

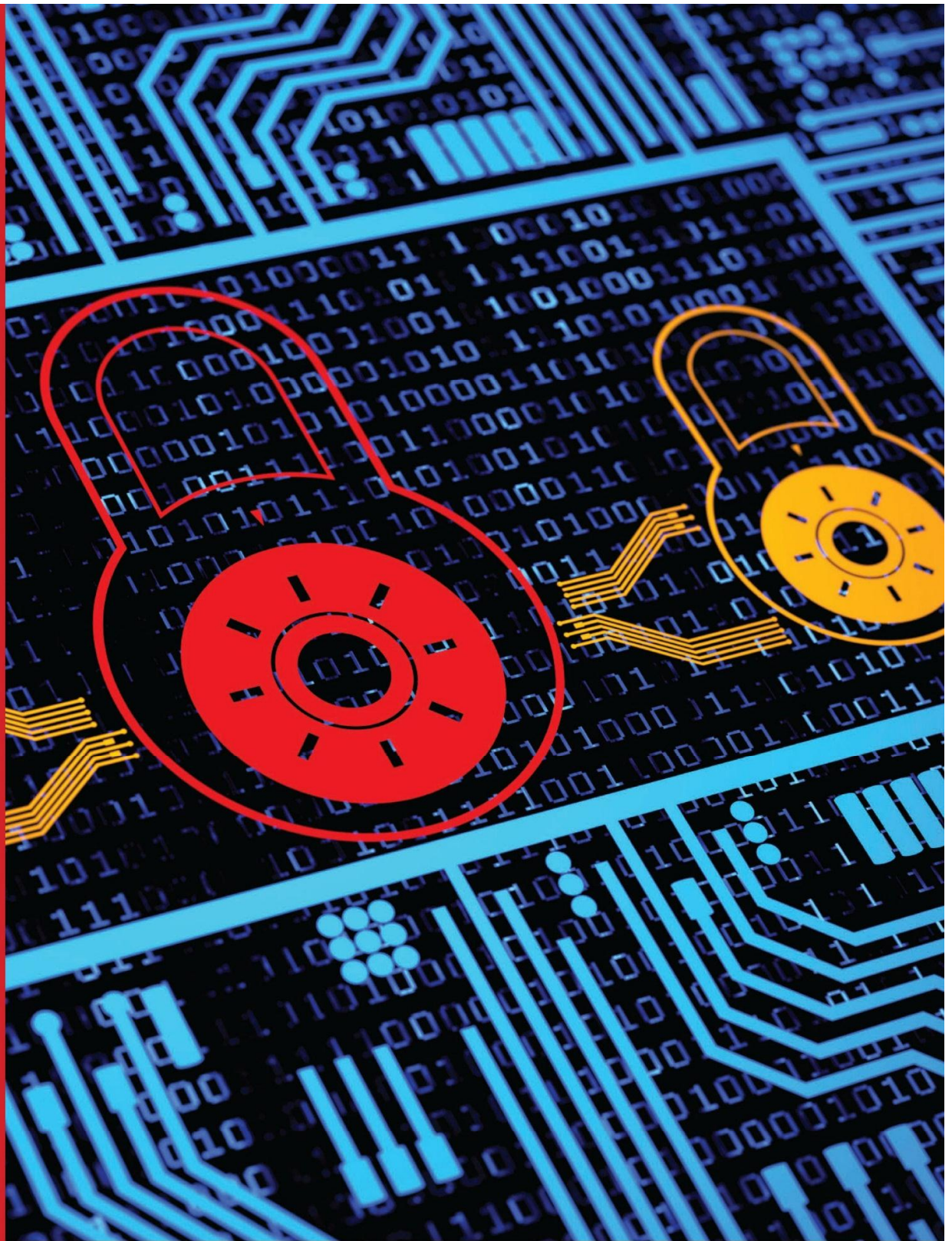


I M A L I A

**My Computer Security &
Data Protection Cover**

Policy

Cyber eRisks Policy



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LAUW

LONDON AUSTRALIA UNDERWRITING



Introduction

London Australia Underwriting Pty Ltd ("LAU") is authorised as an agent of Certain Underwriters at Lloyd's of London (collectively referred to as **underwriters**). As agents of **underwriters**, LAU can administer, deal with and adjust any **claim** under this Policy. Any communications regarding the Policy shall be directed to LAU.

Throughout this Policy words appearing in bold, other than in headings, are expressly defined terms under the Policy. These words are contained in Section 2 - Definitions.

If a word or phrase is defined, its other grammatical forms have corresponding meanings. For the avoidance of doubt, headings are included for reference only and do not act as to guide interpretation of the Policy. Unless otherwise specified, all words that are singular include the plural and the plural includes the singular.

Your duty of disclosure, the claims made nature of the Policy, **underwriters'** complaints procedures, compliance with the General Insurance Code of Practice and a privacy statement have been provided to **you** prior to purchasing this Policy. These are extracted again for **your** convenience in the Important Notices Section.

Important Notices

Claims-made contract

This Policy operates on a claims made and notified basis. This means that the Policy provides cover for **claims** first made and **notified** during the **policy period**, subject to the terms and conditions of the Policy.

The Policy does not provide cover in relation to Known Facts (as set out in the relevant exclusion) nor in relation to any actual or alleged act, error, omission or event before the **retroactive date** (if any) specified in the schedule (as set out in the relevant exclusion).

Where you give notice in writing to us of any facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of those facts but before the expiry of the **policy period**, you may have rights under Section 40(3) of the *Insurance Contracts Act 1984* to be indemnified in respect of any claim subsequently made against you arising from those facts notwithstanding that the claim is made after the expiry of the **policy period**. Those rights are in addition to any rights that you may have under the Policy.

Your duty of disclosure

Before you enter into the Policy with **Underwriters**, in accordance with the provisions of the *Insurance Contracts Act 1984* (Cth), **you** have a duty to disclose to **underwriters** every matter that **you** know, or could reasonably be expected to know, is relevant to **underwriters'** decision to provide **you** with insurance cover. The duty of disclosure does not require **you** to disclose matters that diminish the risk proposed to **underwriters**, are common knowledge, or that **underwriters** know or, in the ordinary course of business, should know. **Your** duty of disclosure continues with **underwriters** and extends to any renewal, reinstatement, variation or extension of the insurance provided by **underwriters**.

Non-Disclosure

Underwriters may be entitled either to reduce their liability under the Policy in respect of a **Claim** or may cancel the Policy if you fail to comply with your duty of disclosure. If your non-disclosure is fraudulent, **Underwriters** may also have the option of avoiding the Policy from its beginning.

General Insurance Code of Practice

LAUW and **Underwriters**, through Lloyd's, proudly support and agree to comply with the Insurance Council of Australia's General Insurance Code of Practice, except in relation to any claims adjusted outside Australia. The terms of the Code require us to be open, fair and honest in our dealings with you.

Any enquiry or complaint relating to this Insurance should be referred to **Underwriters** in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to the Lloyd's Underwriters' General Representative in Australia, Suite 2, Level 21, Angel Place, 123 Pitt Street, Sydney, NSW 2000, who will refer your dispute to the Complaints Department at Lloyd's. Complaints that cannot be resolved by the Complaints Department may be referred to an appropriate external dispute resolution service. Further details will be provided at the appropriate stage of the complaints process.

Complaints

Please refer any complaint, in writing, to LAU's:

Complaints Officer
London Australia Underwriting Pty Ltd
Level 35, 100 Miller Street,
NORTH SYDNEY, NSW 2060
Tel. (02) 8912 6400
Fax. (02) 8912 6401

who will handle the matter in a fair, transparent and timely manner and in accordance with our obligations under the Code of Practice.

Any enquiry or complaint relating to this Policy should be referred to LAU in the first instance.

If LAU is unable to resolve the matter, or **you** are not satisfied with the way a complaint has been dealt with, **you** should write to:

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

Lloyd's Underwriters' General Representative in Australia will refer **your** dispute to the Complaints Department at Lloyd's. Complaints that cannot be resolved by the Complaints Department may be referred to the Financial Ombudsman Service (UK).

