

## COVERAGE SUMMARY

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<b>Insured:</b>	Cave Divers Association Of Australia Inc
<b>Insured's Business:</b>	Member based cave diving association fostering the development, advancement, promotion, mapping, education, exploration, conservation, safety and research of underwater caves and any activities incidental thereto, and property owners
<b>Period of Insurance:</b>	From: 30/09/2017 at 4.00pm local standard time To: 30/09/2018 at 4.00pm local standard time
<b>Policy Type:</b>	Affinity Equine & Adventure Leisure Program – Combined General & Products Liability
<b>Limit of Indemnity:</b>	<p><b>Combined General Liability</b></p> <p>AUD20,000,000 any one Occurrence in respect of public liability and in the aggregate during the Period of Insurance in respect of Product liability.</p> <p><b>Statutory Liability</b></p> <p>AUD500,000 any one Claim and in the aggregate for all Claims made during the Period of Insurance</p>
<b>Sub-Limit of Indemnity:</b>	<p><b>Financial Loss Liability</b></p> <p>AUD500,000 any one Claim and in the aggregate for all Claims made during the Period of Insurance.</p> <p><b>Care, Custody &amp; Control</b></p> <p>AUD100,000 each and every Occurrence and in the aggregate for any one Period of Insurance.</p>
<b>Deductible(s):</b>	<p><b>Combined General Liability</b></p> <p>AUD1,500 each and every Occurrence (costs inclusive).</p> <p>Other than in respect of claim for Injury to contractors, subcontractors and/or labour hire workers for which the Deductible is AUD25,000 any one Occurrence (costs inclusive).</p> <p><b>Financial Loss Liability</b></p> <p>AUD2,500 each and every Claim (costs inclusive)</p> <p><b>Statutory Liability</b></p> <p>Nil</p>

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<b>Policy Wording:</b>	LIU Combined General & Products Affinity Adventure Equine Leisure and Adventure Programme Policy form LIU-CAS-AEAL-14-01 and attached endorsements.
<b>Endorsement:</b>	Financial Loss Liability Endorsement Statutory Liability Extension
<b>Retroactive Date:</b>	Financial Loss Liability - 30/09/2015 Statutory Liability - 30/09/2015
<b>Geographical and Jurisdiction Limits:</b>	Worldwide excluding the USA/Canada
<b>Interested Party:</b>	N/A
<b>Insurer:</b>	Liberty International Underwriters

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#### **AFFINITY RISK MANAGEMENT:**

##### **Retention of Risk Management Programme:**

We agree to insure you with the condition that you have already, or are soon to implement, a Risk Management program. This program must be retained throughout the period of insurance.

##### **Risk Management Guidelines:**

We have agreed to insure you on the condition that the following recommendations have been implemented from inception of the policy:

##### **First Aid:**

It is expected that all instructors and guides hold a current first aid qualification.

##### **Documentation:**

Affinity Risk Management will review and file your current risk related documentation.

The purpose of this review is to familiarise ourselves with your operation and it's policies as well as to be able to provide relevant feedback should you require any assistance.

Document could include:

- Standard Operating Procedures
- Emergency Management Procedures
- Relevant contracts in which you have entered
- Waivers you use (Affinity have waivers available)

If you do not have any of these documents, Affinity Risk Management is available to discuss and assist you in developing what may be required.

**Affinity Risk Partners (Brokers) Pty Ltd T/as Affinity Insurance Brokers**  
Level 1, 1265 Nepean Hwy, Cheltenham Vic. 3192, PO Box 601, Moorabbin, Vic. 3189  
p: + 61 3 8587 7777 f: + 61 3 8587 7700 w: [www.affinityib.com.au](http://www.affinityib.com.au)  
ABN: 15 091 944 580 AFS No: 241185



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ABN: 15 091 944 580 AFS No: 241185

## Policy Schedule

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- 1. Policy Number:** 441680
- 2. Insured:** Cave Divers Association Of Australia Inc
- 3. Period of Insurance:** From: 30/09/2017 at 4pm local standard time  
To: 30/09/2018 at 4pm local standard time
- 4. Insured's Business:** Member based cave diving association fostering the development, advancement, promotion, mapping, education, exploration, conservation, safety and research of underwater caves and any activities incidental thereto, and property owners
- 5. Limit of Indemnity:**

**Combined General Liability**  
AUD20,000,000 any one Occurrence in respect of public liability and in the aggregate during the Period of Insurance in respect of Product liability.

