or registration of these rights) together with all confidential information including trade secrets, know-how, formulae, methods, routines and other proprietary technology.
- 7.8 “Money” means shares, bonds, currency, coins, bank notes, bullion, precious metals, gems, jewellery, coupons, stamps, cheques, travellers’ cheques, registered cheques, postal orders and money orders.
- 7.9 “Professional Inquiry” means any administrative or regulatory proceeding, official investigation, inquiry or hearing into the performance of Professional Services by the Named Insured or its Subsidiaries which an Insured is legally required to attend if findings from such proceeding, investigation, inquiry or hearing could lead to a Claim being made against the Insured which may be covered under this Section.
- 7.10 “Proportionate Liability Legislation” means the Civil Liability Act 2002 (NSW) Pt 4, Wrongs Act 1958 (Vic) Pt IVAA, Civil Liability Act 2002 (WA) Pt 1F, Civil Liability Act 2003 (Qld) Pt 2, Civil Law (Wrongs) Act 2002 (ACT) Ch 7A, Proportionate Liability Act 2005 (NT), Civil Liability Act 2002 (Tas) Part 9A, Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA) Pt 3, Trade Practices Act (Cth) s87C, Development Act 1993 (SA) s72, Building Act 2004 (ACT) s141 and Building Act 2000 (Tas) s252, and any similar legislation, all as amended from time to time.
- 7.11 “Schedule” in relation to this Section means the schedule attached to the Policy and containing the variable information required in terms of this Section and signed by a person authorised by LIU.
- 7.12 “Subsidiary” means any company which, according to the laws of the Commonwealth of Australia or the Australian State or Territory in which the Section is issued, was or is a subsidiary of the Named Insured prior to or at the commencement of the Period of Insurance.

Cover in respect of any such company applies only in respect of Professional Services performed whilst the company was or is a Subsidiary of the Named Insured.

## 8. General Exclusions (Applicable to both Section 1 and Section 2)

This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

- 8.1 8.1.1 Ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self-sustaining process of nuclear fission or fusion; or
- 8.1.2 Nuclear weapons material.
- 8.2 And regardless of any other cause or event contributing concurrently or in any other sequence to the loss:
- 8.2.1 War and military action which includes without limitation the following:
- 8.2.1.1 War, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
- 8.2.1.2 Warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- 8.2.1.3 Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- 8.2.2 Any actual or threatened act of domestic or international Terrorism committed by a person or persons acting:
- 8.2.2.1 Alone or on behalf of or in connection with any organisation; or
- 8.2.2.2 With the goal of furthering any political, social, religious, ideological or similar objective.
- 8.2.3 Action taken to prevent or defend against an act of Terrorism.

If an act of Terrorism involves chemical or biological weapons, this Terrorism exclusion will still apply.

If an act of Terrorism involves nuclear reaction, nuclear radiation or radioactive contamination, this Terrorism exclusion will apply to liabilities that result from such nuclear reaction or nuclear radiation or radioactive contamination in place of Exclusion 8.1.

## 9. General Definitions (Applicable to both Section 1 and Section 2)

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- 9.1 "LIU" means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, USA (The liability of members is limited).

9.2 “Terrorism” means an act or acts:

9.2.1 That are violent in nature or are dangerous to human life:

9.2.1.1 That are a violation of the criminal laws of the United States of America or Australia or of any State or Territory of the United States of America or Australia or that would be a criminal violation if committed within the jurisdiction of the United States of America or Australia or any State or Territory of the United States of America or Australia and that have the apparent intent of:

9.2.1.1.1 Intimidating or coercing any civilian population;

9.2.1.1.2 Influencing the policy of any government by intimidation or coercion;  
or

9.2.1.1.3 Affecting the conduct of any government by mass destruction, assassination or kidnapping,

Or

9.2.2 That result in:

9.2.2.1 The denial of access to or services from web sites, computer networks or telecommunication equipment; or

9.2.2.2 The malfunction or degradation of web sites, computer networks, telecommunications equipment, mechanical equipment or the interruption to the functioning of web sites or such properties,

And that have the apparent intent of intimidating or coercing any civilian population or influencing the policy of any government by intimidation or coercion.

9.3 “GST” means the tax imposed as goods and services tax under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or as amended and any penalty or interest payable in respect of that tax.

9.4 “Senior Counsel” means a Senior Counsel to be mutually agreed upon by LIU and the Insured named in the Schedule in relation to either Section 1 or Section 2 as the case may be, or, in the absence of agreement, to be appointed by the current President of the Law Society in the State or Territory in which the Policy is issued.

9.5 “Worker” means any person employed by, or deemed to be employed by, the Insured named in the Schedule in relation to either Section 1 or Section 2 as the case may be, whether so deemed pursuant to any Workers’ Compensation Law or otherwise.