Further details will be provided to **you** at the appropriate stage of the complaints process.

For further details, please see: <http://lauw.com.au/complaints.php>

Governing Law and Service of Suit

Underwriters hereon agree that:

- in the event of a dispute arising under this Policy, **underwriters** at the request of the **insured** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court;
- any summons, notice or process to be served upon the **underwriters** may be served upon the Lloyd's General Representative in Australia, Suite 2, Level 21 Angel Place, 123 Pitt Street, Sydney NSW 2000, who has authority to accept service and to enter an appearance on the **underwriters'** behalf, and who is directed at the request of the **Insured** to give a written undertaking to the **insured** that the Lloyd's General Representative will enter an appearance on the **underwriters'** behalf; and
- if a suit is instituted against any one of the **underwriters**, all **underwriters** hereon will abide by the final decision of any such Court or any competent Appellate Court.

Privacy Notice

LAUW and **Underwriters** are committed to compliance with the provisions of the Australian Privacy Principles and the *Privacy Act 1988* (Commonwealth). In order for **Underwriters** to assess the risk of and provide you with insurance products and assess and manage any claims under those products, it is necessary to obtain personal information from you. If you do not provide us with this information, this may prevent **Underwriters** from providing you with the products or services sought.

If you provide us with information about someone else, you must obtain their consent to do so.

LAUW and **Underwriters** may disclose your information to other insurers, their reinsurers, and insurance reference service or other advisers used by **Underwriters** or LAUW on behalf of **Underwriters** such as loss adjusters, lawyers or others who may be engaged to assist in claims handling, underwriting or for the purpose of fulfilling compliance and/or regulatory requirements. These third parties will all be contractually required to adhere to **Underwriters'** privacy obligations.

Our privacy policy contains information about how you can access the information we hold about you, ask us to correct and how you may make a privacy related complaint. For further details please see: <http://lauw.com.au/privacy-policy.php>

Preamble

In reliance on the **application form** prepared and submitted by the **named insured** and in consideration of payment of the Premium, **underwriters** agree to indemnify **you** subject to the terms, conditions, exclusions and definitions of this Policy.

1. Insuring Agreements

Underwriters agree to provide **you** with the cover as indicated in Item 4 of the Schedule nominating the Insuring Agreement(s) that have been purchased by the **named insured** as 'included' and subject to the applicable sub-limits and excess. If an Insuring Agreement is stated 'excluded', then there is no indemnity payable by the Policy in relation to the cover proposed by such Insuring Agreement.

1.1 Professional services

Underwriters shall pay on **your** behalf all **damages** and **defence costs**, which exceed the **excess**, which **you** become legally obligated to pay as a result of any **claim** first made against **you** and **notified** during the **policy period** (or any **extended reporting period** if applicable) arising from the performance of **technology professional services** for others, by **you** or by others on **your** behalf for whom **you** are legally responsible, for any actual or alleged wrongful acts, which for the purpose of this Insuring Agreement shall mean:

- (a) negligent breach of duty, negligent misrepresentation, or negligent act, error or omission in the performance of or failure to perform **technology professional services**;
- (b) **breach of contract**;
- (c) defamation, including, but not limited to, disparagement or harm to the reputation or character of any person or organisation, libel, slander, product disparagement or trade libel;
- (d) plagiarism, piracy or misappropriation of ideas under implied contract, misappropriation of name or likeness for commercial advantage; any act of passing-off; misappropriation of formats, characters, trade names, character names, titles, plots, musical compositions, voices, slogans, graphic materials, or artwork; negligence regarding the content of any media communication, including harm caused through any reliance or failure to rely upon such content;

provided that the above actual or alleged wrongful acts were unintentional and provided also that such actual or alleged wrongful acts occurred on or after the **retroactive date**.

1.2 Multimedia liability

Underwriters shall pay on **your** behalf all **damages** and **defence costs** which exceed the **excess** which **you** become legally obligated to pay as a result of any **claim** first made against **you** and **notified** during the **policy period** (or any **extended reporting period** if applicable) arising from **your multimedia** activities, for any actual or alleged wrongful acts, which for the purpose of this Insuring Agreement shall mean:

- (a) defamation including, but not limited to, disparagement or harm to the reputation or character of any person or organisation, libel, slander, product disparagement or trade libel;

- (b) invasion, infringement, or interference with the right to privacy or right of publicity, including public disclosure of private facts, including those of an employee, intrusion, or commercial appropriation of name or likeness;
- (c) plagiarism, piracy or misappropriation of ideas in connection with **your multimedia** activities;
- (d) infringement of copyright, domain name, title, or slogan; trade duress; or the dilution or infringement of trademark, service mark, service name, or trade name;
- (e) liability arising out of **your** negligence in connection with **your** release of **multimedia** content

provided that the above actual or alleged wrongful acts were unintentional and provided also that any such actual or alleged wrongful acts occurred on or after the **retroactive date**.

1.3 Security and privacy liability

Underwriters shall pay on **your** behalf all **damages** and **defence costs** which exceed the **excess** which **you** become legally obligated to pay as a result of any **claim** first made against **you** that is **notified** during the **policy period** (or any **extended reporting period** if applicable) arising from a **security breach** or **privacy breach** on **your computer network(s)**, in relation to any actual or alleged wrongful acts, which for the purposes of this agreement shall mean:

- (a) the failure to prevent or hinder unauthorised access to or unauthorised use of a **computer network**, failure to prevent physical theft or loss of commercial information and **personal information**, **hardware** controlled by **you**, or **your** people, or processes; security failures; or false communications designed to trick the user into surrendering **personal information** (commonly known as phishing or pharming) that results in:
 - (i) the alteration, copying, corruption, destruction, deletion, or damage to electronic **data** on a **computer network**;
 - (ii) unauthorised disclosure of commercial information, **personal information** or **data**;
 - (iii) theft of **data** (including theft of **data** which is commonly referred to as identity theft);
 - (iv) **your** failure to disclose a breach of security affecting **personal information**, or failure to dispose of such information within the required time period in violation of notification laws or regulations in effect now or in the future;
 - (v) the failure to prevent transmission of **malicious code** or **computer virus** from a **computer network** to third party computers or systems; or
 - (vi) **your** breach of duty to maintain the security or confidentiality of **personal information** stored on **your computer network** under any contract, including but not limited to a payment card processing agreement with a merchant bank or payment processor;
- (b) **privacy breach, security breach, or breach of privacy regulations;**

- (c) the failure to prevent or hinder participation in a **denial of service** from a **computer network** operated by **you** or on **your** behalf against internet sites or **computer networks** of a third party; or
- (d) loss of **employee personal information**, as defined in **privacy regulations**;

provided that the above actual or alleged wrongful acts occurred on or after the **retroactive date**.

1.4 **Data recovery and loss of business income coverage**

Underwriters shall indemnify **you** for **first party costs and expenses** which exceed the **excess**, and for **loss of business income** after expiration of the applicable **waiting period**, as a result of a **first party insured event** incurred by **you** and **notified** during the **policy period** or any **extended reporting period**, if applicable, provided that the **first party insured event** occurred on or after the **retroactive date**.

1.5 **Privacy regulatory defence costs and penalties**

Underwriters shall pay on **your** behalf those amounts, which exceed the **excess**, which **you** become legally obligated to pay, including **defence costs**, as a result of a civil regulatory action, including a **regulatory compensatory award**, civil penalty, or fines to the extent insurable by law, imposed by a governmental regulatory body against **you**, that is **notified** during the **policy period** or any **extended reporting period**, if applicable, as a result of a **privacy breach, security breach**, or breach of **privacy regulations** by **you** or others on **your** behalf for whom **you** are legally responsible, provided that the **privacy breach, security breach**, or breach of **privacy regulations** occurred on or after the **retroactive date**.

1.6 **Customer support and reputational expenses**

Underwriters shall indemnify **you** for **privacy notification expenses, crisis management costs** and **customer support and credit monitoring expenses** exceeding the **excess** limited to the sums attributable to the individual customers who have actually incurred credit monitoring expenses and that are incurred by **you** resulting from a **security breach, privacy breach** or breach of **privacy regulations** occurring on or after the **retroactive date** and which are **notified** during the **policy period** or any **extended reporting period** if applicable.