**Statutory Liability**  
AUD500,000 any one Claim and in the aggregate for all Claims made during the Period of Insurance
- 6. Sub-Limit of Indemnity:**

**Financial Loss Liability**  
AUD500,000 any one Claim and in the aggregate for all Claims made during the Period of Insurance.

**Care, Custody & Control**  
AUD100,000 each and every Occurrence and in the aggregate for any one Period of Insurance.
- 7. Deductibles:**

**Combined General Liability**  
AUD1,500 each and every Occurrence (costs inclusive).  
Other than in respect of claim for Injury to contractors, subcontractors and/or labour hire workers for which the Deductible is AUD25,000 any one Occurrence (costs inclusive).

**Financial Loss Liability**  
AUD2,500 each and every Claim (costs inclusive)

**Statutory Liability**  
Nil
- 8. Policy Wording:** LIU Combined General & Products Affinity Equine Leisure and Adventure Programme Policy form LIU-CAS-AEAL-14-01 and attached endorsements.



- 9. Endorsements/Extensions:** Financial Loss Liability Endorsement  
Statutory Liability Extension
- 10. Retroactive Date:** Financial Loss Liability - 30/09/2015  
Statutory Liability - 30/09/2015
- 11. Premium:** AUD4,440 plus charges

This Schedule attaches to and forms part of Liberty International Underwriter's Combined General & Products Affinity Adventure Equine Leisure and Adventure Programme Policy Form LIU-CAS-AEAL-14-01 Wording and is valid only if it is signed and dated below by a properly authorised agent of Liberty International Underwriters

4 October 2017

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Affinity Insurance Brokers, as  
an agent of Liberty International Underwriters

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Date

## Financial Loss (Products & Services)

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**Endorsement attaching to and forming part of Policy Number:** 441680  
**Insured:** Cave Divers Association Of Australia Inc  
**Endorsement effective from:** 30/09/2017

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### 1. Notice to the Insured

This endorsement provides cover on a Claims made and notified basis.

- 1.1 A Claim must be made against the Insured during the Period of Insurance; and
- 1.2 The Insured must notify LIU in writing of such Claim during the Period of Insurance.

### 2. Insuring Clause

Subject to the terms and conditions of the Policy and this endorsement, 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 as a result of a Claim for Financial Loss both first made against the Insured and notified to LIU during the Period of Insurance arising out of any negligence, whether by act, error or omission (which expression shall include any non-deliberate breach of Section 52, Section 53, Section 55, Section 55A or Section 71 of the Trade Practices Act 1974 or Section 18, Section 29, Section 33, Section 34, Section 54 or Section 55 of the Australian Consumer Law or mirroring provisions of any State Fair Trading Act or similar statute) committed or alleged to have been committed by the Insured in connection with the Insured's Products and Services as defined in the Policy Schedule provided in the normal course of the Insured's Business.

### 3. Definitions

- 3.1 "Claim" means:
  - 3.1.1 Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third or similar party notice issued against or served upon the Insured; or
  - 3.1.2 The receipt by the Insured of any written or verbal notice of demand for compensation made by a third party against the Insured.
- 3.2 "Financial Loss" means any loss which is economic in nature and not consequent upon Injury or Damage.

#### 4. Sub-Limit of Indemnity

LIU's liability to pay compensation under this endorsement shall not exceed the Sub-Limit of Indemnity referred to in the Schedule any one Claim and in the aggregate during the Period of Insurance.

Further, all payments made under this endorsement will also contribute towards the exhaustion of the aggregate Limit of Indemnity in respect of Products liability.