- 9.6 "Workers' Compensation Law" means any law relating to compensation for Injury to Workers or employees.
- 9.7 "Period of Insurance" means the period of time specified in the Schedule in relation to either Section 1 or Section 2 (as applicable) unless either Section is cancelled in which event the Period of Insurance will end of the effective date of such cancellation.
- 9.8 "Premium" means the amount payable by the Insured or the Named Insured (as the case may be) for each Section of this Policy including any applicable charges advised by LIU.
- 9.9 "Product" means any commodity, article or thing (after it has ceased to be in the possession or under the control of the Insured) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the Insured or by others trading under the name of the Insured (including any container thereof other than a motor vehicle).

## 10. General Conditions (Applicable to both Section 1 and Section 2)

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- 10.1 10.1.1 Words importing persons shall include corporations and other legal entities;
- 10.1.2 References in the singular shall be deemed to include the plural and vice versa;
- 10.1.3 Words depicting any gender include reference to all other genders;
- 10.1.4 References to any legislation or subordinate instruments shall refer to such legislation or subordinate instruments as amended from time to time and in force; and
- 10.2 Each Insured agrees that LIU may issue by electronic mail or post any notices required to be given under the Insurance Contracts Act or otherwise.
- 10.3 This Policy is governed by the law in force in the Australian State or Territory in which the Policy is issued. All matters arising from or relating to the construction or operation of the provisions of the Policy shall be submitted to the exclusive jurisdiction of the courts exercising jurisdiction under the law of that State or Territory.
- 10.4 Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company ("LMIC"), a stock insurance company incorporated in Massachusetts USA. LMIC is an indirect subsidiary of Liberty Mutual Holding Company Inc. ("LMHC"), a Massachusetts USA mutual holding company. NOTICE IS HEREBY GIVEN that the annual meeting of LMHC is held on the second Wednesday in April of each year at ten o'clock in the morning, local time, at LMHC's office at 175 Berkeley Street, Boston, Massachusetts USA. This notice is for members of LMHC only. One becomes a member of LMHC by virtue of being a policyholder of LMIC. Membership rights terminate when one ceases to be a policyholder of LMIC. Members of LMHC may request a copy of LMHC's annual financial statements, which are posted on Liberty Mutual's website at [www.libertymutual.com](http://www.libertymutual.com) by writing to Liberty Mutual Holding Company Inc., 175 Berkeley Street, Boston, Massachusetts 02116.



10.5 The Insured may cancel this Policy at any time by giving notice in writing to LIU.

LIU may cancel this Policy at any time where:

10.5.1 It is entitled to do so pursuant to the Insurance Contracts Act 1984 or any amendments thereto;

10.5.2 The Insured has failed to notify LIU of any specific act or omission where such notification is required under the terms or conditions of this Policy; or

10.5.3 The Insured has acted in contravention of or omitted to act in compliance with any term of this Policy which empowers LIU to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by LIU shall take effect either at the time when another contract of insurance between the Insured and LIU or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4pm on the 3rd business day after the date on which notice was given to the Insured by LIU, whichever is the earlier.

Where the Insured under either Section of this Policy comprises more than one person or company, it is agreed that such Insured shall be the agent of each of the other Insured persons or companies or others indemnified by that Section for the purposes of receiving any notice of cancellation pursuant to this Condition, or any other notice, statement, document or information relating to this Policy.

Where the Insured has a broker, nothing shall restrict LIU's right to notify the broker as agent of the Insured.

10.6 Notwithstanding anything else to the contrary in the Policy, whenever coverage provided by this policy would be in violation of any applicable economic, trade or other sanction or law, such coverage shall be null and void and LIU has no obligation to pay a claim if to do so would breach that sanction or law.

10.7 Failure by any Insured to comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth) or misrepresentation by any Insured to LIU shall not prejudice the right of any other Insured to cover under this Policy. Cover is only provided to an Insured who is innocent of and has no prior knowledge of such failure or misrepresentation.

10.8 For the purposes of determining the availability of cover under this Policy the conduct of one Insured shall not be imputed to any other Insured, provided that cover is only provided to an Insured who is innocent of and has no prior knowledge of such conduct.

Signed on behalf of Liberty International Underwriters



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke.



24<sup>th</sup> October 2018

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For and on behalf of  
Liberty International Underwriters

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Date



## Section 1 Endorsements

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### Endorsement 1 Show Racing Condition

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This policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with show racing at showgrounds or any other non-registered tracks other than as provided under Endorsement 8 in relation to mini-trotting at Agricultural Shows; unless such racing is approved by HRA or their State Controlling Bodies after confirmation that:

- 3.1 The Club is an insured under the policy.
- 3.2 The stewards have checked the suitability of the track for harness racing prior to the event.
- 3.3 The race is being held in accordance with Australian Rules of Harness Racing.

### Endorsement 2 Driver-v-Driver Condition

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The driver -v- driver cover provided by this Policy only applies to registered drivers at official race meetings and/or official trials.