1.7 **Data extortion**

Underwriters shall indemnify **you** to the extent insurable by law for **cyber extortion monies** exceeding the **excess** that are paid by **you** following a **cyber extortion threat** occurring on or after the **retroactive date**, and **notified** during the **policy period** or any **extended reporting period** if applicable.

2. Definitions

2.1 Application form

means all application forms, including any attachments thereto, and all other information and materials submitted to **underwriters** by **you** or on **your** behalf in connection with the underwriting of this Policy. All such applications, attachments, information, and materials are deemed attached to and incorporated into this Policy.

2.2 Bodily injury

means physical injury, sickness, disease, or death sustained by any person and, where resulting from such physical injuries only, mental anguish, mental injury, shock, humiliation, or emotional distress.

2.3 Breach of contract

means unintentional breach of a written contract(s) with a client to perform **technology professional services** because of:

- (a) the **technology professional services** being negligently performed or containing a material defect;
- (b) the **technology professional services** failing to meet any statutory term concerning quality, safety, or fitness for a particular express purpose, or failing to meet an implied duty to exercise that degree of care or skill consistent with applicable industry standards; or
- (c) breach of any hold harmless or indemnity provision regarding infringement of intellectual property rights, breach of security, or the confidentiality of information.

2.4 Claim means:

- (a) a written demand for monetary damages or non-monetary relief, a request for a standstill agreement, the service of civil proceedings, or institution of arbitration proceedings received by **you** seeking monetary damages or including the threat or initiation of proceedings seeking a temporary restraining order or an interim or permanent injunction;
- (b) formal regulatory action to the extent covered by Insuring Agreement 1.5;
- (c) a **first party insured event**;
- (d) the incurring of **crisis management costs, privacy notification expenses or customer support and credit monitoring expenses**;
- (e) a **cyber extortion threat**; or
- (f) any notice by a third party to **you** of circumstances that could reasonably be expected to result in any of the foregoing (a) to (e) above.

2.5 Computer network(s)

means interconnected electronic, wireless, web, or similar systems (including all hardware and software) used to process **data** or information in an analogue, digital, electronic or wireless

format including, but not limited to, computer programs, electronic data, operating systems, servers, media libraries, associated input and output devices, mobile devices, networking equipment, websites, extranets, off line storage facilities (to the extent that they hold electronic data), and electronic backup equipment.

2.6 **Computer virus**

means a program that possesses the ability to create replicas of itself (commonly known as auto-reproductionprogram) within other programs or operating system areas, or which is capable of spreading copies of itself wholly or partly to other **computer networks** or systems.

2.7 **Crisis management costs**

means any fees reasonably and necessarily incurred by **you** and approved by **underwriters** for the engagement of a public relations consultant, advertising expenses and legal expenses, if **you** reasonably consider (and **underwriters** agree) that such appointment is needed to avert or mitigate any material damage to any of **your** brands following an actual or alleged **security breach** or breach of **privacy regulations**.

2.8 **Customer support and credit monitoring services**

means those reasonable and necessary expenses **you** incur for a period of 12 months from the date **you** have obtained **underwriters** approval for the provision of any customer support activity, including the provision of credit file monitoring services and identity theft education and assistance in the event of a **privacy breach** that results in the compromise or potential compromise of **personal information** maintained by **you** or otherwise residing on a **computer network** operated by **you** or on **your** behalf.

2.9 **Cyber extortion threat**

means a credible threat or series of related threats, including a demand for funds, directed at **you** to avoid corruption, damage, destruction, or introduction of a **computer virus**, **malicious code**, or a **denial of service** to any aspect of **your computer networks**, or any threat or series of related threats to release, or disclose confidential information and **personal information** which resides within **your computer network**.

2.10 **Cyber extortion monies**

means monies payable by **you**, with **underwriters'** prior written consent, to a person(s) or entity(ies) reasonably believed to present a **cyber extortion threat** for the purpose of terminating such threat.

2.11 **Damages**

means a monetary judgment, consumer redress fund, award, or settlement including punitive damages to the extent permissible by the applicable law of the country in which the **claim** is made. **Damages** do not include

- (a) **your** future profits or royalties, restitution, or loss of **your** profits;
- (b) the cost of complying with orders granting injunctive or non-monetary relief, including specific performance, or any agreement to provide such relief;
- (c) loss of **your** fees or profits, return or offset of **your** fees or charges, or **your** commissions or royalties provided or contracted to be provided;

- (d) taxes, fines, penalties, or sanctions, save to the extent insurable by the applicable law of the country in which the **claim** is made;
- (e) any damages that are a multiple of compensatory damages;
- (f) any amount which **you** are not financially or legally obligated to pay;
- (g) loss of any remuneration or financial advantage to which **you** were not legally entitled;
- (h) monetary judgments, awards, or settlements which are uninsurable by the applicable law of the country in which the **claim** is made.
- (i) past, present and/or future license fees of any kind; or
- (j) liquidated damages.

2.12 **Data**

means any machine readable information, including ready for use programs or electronic data, irrespective of the way it is used and rendered including, but not limited to, text or digital media.

2.13 **Defence costs**

means:

- (a) reasonable and necessary legal costs and expenses incurred with **underwriters'** prior written consent and charged by a legal representative engaged or agreed by **underwriters** to defend a **claim**,
- (b) all other reasonable and necessary fees, costs, and expenses resulting from the investigation, adjustment, defence, and appeal of a **claim**, if incurred by us, or by **you** with **underwriters'** written consent;
- (c) **defence costs** do not include any salary, overhead, or other charges incurred by **you** for any time spent in cooperating in the defence and investigation of any **claim** or circumstance which might lead to a **claim** notified under this Policy; and
- (d) with respect to Insuring Agreement 1.5, **your** reasonable and necessary legal costs and expenses incurred with **underwriters'** prior written consent in the defence of any civil administrative proceeding or regulatory action as a result of a **privacy breach**, **security breach**, or breach of **privacy regulations** by **you** or on **your** behalf for whom **you** are legally responsible.

2.14 **Delivered programs**

means programs, applications and software where the development stage has been finalised, and are ready for operational use, having passed all test-runs and been proven successful in a live environment.

2.15 Denial of service

means unauthorised or unexpected interference or malicious attack on **your computer network** that restricts or prevents access to **your computer network** by persons or entities authorised to gain access to it.

2.16 Employee

means any individual in **your** service, including any part-time, seasonal, and temporary employees who are under a contract of service with **you** or any individual who is working on **your** behalf, or at **your** direction, and under **your** direct control. **Employee** does not include any partner, senior officer or director of **you**.

2.17 Excess

means the amount specified in Item 4 of the Schedule.

2.18 Extended reporting period

means the period specified in 2.18(a), and/or subject to the relevant conditions in clauses 2.18(b) and/or (c) and **underwriters'** agreement thereof, the periods specified in clauses 2.18(b) and/or (c) below:

- (a) if either the **named insured** or **underwriters** cancel or do not renew this Policy, the **named insured** shall have the right following the effective date of such cancellation or non-renewal, to a period of sixty (60) days to notify **claims**, provided that any actual or alleged wrongful acts under Insuring Agreement(s) 1.1, 1.2, or 1.3, **first party insured event** under Insuring Agreement 1.4, **privacy breach**, **security breach**, or breach of **privacy regulations** under Insuring Agreement 1.5, **security breach**, **privacy breach** or breach of **privacy regulations** under Insuring Agreement 1.6, or **cyber extortion threat** under Insuring Agreement 1.7 occurred prior to the end of the **policy period** and are otherwise covered by this Policy.
- (b) Notwithstanding 2.18(a), in the event of cancellation or non-renewal of this Policy the **insured** shall have the right, upon payment in full (and not proportionally or otherwise in part):
 - (i) of 100% of the premium set forth in item 3 of the Schedule if **underwriters** cancel or do not renew this Policy; or
 - (ii) of 200% of the premium set forth in item 3 of the Schedule if the **named insured** cancels or does not renew this Policy,

to have issued an endorsement providing a 12 month **extended reporting period** for **claims**, provided that any actual or alleged wrongful acts under Insuring Agreement(s) 1.1, 1.2, or 1.3, **first party insured event** under Insuring Agreement 1.4, **privacy breach**, **security breach**, or breach of **privacy regulations** under Insuring Agreement 1.5, **security breach**, **privacy breach** or breach of **privacy regulations** under Insuring Agreement 1.6, or **cyber extortion threat** under Insuring Agreement 1.7, occurred prior to the end of the **policy period** and are otherwise covered by this Policy and are reported to **underwriters** during the **extended reporting period**,

subject to the conditions set forth with regard to the **extended reporting period** herein. In order for the **named insured** to purchase the **extended reporting period** endorsement, the additional premium for the **extended reporting period** must be paid to **underwriters** within thirty (30) days of the non-renewal or cancellation.