All Claims of a series consequent on or attributable to one source or original cause shall be deemed one Claim.

The Deductible shown in the Schedule applies each and every Claim (costs inclusive) shall be borne by the Insured at their own risk and LIU's liability shall only be in excess of this amount.

#### 5. Defence Costs

LIU agrees to pay all legal costs and expenses incurred with LIU's prior written consent in connection with any Claim for which indemnity is available under this endorsement, provided that such legal costs and expenses are included within the Sub-Limit of Indemnity applicable to this endorsement.

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

In the event the Insured is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this endorsement, 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 endorsement which relate solely to what is covered under this endorsement.

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 endorsement as it considers appropriate.

#### 6. Exclusions

For the purposes of this endorsement only:

6.1 Exclusion 7.13.2 of the Policy wording is deleted.

6.2 Exclusion 7.3 is deleted and replaced with the following:

7.3 Damages claimed for, and/or the costs of withdrawal, recall, inspection, repair, replacement or disposal of the Insured's Products or any property of which such Products form a part.

- 6.3 Section 3. Cross Liabilities of the Policy wording is deleted.
- 6.4 The following additional exclusions apply:
- 6.4.1 Any act, error or omission which occurred or allegedly occurred prior to Retroactive date in the Schedule.
  - 6.4.2 An occurrence which would otherwise be excluded under the public/products component of this Policy (and any endorsements attached thereto) to which this endorsement is attached.
  - 6.4.3 Any facts or circumstances of which the Insured was aware prior to the commencement of the Period of Insurance or which a reasonable person in the Insured's position would have considered may give rise to a Claim.
  - 6.4.4 Any Claim made prior to or existing at the inception of this Policy.
  - 6.4.5
    - 6.4.5.1 Any Claim; or
    - 6.4.5.2 Facts or circumstances that might give rise to a Claim,  
  
Which have been notified or which could have been notified under any prior policy.
  - 6.4.6 Any failure or omission on the part of the Insured to effect or maintain insurance.
  - 6.4.7 Any Claim which is more specifically insured against in any other section of this Policy.
  - 6.4.8 Conspiracy, conversion, deceit, inducement, breach of contract or injurious falsehood.
  - 6.4.9 Claims made and actions instituted within the United States of America or Canada, their respective territories and protectorates and any other territory coming within the jurisdiction of the courts of the United States of America or Canada.
  - 6.4.10 Claims and actions to which the laws of the United States of America or Canada and their respective territories and protectorates apply.
  - 6.4.11 Any Claim incurred by or caused by a director or officer of the Insured whilst acting within the scope of their duties in such capacity.
  - 6.4.12 Liability assumed under the terms of a contract or agreement unless the Insured would have been liable in the absence of such contract or agreement.



- 6.4.13 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. Conditions**

- 7.1 In the event of a Claim, the Insured must give immediate notice in writing to LIU of such Claim and such information as LIU may require to reasonably investigate the Claim and to enable LIU to determine its liability under this Policy.
- 7.2 The Insured must take all reasonable precautions to prevent Financial Loss to any third party.

Nothing contained in this endorsement shall in any way serve to increase the Limit of Liability stated in the Schedule.

Other than as amended above, the terms of this Policy shall continue to apply.



4 October 2017

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For and on behalf of  
Liberty International Underwriters

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Date

## Statutory Liability Extension

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<b>Endorsement attaching to and forming part of Policy Number:</b>	441680
<b>Insured:</b>	Cave Divers Association Of Australia Inc
<b>Endorsement effective from:</b>	30/09/2017

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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 form or insurance broker's quotation submission, LIU agrees to indemnify the Insured in accordance with the following extension wording.

### 2. Notice to the Insured

This endorsement provides cover on a Claims made and notified basis.

- 1.1 A Claim must be made against the Insured during the Period of Insurance; and
- 1.2 The Insured must notify LIU in writing of such Claim during the Period of Insurance.

### 2. Insuring Clause

Subject to the terms and conditions of this extension, LIU will pay to or on behalf of the Insured any Loss arising from any Claim in respect of a Wrongful Breach that occurs after the Retroactive Date.