### Endorsement 3 Indemnity to Others

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Clause 3 of Section 1 is deleted and replaced by the following: -

The indemnity granted by Section 1 will extend to:

- 3.1 Any principal, in respect of that principal's vicarious liability for the negligent acts or omissions of the Insured pursuant to Definition 2.5 and arising out of the Insured's Business, but this Policy does not extend to the liability of any principal howsoever arising out of the negligence, breach of contract or breach of duty of such principal;
- 3.2 Any director, executive officer or Worker of the Insured or, where the Insured is a partnership, any partner of the Insured, but only while acting within the scope of their duties in such capacity;
- 3.3 The officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire-fighting and employee welfare organisations in their respective capacity as such; or
- 3.4 The legal personal representative of any person entitled to indemnity under this Clause 3 in circumstances giving rise to indemnity under this Section.
- 3.5 Any volunteer whilst acting for the Insured including stablehands, but only whilst such volunteer and/or stablehands are licensed by the appropriate licensing authority.



3.6 Work experience students whilst undertaking work experience but only whilst such student is licensed by the appropriate licensing authority.

Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this Section in so far as they can apply as though they were the Insured.

#### Endorsement 4 Celebrity or Non-Official Races or Trials Exclusion

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This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with celebrity or other non-official races or non-official trials that do not conform with the Australian Rules of Harness Racing.

#### Endorsement 5 Drug or Intoxicating Liquor Exclusion

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This Policy does not provide indemnity to a licensed driver or trainer for liability directly or indirectly caused by, arising out of or in any way connected with any Injury or Damage where such driver or trainer, while in control of a sulky on a racetrack, was found to be under the influence of or impaired by any drug or intoxicating liquor as determined under the Australian Rules of Harness Racing and current policies as adopted by the relevant State Jurisdiction(s).

#### Endorsement 6 Wooden Shafted Sulkies Exclusion

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This Policy does not provide indemnity to a licensed driver or trainer for liability directly or indirectly caused by, arising out of or in any way connected with the usage by the driver or trainer of wooden shafted sulkies and separate wooden shafts in races, official trials, qualifying trials, club and unofficial trials and run-arounds on all club registered tracks and training tracks.

## Endorsement 7 Care Custody or Control

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Sub-Exclusion 7.2.4.2 is deleted and replaced by the following:-

7.2.4.2 LIU's Limit of Indemnity under this Clause 7.2.4 does not exceed AUD5,000,000 each and every Occurrence and in the aggregate for any one Period of Insurance.

## Endorsement 8 Mini-Trotting Condition

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This policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with mini-trotting racing or trials at showgrounds or any other non-registered tracks other than racing at Agricultural Shows, subject to being administered and supervised by Mini Trotters State Association.

## Endorsement 9 United States of America and Canada Exclusion

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Exclusion 7.20 is deleted.

## Endorsement 10 Crisis Management Expenses

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LIU will indemnify the Insured for crisis / media management expenses incurred by the Insured in the event of a fatality or disability in the course of the Insured's Business. LIU in conjunction with the Insured will use discretion on how these expenses will be paid. This Sub-Limit is in addition to the Limit of Liability as stated under Section 1 above.

The Insured shall be personally liable for amounts in excess of the Sub-Limit of Indemnity for either Legal Expenses Benefits or Crisis Management Expenses.

"Crisis Management Expenses" means reimbursement of costs involved in engaging a media management company, reimbursement of costs associated from counselling required following a serious incident or other expenses as deemed necessary and in agreement with LIU.

Nothing contained in these endorsements shall in any way serve to increase the Limit of Indemnity stated in the Schedule. Other than as amended above, the terms of this Policy shall continue to apply.

## Section 2 Endorsements

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### Endorsement 1 Volunteer Veterinarians or Volunteer Ambulance Officers

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Extension 2.3 is deleted and replaced by the following:-

2.3 The definition of Insured in Definition 7.6 is extended to include any contractor or consultant who:

- 2.3.1 Is a “deemed worker” under the Workers’ Compensation Law of the State or Territory of Australia in which the contractor or consultant is performing Professional Services; and
- 2.3.2 Any Volunteer Veterinary Services Provider, any Volunteer Ambulance Officers Medical Services Provider.

The definition of Volunteer Veterinary Services Provider and/or any Volunteer Ambulance Officers Medical Services Provider shall mean:

Any individual Volunteer Veterinarian and/or Volunteer Ambulance Officer registered or licensed as a veterinarian and/or ambulance officer under the relevant state or territory law and volunteering for the Insured.

### Endorsement 2 Annual Yearling Sales Exclusion

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Cover excludes indemnity to Australian Pacing Gold Ltd & Harness Racing South Australia – Annual Yearling Sales.

### Endorsement 3 Totaliser Operations Exclusion

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Exclusion 4.12.1 is deleted and replaced by the following:

- 4.12.1 One or more Insured against another Insured but only in respect to totaliser operations.

Nothing contained in these endorsements shall in any way serve to increase the Limit of Indemnity stated in the Schedule. Other than as amended above, the terms of this Policy shall continue to apply.



24<sup>th</sup> October 2018

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For and on behalf of  
Liberty International Underwriters

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Date