- (c) In the event the **named insured**:
- (i) is acquired;
 - (ii) merges into another entity;
 - (iii) goes into liquidation;
 - (iv) is dissolved;
 - (v) is sold or has disposed of substantially all of its assets;

(all of which collectively and alternatively constitute a "change of control")

then provided that the **named insured** has otherwise complied with the terms and conditions of this Policy, the **named insured** may advise **underwriters** within thirty (30) days of the "change of control" and elect an **extended reporting period** of twelve (12) months from the date of such "change of control". Such "change of control" **extended reporting period** shall cover **claims** made under Insuring Agreement(s) 1.1, 1.2, or 1.3, or **first party insured event** under Insuring Agreement 1.4, **privacy breach, security breach**, or breach of **privacy regulations** under Insuring Agreement 1.5, **security breach, privacy breach** or breach of **privacy regulations** under Insuring Agreement 1.6, or **cyber extortion threat** under Insuring Agreement 1.7, and **notified** during the "change of control" **extended reporting period**, but only in respect of any **claim** which took place prior to the end of the **policy period** and is otherwise covered by this Policy.

- (d) Each **extended reporting period** in Clause 2.18 (a), (b) and (c) applies to the Insuring Agreement(s) shown in the Schedule as "included".
- (e) **Underwriters'** maximum **limit of liability** for any **extended reporting period** agreed shall be part of, and not in addition to, the **limit of liability** for the **policy period** to which the **extended reporting period** applies.
- (f) The quotation by **underwriters** of a different premium, **excess, limit of liability** or change to the Policy for the purpose of renewal shall not constitute a refusal to renew by **underwriters**.
- (g) Any right for an **extended reporting period** shall not be available to the **named insured** where cancellation or non-renewal by **underwriters** is because of non-payment of premium or failure by an **insured** to pay amounts within the applicable **excess**.
- (h) All notices and premium payments with respect to each **extended reporting period** option shall be directed to **underwriters** through the entity named in item 8 of the Schedule.
- (i) At the commencement of each **extended reporting period** the entire premium shall be deemed earned and in the event the **named insured** terminates the **extended reporting period** for any reason prior to its natural expiration, then Clause 7.8

"Cancellation" shall not apply and **underwriters** will not be liable to return any premium paid for the **extended reporting period**.

2.19 **First party costs and expenses**

Means all reasonable and necessary costs and expenses incurred by **you** with **underwriters'** prior written consent including:

- (a) **your** actual costs to restore, re-collect, or replace **your data**, including expenses for materials, working time, and overhead cost allocation at the affected location(s) associated with restoring or replacing **your data**;
- (b) **your** reasonable and necessary costs and expenses of specialists, investigators, forensic auditors, or loss adjusters retained by **you** for the purpose of conducting a review or audit to substantiate that a **first party insured event** is occurring or has occurred or to determine the scope, cause, or extent of any theft or unauthorised disclosure of **your** information or **data**, **privacy breach**, or breach of **privacy regulations**;
- (c) **your** reasonable and necessary costs and expenses for the use of rented, leased, or hired external equipment, services, labour, premises, or additional operating costs, including staff overtime and expenditure, provided that these costs and expenses were reasonably incurred as a result of a **first party insured event**; or
- (d) any other reasonable and necessary costs and expenses that **you** incur directly as a result of a **first party insured event**.

First party costs and expenses shall not include loss of profits or **loss of business income** and form part of, and are not in addition to, the **limit of liability**.

2.20 **First party insured event**

means **your** loss actually sustained by **you** and that occurs at **your** premises, or at **your** external backup data centre or storage facilities, which arises from:

- (a) a **security breach**;
- (b) a **computer virus**;
- (c) **malicious code**;
- (d) accidental damage or destruction of **data** because of **human error**;
- (e) electrostatic build-up or electromagnetic disturbances;
- (f) accidental damage or destruction of hardware, so that the **data** stored is not machine readable;
- (g) malfunction or failure of **your computer network**;
- (h) **programming error** of **delivered programs**;
- (i) natural disaster, but only for corruption, destruction, or damage to **your data**; or

- (j) failure of a direct or back-up power supply or under/over voltage but only if such power supply is owned, operated, and controlled by **you** or by a business process service provider or information technology service provider.

First party insured event only pertains to **your** loss and does not include coverage for any **claim** made by a third party.

2.21 **Hardware**

means any and all physical components of a **computer network**.

2.22 **Human error**

means an operating error, an error in setting parameters, or an unintentional mistake by **your employee** or a third party providing services to **you**, which results in a **first party insured event** sustained by **you**.

2.23 **Insured** means:

- (a) the **named insured**;
- (b) any **subsidiary** of the **named insured**, but only with respect to wrongful acts, insured events, breaches, or threats as detailed under the relevant Insuring Agreement, which occur while it is a **subsidiary** and otherwise covered by this Policy;
- (c) any past, present, or future officer, director, trustee, or **employee** of any party described in 2.23(a) or (b) above, but only while acting solely within the scope of their duties as such;
- (d) in the event that any party described in 2.23(a) or (b) above is a partnership, limited liability partnership, or limited liability company, then any general or managing partner, principal, member, or owner thereof, but only while acting solely within the scope of their duties as such;
- (e) any agent or independent contractor, including distributors, licensees, and sub-licensees, but only while acting on behalf of at the direction of, or under the control of any party described in 2.23(a) or (b) above; and
- (f) any entity required by contract to be named as an insured under this Policy and to whom **underwriters** consent is first obtained in writing, but only for the acts of any entity, with regard to the relevant Insuring Agreement.

2.24 **Limit of liability**

means the respective amounts of **underwriters'** maximum liability under this Policy as stated in Item 4(A) of the Schedule.

2.25 **Loss of business income**

means:

- (a) the net income (net profit or loss before income taxes) as certified by a member of the Institute of Chartered Accountants other than the firm which audits or otherwise

acts for **you**) which **you** would have earned had no **first party insured event** occurred; or

- (b) reasonable, continuing, and normal operating expenses that were incurred and affected by a **first party insured event**.

2.26 Malicious code

means software designed to infiltrate or damage a **computer network** without the owner's informed consent by a variety of forms including, but not limited to, Trojan horses, spyware, dishonest adware, and crimeware.

2.27 Multimedia

means the release of any content in a physical or electronic format, including electronic data, internet, newspapers, newsletters, magazines, books, brochures or other types of publications, and advertising materials, including packaging, photographs, and digital images.

2.28 Named insured

means the individual, partnership, entity, or corporation designated as such in Item 1 of the Schedule.

2.29 Notified/Notifying/Notify/Notifies

means any written correspondence prepared and communicated by **you** (or **your agent**) as required by the terms and conditions of this Policy which is acknowledged as being received by **underwriters**.

2.30 Personal information

means any information or an opinion about an identified individual or an individual who is reasonably identifiable whether the information or opinion is:

- (a) true or not; and
- (b) is recorded in a material form or not.