### 3. Definitions

- 3.1 "Act" means any Act of the Parliament of Australia and any Act of the Parliaments of the States or Territories of Australia, including any subordinate or delegated legislation made under those Acts; and any amendment, consolidation or re-enactment of any of the above Acts or legislation.
- 3.2 "Business" means the business conducted by the Insured as described in the Schedule.
- 3.3 "Claim" means the receipt by the Insured of any written or verbal notice from a regulatory authority which alleges a Wrongful Breach and imposes a Penalty upon the Insured for the Wrongful Breach or asserts that the Insured is liable to pay a Penalty.

3.4 “Consumer Protection Act” means any of the following:

Fair Trading Act 1985 (VIC)  
Fair Trading Act 1987 (NSW)  
Fair Trading Act 1987 (SA)  
Fair Trading Act 1987 (WA)  
Fair Trading Act 1989 (QLD)  
Fair Trading Act 1990 (TAS)  
Fair Trading Act 1992 (ACT)  
Consumer Affairs and Fair Trading Act 1996 (NT)  
Trade Practices Act 1974 (Cth)  
Competition and Consumer Act 2010 (Cth)  
Part 2 of the Australian Securities and Investments Commission Act 2001

And any amendment, consolidation or re-enactment of any of those Acts.

3.5 “Deductible” means the amount stated in the Schedule and applies to all amounts payable under this extension.

3.6 “Defence Costs” means necessary and reasonable legal costs and expenses, including witness costs and expenses, but excludes wages, salaries or other remuneration of the Insured, in defending any prosecution or threatened prosecution.

3.7 “Employee” means any person who is, was, or becomes engaged as an employee under a contract of employment with the Insured.

3.8 “Insured” means:

3.8.1 The organisation named as the Insured in the Schedule, including any past, present or future Officer, Employee or work experience student whilst acting in the performance of their duties or employment;

3.8.2 Any subsidiary company of the Insured named in the Schedule which is:

3.8.2.1 Incorporated within Australia including subsidiaries;

3.8.2.2 Controlled by the Insured and over which the Insured assumes active management;

3.8.3 Outside Directorship held by an Officer;

Provided that:

3.8.3.1 Coverage shall not be extended to the outside organisation in which such Outside Directorship is held, or to any other director, executive officer, company secretary or employee of such organisation; and

3.8.3.2 Coverage shall not apply to any part of any Loss covered by any indemnity given by such outside organisation or any contract of insurance taken out by or on behalf of that outside organisation or its directors, executive officers, company secretary or employees.

3.9 "Joint Venture" means any enterprise undertaken jointly by the Insured and any other party.

3.10 "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).

3.11 "Loss" means any Penalty and Defence Costs.

3.12 "Officer" means any past, present or future director, executive officer (as defined by the Corporations Act) or company secretary of the Insured.

3.13 "Outside Directorship" means an executive position held by an Officer of the Insured in connection with the Business at the specific request of the Insured in any corporation, joint venture, partnership, trust or other enterprise which is not included in the Definition of the Insured. In this Definition, a reference to Insured shall mean the Insured as defined in Clauses 3.8.1 and 3.8.2.

3.14 "Penalty" means any fine, infringement fee or monetary sum imposed by any Regulatory Authority on and payable by the Insured pursuant to any Act for a Wrongful Breach by the Insured but excluding:

3.14.1 Any amounts payable as compensation;

3.14.2 Any compliance, remedial, reparation or restitution costs;

3.14.3 Any damages, including any exemplary or punitive damages;

3.14.4 Any consequential economic loss;

3.14.5 Any legal costs and associated expenses.

Notwithstanding Clause 3.14.5, LIU will pay any reasonable legal costs and associated expenses payable by the Insured to any Regulatory Authority upon the imposition of a Penalty covered by this extension. Provided that where the proceedings that lead to the imposition of the Penalty also include proceedings in respect of any of the matters set out in Sub-Clauses 3.14.1 to 3.14.4, LIU will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in Sub-Clauses 3.14.1 to 3.14.4.