Personal information includes but is not limited to an individual's name, tax file number, Medicare number, healthcare information, drivers licence number, bank account number, credit card and/or debit card number, access codes and/or passwords and any other personal information as defined in the *Privacy Act 1988 (Cth)* and *Privacy Amendment (Enhancing Protection Act) 2012 (Cth)* or other federal, state, territory or local privacy legislation (including health specific privacy legislation) and any rule or regulation promulgated thereunder.

2.31 Policy period

means the period stated in Item 2 of the Schedule commencing and concluding at 4pm local time at the Principal Address stated in Item 1A of the Schedule.

2.32 **Privacy breach**

means a breach of confidentiality, infringement, or violation of any right to privacy including, but not limited to, a breach of **your** privacy policy, breach of a person's right of publicity, intrusion upon a person's seclusion and public disclosure of **personal information**.

2.33 **Privacy notification expenses**

means those reasonable and necessary legal expenses, public relations expenses, postage expenses and related advertising expenses directly incurred by **you** for the purpose of alerting an individual, entity or Regulatory Authority as required by a federal, state, territory or local statute, rule, law, regulation or regulatory guide of a **security breach, privacy breach** or breach of **privacy regulations** that results in the compromise or potential compromise of **personal information**, maintained by **you** or otherwise residing on a **computer network** operated by **you** or on **your** behalf.

Privacy notification expenses shall not include internal costs (such as wages, overtime, salaries and overheads) unless **underwriters** provides its prior written consent to the incurring of such costs.

2.34 **Privacy regulations**

means the following, as well as similar statutes and regulations, as they currently exist and as amended, associated with the confidentiality, access, control, and use of personally identifiable, non-public information including, but not limited to:

- (a) the *Privacy Act 1988* (Cth) and the *Privacy Amendment (Enhancing Protection) Act 2012* (Cth) and other federal, state, territory or local privacy legislation (including health specific privacy legislation) and any rule or regulation promulgated thereunder;
- (b) privacy provisions of consumer protection laws;
- (c) similar privacy laws worldwide, including but not limited to:
 - (i) *Data Protection Act* (UK) 1988;
 - (ii) *Regulation of Investigatory Powers Act* (UK) 2000;
 - (iii) *Privacy and Electronic Communications (EC Directive) Regulations 2003* (UK);
 - (iv) US state and federal statutes and regulations regarding the security and privacy of **personal information**; and
 - (v) Identity theft red flag rules under *the Fair and Accurate Credit Transactions Act* (US) 2003.

2.35 **Programming error**

means an error which occurs during the development or encoding of a computer program, software, or application, which would, when in operation, result in a malfunction or incorrect operation of a **computer network**.

2.36 Property damage

means physical injury to, impairment, destruction, or corruption of any tangible property, including the loss thereof. **Data** is not tangible property.

2.37 Regulatory compensatory award

means a regulatory agency's monetary award to a third party, including a sum or money which **you** are legally required to deposit into a fund as equitable relief for the payment of consumer claims due to an adverse judgement or settlement of a regulatory proceeding. **Regulatory compensatory award** does not include a criminal penalty or fine issued by a regulatory agency of any kind, including any federal, state, or local governmental agencies.

2.38 Retroactive date

means the date specified in item 6 of the Schedule.

2.39 Security breach

means an intentional, malicious or wilful act that results in the misuse of **your computer network** to modify, delete, corrupt, or destroy **data** or a **denial of service**, or the actual or alleged act, error, omission, or breach of duty to protect the security and confidentiality of non-public proprietary corporate information, **personal information** of a medical or financial nature, or other information or confidential paper records or electronic information. This includes, but is not limited to, electronic or non-electronic security failures, failure to protect against anticipated threats or hazards, failure to protect against unauthorised access, use, disclosure or, physical theft of information or **hardware**, false communications, or social engineering techniques designed to trick the user into surrendering **personal information** (commonly known as "phishing" or "pharming").

2.40 Subsidiary/Subsidiaries means:

- (a) a subsidiary of the **named insured** as defined in s46 of the *Corporations Act 2001* (Cth) that was a subsidiary as so defined on or prior to the commencement of the **policy period**;
- (b) any entity of which more than 50% of the issued and outstanding shares are owned by the **named insured**, on or before the commencement of the **policy period**; or
- (c) **any entity** which becomes a **subsidiary** during the **policy period** provided that such entity does not represent more than a fifteen percent (15%) increase in the **named insured's** total assets, employee count or gross revenue as of the date of the acquisition. Where such entity represents an increase in **the named insured's** total assets, employee count or gross revenue of more than fifteen percent (15%), such entity shall be deemed a **subsidiary** under this Policy, but only upon the condition that within thirty (30) days of it becoming a **subsidiary** the **named insured**

shall have provided **underwriters** with full particulars of the new **subsidiary** and agreed to any additional premium and/or amendment of the provisions of this Policy required by **underwriters** relating to such new **subsidiary**, subject to advanced review and acceptance by **underwriters** of full and complete underwriting information.

2.41 **Technology professional services**

means **your** business services, which are performed for and on behalf of **your** clients or customers in the course of **your** business and arising from **your** activities or advice in:

- (a) the design or sale of any products relating to information technology;
- (b) data processing;
- (c) the installation, design, development, integration, or configuration of a **computer network** or any aspect thereof;
- (d) web design and content delivery; and
- (e) those **technology professional services** stated in item 11 of the Schedule,

provided that **technology professional services** does not include any manufacturing, assembling or production activities.

2.42 **Underwriters**

means certain underwriters at Lloyd's of London.

2.43 **Waiting period**

means the number of hours stated in item 5 of the Schedule which must elapse before the recovery of **loss of business income** can be considered.

2.44 **You / your**

means the **insured**.

3. **Exclusions**

Underwriters shall not be liable for any **claim** directly or indirectly arising out of or in any way attributable to:

- 3.1 any fact, circumstance or situation which has been the subject of written notice under any insurance policy or any policy of which this Policy is a direct or indirect renewal or replacement, or any policy expiring prior to the inception date of this Policy.
- 3.2 any act, error or omission or wrongful act or fact, circumstance or situation occurring prior to:
- (a) the inception date of this Policy;
 - (b) the inception date of the first policy in an uninterrupted series of cyber policies continuously issued by **underwriters** to **you** of which this Policy is a renewal, whichever inception date is earlier; or
 - (c) the **retroactive date**, if on or before such earlier inception date or **retroactive date**, **you** knew or could have reasonably foreseen that such wrongful act, fact, circumstances or situation would give rise to a **claim**.
- 3.3 any **claim** made by an **insured** against another **insured** unless such **claim** is brought by an **employee** under Insuring Agreements 1.3 and 1.6.
- 3.4 any **claim** arising out of an **insured's** wilful, deliberate, malicious, fraudulent, dishonest, or criminal act. Notwithstanding the foregoing, the insurance afforded by this Policy shall apply to **defence costs** incurred in defending any such **claim**, but shall not apply to any **damages** that **you** might become legally obligated to pay. **Underwriters** will have the right to recover those **defence costs** incurred from those parties found to have committed criminal, wilful, deliberate, dishonest, fraudulent, or malicious acts by a court, jury, or arbitrator. However, with respect to only a **first party insured event** under Insuring Agreement 1.4, this exclusion does not bar coverage for employee sabotage.
- 3.5 any **claim** arising out of **your** activities as a trustee, partner, officer, director, or employee of any employee trust, charitable organisation, corporation, company, or business other than that of the **named insured**.
- 3.6 **your** insolvency or bankruptcy or the insolvency or bankruptcy of any other entity including, but not limited to, the failure, inability, or unwillingness to make payments because of the insolvency, liquidation, or bankruptcy of any individual or entity.
- 3.7 **bodily injury**, except that this exclusion shall not apply to wrongful infliction of emotional distress or mental anguish arising out of actual or alleged **technology professional services**, **multimedia** activities, **privacy breach**, **security breach**, or breach of **privacy regulations**.
- 3.8 **property damage**.
- 3.9 the confiscation, commandeering, requisition, destruction of or damage to, **hardware** by order of a government *de jure* or *de facto*, or by any public authority for whatever reason.
- 3.10 satellite failures; electrical or mechanical failures and/or interruption including, but not limited to, electrical disturbance, spike, brownout, or blackout; and outages to electricity, gas, water, telephone, cable, telecommunications, or other infrastructure, unless such infrastructure is under the **insured's** operational control and unless such **claim** forms part of a **first party insured event**.
- 3.11 the wear and tear, drop in performance, progressive or gradual deterioration, or aging of electronic equipment and other property or **hardware** used by **you** or the failure of **you** or those acting on **your** behalf to maintain any computer, **computer network**, computer software, or other equipment.

- 3.12 failure or gradual deterioration of overhead transmission, distribution lines or subterranean insulation or cabling.
- 3.13 fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, an act of God, or any other physical event however caused, unless such **claim** is part of a **first party insured event**.
- 3.14 the actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products, or services; including **your** cost guarantees, cost representations, contract price or cost estimates being exceeded.
- 3.15 the violation of any economic or trade sanctions by the United States government including, but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control (OFAC).
- 3.16 any breach of any express, implied, actual, or constructive contract, warranty, guarantee, or promise, but this exclusion does not apply to:
- (a) any liability or obligation **you** would have in the absence of such contract or agreement;
 - (b) unintentional **breach of contract**; or
 - (c) a breach of **your** privacy policy.
- 3.17 the liability of others assumed by **you** under any contract or agreement, either oral or written, except and to the extent **you** would have been liable in the absence of such contract or agreement.
- 3.18 the actual or alleged loss of value of any securities.
- 3.19 the actual or alleged purchase, sale, offer of, or solicitation of an offer to purchase or sell securities, or violation of any securities law including, but not limited to, the provisions of the *Securities Act* of 1933, the *Securities Exchange Act* of 1934, the *Sarbanes-Oxley Act* of 2002, the *Corporations Act* 2001 (Cth) or any regulation promulgated under the foregoing statutes, or any federal, state, local, or foreign laws similar to the foregoing statutes, including Blue Sky laws, whether such law is statutory, regulatory, or common law.
- 3.20 The actual or alleged violation of the *Organized Crime Control Act* of 1970 (commonly known as Racketeer Influenced And Corrupt Organizations Act or RICO), as amended, the *Anti Money Laundering & Counter Terrorism Financing Act* 2006 (Cth) or any regulation promulgated under the foregoing statutes, or any similar federal, state, local or foreign laws, whether such law is statutory, regulatory or common law.
- 3.21 the actual or alleged government enforcement of any state or federal regulation whether local or foreign but not limited to, regulations promulgated by the United States Federal Trade Commission, Federal Communications Commission, Securities and Exchange Commission, The Office of the Australian Information Commissioner and the Australian Securities and Investments Commission; however this exclusion does not apply:
- (a) to the extent that a **claim** falls under Insuring Agreement 1.5; or
 - (b) to a **claim** by a government entity brought in its capacity as a customer of an **insured** arising in the course of the provision of **technology professional services** to such government entity.

- 3.22 any employer-employee relations, policies, practices, acts, or omissions, any actual or alleged refusal to employ any person, or any misconduct with respect to **employees**. This includes but is not limited to **claims** arising under workers compensation or similar laws, unless such **claims** are made by an **employee** arising out of a **security breach, privacy breach** or breach of **privacy regulations**.
- 3.23 actual or alleged discrimination of any kind including, but not limited to, age, colour, race, gender, creed, national origin, marital status, sexual preferences, disability, or pregnancy. However, this exclusion will not apply to the theft of personal information and data which leads to actual or alleged discrimination of any kind, but not limited to age, colour, race, gender, creed, national origin, marital status, sexual preferences, disability or pregnancy.
- 3.24 the violation of any pension, healthcare, welfare, profit sharing, mutual, or investment plans, superannuation, pension or employee benefit scheme, funds or trusts or any violation of any provision of the *Employee Retirement Income Security Act of 1974* and its amendments and/or the *Pension Protection Act of 2006* and its amendments, or violation of legislation or regulations such as the *Corporations Act 2001 (Cth)* or the *Superannuation Industry (Supervision) Act 1993 (Cth)*.
- 3.25 strikes or similar labour actions, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular uprising, military uprising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions. This exclusion also excludes coverage for any loss or damages arising out of confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority. This exclusion also excludes loss, cost, damages, or **defence costs** of whatsoever nature directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing, or in any way relating to the above.
- 3.26 all losses or expenses arising from a terrorist act. For the purposes of this exclusion, a terrorist act means an act or series of acts including the use of force or violence of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s), committed for political, religious, or ideological purposes, including the intention to influence any government and/or to put the public in fear for such purposes.
- 3.27 **your** commercial decision to cease providing a particular product or service.
- 3.28 gambling, pornography, prizes, awards, coupons, or the sale or provision of prohibited, restricted, or regulated items including, but not limited to, alcoholic beverages, tobacco, or drugs.
- 3.29 any fine or penalty arising out of any agreement by an **insured** to comply with or follow the Payment Card Industry Standard or any Payment Card Company Rules; or implement, maintain, or comply with any security measures or standards related to any payment card data including, but not limited to, any fine or penalty imposed by a payment card company on a merchant bank or payment processor that **you** have paid or agreed to reimburse or indemnify. However, this exclusion shall not apply to civil penalties and fines to the extent insurable by law arising out of an otherwise covered **claim** under Insuring Agreement 1.5.
- 3.30 any actual or alleged unfair competition, antitrust violations, deceptive trade practices, or restraint of trade or any actual or alleged breach of any competition or antitrust statute, legislation, or regulation.

- 3.31 the actual or alleged infringement of any patent or the misappropriation, theft, copying, display or publication of any trade secret by, or with the active cooperation, participation, or assistance of any **insured**, any of **your** former **employees**, **subsidiaries**, directors, executive officers, partners, principals, trustees, or any of **your** successors or assignees.
- 3.32 the use of programs that are not **delivered programs**, however this exclusion applies only in respect of Insuring Agreement 1.4.
- 3.33 **your** knowing use of illegal or unlicensed programs that are in violation of the provisions or laws referring to software protection.
- 3.34 the existence, emission, or discharge of any electromagnetic field, electromagnetic radiation, or electromagnetism that actually or allegedly affects the health, safety, or condition of any person or the environment or that affects the value, marketability, condition, or use of any property.
- 3.35 radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- 3.36 goods or products (being tangible property or merchandise) sold, supplied, repaired, altered, treated, manufactured or maintained by or on behalf of **you**.
- 3.37 any presence of pollutants or contamination of any kind.
- 3.38 any actual, alleged or threatened discharge, dispersal, release or escape of pollutants or contamination of any kind including but not limited to solid, liquid, gaseous or thermal irritants or contaminants including asbestos, smoke, soot, fumes, acids, alkalis, chemicals and waste (including materials to be recycled, reconditioned or reclaimed) wherever such occurs and whether or not such results from **your** activities or the activities of others, is sudden or gradual, and is accidental, intended, foreseeable, expected, fortuitous or inevitable.
- 3.39 any government or regulatory or other official directive or request that **you** or anyone acting under **your** direction or control test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants or in any way respond to or assess the effects of pollutants or contamination of any kind.

4. Limit of liability

- 4.1 The **limit of liability** specified in item 4(A) of the Schedule shall be the maximum amount payable by **underwriters** for each **claim** and in the aggregate arising under each Insuring Agreement, including **defence costs**, where applicable.