3.15 “Period of Insurance” means the Period of Insurance specified in the Schedule.

3.16 “Reasonable Grounds for Defence” means:

3.16.1 The Insured has reasonable prospects of success in avoiding the quantum of any Penalty alleged in the Claim; or

3.16.2 The Insured has reasonable prospects of success in reducing the quantum of any Penalty alleged in the Claim by entering a defence or pleading not guilty,

And that having regard to the likely legal costs incurred in defending the Claim it is reasonable for the Claim to be defended.

Provided that Reasonable Grounds for Defence will not exist if the Claim is capable of being avoided or mitigated by a settlement into which a reasonable person in the position of the Insured, properly advised, would enter.

In the event that an agreement on reasonable prospects for success cannot be reached between LIU and the Insured, a Senior Counsel (to be mutually agreed upon by LIU and the Insured) shall, as an expert and not an arbitrator, make such determination. 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 extension as it considers appropriate.

In the event that agreement on the appointment of a Senior Counsel cannot be reached, such Senior Counsel shall be appointed by the then President of the Law Society or the Law Institute in the relevant State or Territory.

3.17 “Regulatory Authority” means a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or another Act, including a person or entity authorized to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.

3.18 “Retroactive Date” means the date specified in the Schedule.

3.19 “Territorial Limits” means anywhere in Australia.

3.20 “Wrongful Breach” means any act, error or omission which occurs in connection with the Business, within the Territorial Limits and after the Retroactive Date, whereby:

3.20.1 The Insured contravenes an Act or is involved in the contravention of an Act;

3.20.2 The Insured commits an offence pursuant to an Act; or

3.20.3 Such conduct is prohibited under an Act or is the subject of the imposition of a Penalty under an Act.

#### **4. Limit of Indemnity and Deductible**

LIU’s liability under this extension in respect of all Losses arising out of all Claims covered by this extension shall not exceed the Limit of Indemnity specified in the Schedule any one Claim and in the aggregate during the Period of Insurance.

All Losses arising out of any one Wrongful Breach or interrelated Wrongful Breaches are deemed to be one Loss.

The Deductible is the first amount for each and every Claim which is to be borne by the Insured.

#### **5. Defence Costs**

LIU agrees to pay all Defence Costs incurred with LIU’s prior written consent in connection with any Claim in respect of a Wrongful Breach where the Insured has Reasonable Grounds for Defence provided that such legal costs and expenses are included within the Limit of Indemnity applicable to this extension.

Provided that LIU shall not be obliged to provide such consent unless LIU is satisfied that the Insured has Reasonable Grounds for Defence.

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

#### **6. Exclusions**

6.1 This extension does not provide indemnity in respect of any Claim:

6.1.1 Based upon, attributable to or in consequence of:

6.1.1.1 Any wilful, intentional or deliberate Wrongful Breach;

6.1.1.2 A wilful, intentional or deliberate failure to comply with any lawful notice, enforcement order, direction, enforcement proceeding or any other proceeding under any Act;