- 4.2 Each sub-limit of liability specified in item 4 in the Schedule is the maximum amount payable by **underwriters** for the cover to which it applies and is part of the **limit of liability** specified in item 4(A) of the Schedule.
- 4.3 The **limit of liability** specified in item 4(A) of the Schedule shall be the total amount payable under this Policy by **underwriters** regardless of the number of Insuring Agreements that apply, including **defence costs** where applicable.
- 4.4 Notwithstanding the aggregate **limit of liability** under each Insuring Agreement as set forth in item 4 of the Schedule, all payments made under this Policy, regardless of the number of Insuring Agreements that apply, will reduce the total **limit of liability** specified in item 4(A) of the Schedule. In no event will **underwriters** pay more than the total **limit of liability** specified in item 4(A) of the Schedule.
- 4.5 All **claims** arising out of the same event without regard to the number of **insureds, claims**, or claimants shall be considered a single **claim** and only one **limit of liability** as set forth in item 4(A) of the Schedule, will apply. All such **claims** shall be deemed to have been made at the time of the first such **claim**.
- 4.6 In the event that a **claim** is **notified** by **you** and attaches to more than one Insuring Agreement, only one sub-limit of liability as set forth in item 4 of the Schedule shall apply. In such event, at most, only the highest of the applicable sub-limits of liability shall apply to such **claim**. **Underwriters** have the sole discretion to allocate **claims** paid, if any, against the appropriate applicable sub-limit of liability. With regard to such **claim**, in no event shall the amount paid by **underwriters** under any Insuring Agreement be greater than the **limit of liability** specified in item 4(A) of the Schedule.
- 4.7 The **limits of liability** for the **extended reporting period**, if applicable, shall be part of and not in addition to the **limit of liability** for the **policy period**.

5. Excess

- 5.1 The **excess** shall apply to each and every **claim**.
- 5.2 The **excess** shall be depleted by amounts covered under the Policy and shall be borne by the named insured, uninsured and at their own risk.
- 5.3 If a **claim** attaches to more than one Insuring Agreement, only the highest **excess** applies.
- 5.4 The **named insured's** payment of the applicable **excess** to the indemnity provided under each Insuring Agreement is a condition precedent to the payment by **underwriters** of any amounts covered by this Policy.

Underwriters shall only be liable to pay or indemnify under the Policy for each and every **claim** that is above the excess as referenced in item 4 of the Schedule.

- 5.5 **Underwriters** shall only be liable for the amount which exceeds the **excess**, which shall not exceed their total **limit of liability**.
- 5.6 The **named insured** shall make direct payments within the excess to the appropriate parties designated by **underwriters**.
- 5.7 All **claims** arising out of the same originating cause without regard to the number of **insureds, claims**, or claimants shall be considered a single **claim** and only one **excess** shall apply. All such **claims** shall be deemed to have been first made at the time of the first such **claim**.

5.8 With respect to the loss of business income under Insuring Agreement 1.4, the waiting period shall apply to covered amounts.

6. Claims conditions

6.1 Notice of claim or circumstance that might lead to a claim

- (a) If any **claim** under Insuring Agreement(s) 1.1, 1.2, 1.3, or 1.5 is made against an **insured**, the risk manager, general counsel, senior officer, or director of the **named insured** shall as soon as reasonably practicable **notify** the persons named in item 7 of the Schedule of every demand, notice, summons, or other process received by an **insured** or an **insured's** representative.
- (b) If an **insured** has a **claim** under Insuring Agreement(s) 1.4, 1.6, or 1.7, the risk manager, general counsel, senior officer, or director of the **named insured** shall as soon as reasonably practicable **notify** the persons named in item 7 of the Schedule such **claim**.
- (c) If during the **policy period**, any **insured** becomes aware of any acts, facts, or circumstances that could reasonably be a basis for a **claim** they shall immediately advise the risk manager, General Counsel, senior officer, or director of the **named insured** who shall **notify** the persons named in item 7 of the Schedule, as soon as practicable during the **policy period**:
 - (i) specific details of the acts, facts, or circumstances that could reasonably be the basis for a **claim**;
 - (ii) possible **damages**, penalties, or other amounts potentially covered under this Policy that may result or has resulted from the facts or circumstances;
 - (iii) details regarding how the **insured** first became aware of the acts, facts, or circumstances;
 - (iv) the **computer network** security and event logs, which provide evidence of the alleged incident; and
 - (v) the names of the actual claimants.

Any subsequent **claim** arising out of such acts, facts, or circumstances which is the subject of the written notice to **us** will be deemed to be a **claim** at the time written notice complying with the above requirements was first given to **us**.
- (d) A **claim** shall be considered to be reported to **underwriters** when we are **notified** through persons named in item 7 of the Schedule.

6.2 Defence, settlement and investigation of claims

- (a) With respect to Insuring Agreements 1.1, 1.2, 1.3, and 1.5, and if marked as "included" in the Schedule, **underwriters** shall have the right but not the obligation, to take control of and conduct in the **insured's** name the investigation, defence, or settlement of any **claim** or circumstance as **underwriters** in their absolute discretion see fit. When the **claim** is being defended by the **insured underwriters** shall have

the right to effectively associate with the **insured** in respect of the conduct and management of the **claim** to which this Policy may apply.

- (b) The **limit of liability** available to pay **damages** and as stated within Item 4 of the Schedule shall be reduced, and may be completely exhausted, by payment of **defence costs** or any other amounts covered under this Policy. **Damages, defence costs**, and any other amounts covered under this Policy are all subject to the **excess**, as stated within Item 4 of the Schedule.
- (c) **Underwriters** shall have the right to make any investigation they deem necessary including, without limitation, any investigation with respect to the **application form**, statements made in the **application forms** and with respect to coverage.
- (d) With respect to Insuring Agreements 1.1, 1.2, 1.3, and 1.5, if an **insured** refuses to consent to any settlement or compromise recommended by **underwriters** that is acceptable to the claimant and the **insured** elects to contest the **claim**, then **underwriters'** total liability for any **damages, defence costs** and other amounts covered under this Policy, shall not exceed the amount for which the **claim** could have been settled, less the remaining **excess**, plus the **defence costs** incurred up to the time of such election.
- (e) It is further agreed that **underwriters** shall not be obligated to pay any **damages, defence costs**, or any other amounts covered by this Policy, or to undertake or continue to defend any **claim** after the applicable **limit of liability** has been exhausted by payment of **damages, defence costs**, or other amounts covered under this Policy and that upon such payment, **underwriters** shall have the right to withdraw from the further defence thereof by tendering control of said defence to the **insured**.

6.3 Allocation

- (a) If the **insured** incurs **damages** and **defence costs** in respect of a **claim** which includes both covered and uncovered matters or which is made against both covered and non-covered parties then **underwriters** and the **named insured** will use best efforts to agree upon a fair and proper allocation of the **damages** and **defence costs** covered hereunder, based on the relative legal and financial exposures of the **insured** as to covered and non-covered matters. **Underwriters** shall not be liable under this Policy for the portion of such amount allocated to non-covered loss.
- (b) If **underwriters** and the **named insured** are not able to agree on a fair and equitable allocation, then the determination shall be referred to a Senior Counsel (to be mutually agreed upon by the parties, or in the absence of agreement to be appointed by the President of the Law Society, or equivalent organisation in the jurisdiction that this Policy is issued), as an expert to decide. That decision shall be binding upon **underwriters** and the **named insured**. The Senior Counsel's costs of providing the determination shall be paid by **underwriters** and such payments shall not erode the **limit of liability**.

6.4 Innocent insured provision

- (a) Whenever coverage under this Policy would be excluded, suspended, or lost because of non-compliance with Clause 6.1, relating to the **notification of claims**, with respect to which any other **insured** shall be in default solely because of the failure to give such notice or concealment of such failure by one or more **insureds**

responsible for the loss or damage otherwise **insured** hereunder, then such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **insureds** who did not personally commit or personally participate in committing or personally acquiescing in such failure to give notice, provided that the insured entitled to the benefit of this provision shall comply with Clause 6.1 promptly after obtaining knowledge of the failure of any other **insured** to comply therewith. Notwithstanding the foregoing, the **notification** of any such **claim** must be made during the **policy period**, or **extended reporting period** if applicable.

- (b) Any insurance as afforded by this provision shall not cover a **claim** whereby a current executive officer or director of the **named insured** knew, but failed to **notify**, (as required by clause 6.1) any **claim** or facts and circumstances that could reasonably be the basis of a **claim**.
- (c) Whenever coverage under this Policy would be excluded, suspended, or lost because of Exclusion 3.5 relating to wilful, deliberate, malicious, fraudulent, dishonest, or criminal acts by any **insured**, then such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **insureds** who did not personally commit, personally participate in committing, personally acquiesce, or remain passive after having personal knowledge thereof.