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- 6.1.1.3 Any Wrongful Breach caused by gross negligence or recklessness by the Insured;
- 6.1.1.4 A dishonest, fraudulent or malicious act or omission of the Insured, provided that cover is provided to any Insured who is innocent of and has no prior knowledge of such conduct. Such Insured shall as soon as practicable after becoming aware of such conduct, advise LIU in writing of all relevant facts;
- 6.1.1.5 The Insured gaining any personal profit or advantage or receiving any remuneration to which he/she was not legally entitled;
- 6.1.1.6 Any Wrongful Breach in connection with any strike, lockout, picket line, stand down or industrial dispute. This exclusion does not apply to Officers and Employees for Claims arising in the proper performance of their duties as Officers and Employees;
- 6.1.1.7 A Wrongful Breach of any Consumer Protection Act. This exclusion does not apply to Officers and Employees for Claims arising in the proper performance of their duties as Officers and Employees;
- 6.1.1.8 Any Wrongful Breach pursuant to Sections 182, 183, 601FE or 601JD of the Corporations Act; and any amendment, consolidation or re-enactment of any of those Sections;
- 6.1.1.9 A Wrongful Breach in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost;
- 6.1.1.10 A Wrongful Breach relating to the regulation of vehicular, air or marine traffic;
- 6.1.1.11 Asbestos, asbestos products and/or products containing asbestos,
- 6.1.2 Made, threatened or in any way intimated against the Insured prior to the Period of Insurance;
- 6.1.3 Arising from any matter disclosed to any insurer, including LIU, prior to the Period of Insurance as either a Claim or fact which may give rise to a Claim against the Insured;
- 6.1.4 Arising from any facts of which the Insured was aware prior to the commencement of the Period of Insurance and which the Insured knew, or ought reasonably to have known, to be facts which may give rise to a Claim;
- 6.1.5 Arising from any Wrongful Breach where the Insured knew, or ought reasonably to have known, prior to the Period of Insurance that there had been such a Wrongful Breach;
- 6.1.6 For any Loss or part of any Loss which is attributable to the period after the Insured knew, or ought reasonably to have known, that its conduct was a Wrongful Breach;

- 6.1.7 Deliberately or intentionally solicited by the Insured. This exclusion does not apply to Officers and Employees where such Claims arise in the discharge of their duties as Officers and Employees;
- 6.1.8 Any Defence Costs incurred or paid before the consent of LIU has been given in accordance with the provisions of this extension;
- 6.1.9 For any Loss or part of any Loss arising from or which is attributable to the Insured's participation in any Joint Venture. Provided that this exclusion shall not apply to Outside Directorship as defined in Definition 3.13;
- 6.1.10 For any Penalty:
  - 6.1.10.1 Imposed pursuant to any law of any country, state or territory outside the Territorial Limits;
  - 6.1.10.2 Imposed within the Territorial Limits but arising out of any act or omission occurring outside the Territorial Limits, and any Defence Costs associated with such Penalty.

6.2 LIU shall not be liable to pay the amount of the Deductible in respect of each Loss.

## **7. Continuous Cover**

If the Insured was aware of any facts that might give rise to a Claim prior to the commencement date of the Period of Insurance and had not notified LIU of such facts prior to the commencement date of the Period of Insurance, then Exclusion 6.1.4 will not apply to the notification of a Claim resulting from such facts, provided that:

- 7.1 The failure to notify such facts was not a fraudulent misrepresentation or fraudulent non-disclosure by the Insured; and
- 7.2 The Insured has been insured continuously under a Statutory Liability Policy or this extension with LIU and was so insured by LIU at the time the Insured first became aware of such facts; but
- 7.3 Indemnity will be considered under the terms and conditions of the Policy or this extension (including Limits of Indemnity and Deductibles) in force when the Insured first became aware of such facts; and
- 7.4 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 prior to the commencement date of the Period of Insurance.

## **8. Conditions**

- 8.1 In the event of a Claim, the Insured must give immediate notice in writing to LIU of such Claim. At the same time the Insured must enable LIU to reasonably investigate the Claim for the purpose of determining liability under this extension including but not limited to the following:



- 8.1.1 Provide comprehensive details of any notice, circumstance or Claim together with any documentation, information and relevant details;
- 8.1.2 Use best endeavours to preserve all property, products, appliances and plant which may assist in the investigation or conduct of the Claim;
- 8.1.3 Co-operate with LIU and its appointed representatives in all aspects of the Claim.
- 8.2 The Insured must take all reasonable care and do and concur to do all things reasonably practicable to avoid or prevent a Wrongful Breach, or diminish a Loss.
- 8.3 The Insured shall not make any admission, offer, promise or payment in respect of any Claim, or agree to pay any Penalty or consent to any order directing the Insured to pay any Penalty without the prior written consent of LIU.
- LIU shall not be liable for any such Penalty incurred without its consent, and such consent will not be unreasonably withheld by LIU.
- 8.4 LIU shall be entitled, but not obligated, to take over the conduct in the name of the Insured the investigation, defence (including appeal and resisting appeal) and settlement of any Claim. Any amount incurred by LIU shall be deemed part of Defence Costs.
- 8.5 If LIU grants indemnity under this extension in respect of any Claim, then LIU shall be subrogated to all the Insured's rights of recovery in respect of such Claim 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 that may prejudice LIU's position or its potential or actual rights of recovery against any party. Any amounts recovered by LIU shall be allocated in the following order – recovery costs, uninsured loss, Limit of Indemnity and Deductible.
- 8.6 Where LIU recommends to the Insured to pay any Penalty, consent to any order directing the Insured to pay any Penalty or otherwise settle or resolve any Claim, and the Insured does not agree to do so, then LIU is entitled to reduce its liability to the Insured to the extent of any prejudice suffered by LIU by reason of the Insured's failure to so agree.
- 8.7 If the Insured continues to defend a Claim where LIU has refused to provide consent in accordance with Clause 5 and the Insured is successful in respect of that Claim, then consent as set out in Clause 5 shall be deemed to have been given at the time it was first requested by the Insured. For the purpose of this condition, "successful" means that the outcome of the Claim established that at the time at which LIU refused consent, the Insured has Reasonable Grounds for Defence.

- 8.8 This extension shall be interpreted in accordance with the laws of Australia or any State or Territory as applicable, and all claims for indemnity under this extension shall be decided in accordance with those laws. All matters arising from or relating to the construction, operation or interpretation of the extension shall be submitted to the exclusive jurisdiction of the Australian Courts.
- 8.9 The Insured shall comply with any lawful notice or direction received from, or any enforcement action taken by any appropriate Regulatory Authority under any Act within the time specified or, if no time is specified, within a reasonable time.
- 8.10 The Insured may cancel the Policy and this extension at any time by giving notice in writing to LIU.

LIU may cancel the Policy and this extension at any time where:

- 8.10.1 It is entitled to do so pursuant to the Insurance Contracts Act 1984 or any amendments;
- 8.10.2 The Insured has failed to notify LIU of any specific act or omission where such notification is required under the terms or conditions of the Policy or this extension; or
- 8.10.3 The Insured has acted in contravention of or omitted to act in compliance with any term of the Policy or this extension 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 the Policy and this extension) is entered into or at 4pm on the third business day after the date on which notice was given to the Insured by LIU (whichever is the earlier).

- 8.11 Where the Insured comprises more than one person or company, it is agreed that the named Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies for the purposes of receiving any notice of cancellation pursuant to Clause 8.10, or any other notice, statement, document or information relating to the Policy and this extension. Where the Insured has an insurance broker, nothing in this paragraph shall restrict LIU's right to notify the broker as agent of the Insured.
- 8.12 Except to the extent that the Insured is compelled by law to do so, the Insured shall not release to any third party or otherwise publish details of:
- 8.12.1 The nature of the liabilities insured by this extension;
- 8.12.2 The extent of cover provided by this extension; or

8.12.3 The amount of the premium specified in the Schedule,

Without the written consent of LIU.

8.13 Where this extension provides any indemnity to the Insured which is prohibited by law, this extension shall be varied by operation of this Clause 8.13 so that this extension does not respond to the extent that the indemnity is prohibited by law.

8.14 8.14.1 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 extension.

8.14.2 Failure by any Insured to comply with any terms and conditions of this extension shall not prejudice the right of any other Insured to cover under this extension.

Cover is only provided to an Insured who is innocent of and has no prior knowledge of such conduct. Such Insured shall as soon as practicable after becoming aware of such conduct, advise LIU in writing of all relevant facts.

8.15 To the extent of any inconsistency, the provisions of this extension prevail over those of the Policy.

Nothing contained in this endorsement shall in any way serve to increase the Limit of Liability stated in the Schedule.

Other than as amended above, the terms of this Policy shall continue to apply.



4 October 2017

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For and on behalf of  
Liberty International Underwriters

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Date