6.5 **Warranty and representations**

- (a) By acceptance of this Policy, all **insureds** agree that the statements contained in the **application form**, any application for insurance if this Policy is a renewal, and any supplemental materials submitted therewith are their agreements and representations, which shall be deemed material to the risk assumed by **underwriters**, and that this Policy is issued in reliance upon the truth thereof.
- (b) The misrepresentation or non-disclosure of any matter by an **insured** or by the agent of an **insured** in the **application form**, any application for insurance if this Policy is a renewal, or any supplemental materials submitted to **underwriters**, may entitle **underwriters** to reduce their liability under the Policy and may also render the Policy void *ab initio* relieving **underwriters** from all liability under this Policy.
- (c) The **application form** and any application for insurance if this Policy is a renewal, and any supplemental materials submitted to **underwriters** are deemed incorporated into and made a part of this Policy.

6.6 **Fraudulent claims**

If an **insured** has sought to **claim** any indemnity whatsoever under this Policy and such **claim** is false or fraudulent (in relation to the quantum or any factual component of the **claim**) then **underwriters** will have no liability for such **claim** and may exercise their rights to cancel the Policy in accordance with the *Insurance Contracts Act 1984* (Cth).

6.7 **Calculation of the net income aspect of loss of business income under Insuring Agreement 1.4**

- (a) The calculation of the net income aspect of **loss of business income** under Insuring Agreement 1.4 shall be based on an analysis of the revenues and costs

generated during each month of the twelve (12) months prior to the loss occurring and will also take into account the reasonable projection of future profitability or otherwise had no loss occurred and will include all material changes in market conditions that would affect the future profits generated.

- (b) Indemnity sought by the **insured** for **loss of business income** shall be accompanied by a computation of the loss. This shall set out in detail how the loss has been calculated and what assumptions have been made. The **insured** shall produce any documentary evidence, including any applicable reports, books of accounts, bills, invoices, and other vouchers and copies of such which **underwriters** may require. The **insured** shall provide to **underwriters** or their appointed agents all assistance to enable their investigations.
- (c) Any **claim** payment under this Section, where applicable, will be reduced by the extent to which the **insured**:
 - (i) uses damaged or undamaged **data**; or
 - (ii) makes use of available stock, merchandise, or other **data**; or
 - (iii) uses substitute facilities, equipment, or personnel.
- (d) **Underwriters** will not indemnify the **insured** for **loss of business income** incurred during the time of the **waiting period**.

6.8 Assistance and cooperation

- (a) Each **insured** shall cooperate with **underwriters** in all investigations. Each **insured** shall execute or cause to be executed all papers and render all assistance as requested by **underwriters**. Part of this assistance may require each and any **insured** to provide copies of a third party's system security and event logs.
- (b) Upon **underwriters'** request, the **insured** shall assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organisation who may be liable to the **insured** with respect to which insurance is provided by this Policy.
- (c) The **insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses at the **insured's** own cost.
- (d) The **insured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award, or dispose of any **claim** without **underwriters'** prior written consent. However, the prompt public admission of a **security breach** of **personal information** of **employees** or third parties as required by governmental privacy legislation or credit card association operating requirements will not be considered as an admission of liability requiring **underwriters'** prior consent. Notwithstanding the aforementioned **underwriters** are to be informed as soon as practicable of such public admission if such public admission is a circumstance that could lead to a **claim**.
- (e) The **insured** shall submit for examination under oath by **underwriters'** representative, if requested, in connection with all matters relating to this Policy.

6.9 Subrogation

If any payment is made under this Policy and there is available to **underwriters** any **insured's** right of recovery against third parties, then **underwriters** shall maintain all rights of such recovery. The **insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **insured** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **damages, defence costs**, or any other amounts paid by us, and lastly to the **excess**. Any additional amounts recovered shall be paid to the **named insured**.

7. General conditions

7.1 Policy interpretation

- (a) The construction and enforcement of the provisions of this Policy shall be determined in accordance with and governed by the laws of Australia. All disputes relating to coverage under this Policy shall be submitted to the exclusive jurisdiction of laws of Australia.
- (b) A reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this Policy.
- (c) The **insured** agrees that this Policy embodies all agreements between each **insured** and **underwriters** relating to this insurance. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or stop **underwriters** from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by Endorsement issued to form a part of this Policy and signed by **underwriters**.
- (d) In this Policy:
 - (i) the singular includes the plural and vice versa
 - (ii) the neutral gender includes the female and male genders
 - (iii) headings are provided for reference only and shall not be considered in its interpretation; and
 - (iv) all monetary amounts are expressed in Australian Dollars.

7.2 Territorial limitations

This Policy applies to any wrongful acts, insured events, breaches or threats detailed under the relevant Insuring Agreements, committed, alleged to have been committed or occurring anywhere in the world or as stated in item 10 of the Schedule.

7.3 Payment of premium

The **named insured** must pay **underwriters** the premium specified in Item 3 of the Schedule on or before sixty (60) days after the inception date of the **policy period**. If the **named insured** fails to pay the premium, **underwriters** may cancel this Policy in accordance with the *Insurance Contracts Act 1984* (Cth).

7.4 Authorisation

- (a) The **named insured** is the agent of each respective **insured** under this Policy, including but not limited to:
- (i) the payment of premium or any **excess** required by this Policy;
 - (ii) **notifying** and receiving notices from **underwriters** in relation to the terms and conditions of the Policy;
 - (iii) requesting amendments, any variation or endorsement to the Policy;
 - (iv) cooperating with, providing instructions to, receiving advice from and consenting to settlements from legal representatives or professional advisors appointed or authorised by **underwriters** in relation to any **claim** or indemnity provided by this Policy; and
 - (v) adhering to the duty of disclosure in completing the **application form** and providing any other relevant information to underwriters for the purposes of this Policy, that informs **underwriters** as to whether they will accept the risk and if so on what terms.
- (b) Subject to Clause 6.4 'Innocent insured provision', each **insured** is bound to statements, acts or omissions of the **named insured**.

7.5 Assignment

The interest hereunder is not assignable by an **insured**. If an **insured** shall die or be adjudged incompetent, this insurance shall cover that **insured's** legal representative to the same extent as the **insured** would be covered under this Policy.

7.6 Cancellation

This Policy shall terminate at the earliest of the following:

- (a) thirty (30) days after the receipt by the **named insured** of a written notice of termination from **underwriters** in accordance with the terms of the *Insurance Contracts Act 1984* (Cth), as amended, except in the case of termination for non payment of premium, in which case it shall be fourteen (14) days after the receipt of written prior notice or, if a later time is specified in such notice, at such later time;
- (b) upon receipt by the addressee specified in Item 8 of the Schedule of a written notice of termination from the **named insured**;
- (c) upon expiration of the **policy period**;
- (d) upon the immediate exhaustion of the **limit of liability**; or
- (e) at such other time as may be agreed upon in writing by **underwriters** and the **named insured**.

Underwriters shall refund the unearned premium computed at the customary short rate if this Policy is terminated by the **named insured**. Under all other circumstances the premium shall be refunded on a computed pro rata basis, provided that if any **claim** or circumstances which

may give rise to a **claim** has been **notified** under this Policy, **underwriters** will not refund any premium.

7.7 **Alteration of risk**

The **named insured** must advise the addressee stated in Item 8 of the Schedule as soon as reasonably practicable of any material alteration to the risk covered by this Policy. Upon receipt of such communication **underwriters** may alter the terms and conditions of the Policy and require that the **named insured** pay additional premiums. A "material change" includes but is not limited to:

- (a) any merger with or acquisition of another business or the commencement of a branch office;
- (b) any **insured** going into voluntary bankruptcy, receivership or liquidation or the **insured** failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- (c) any material change in **technology professional services**;
- (d) any "other insurance" placed by the **insured** covering the same risk as this Policy; and
- (e) cancellation, suspension, any composition of a special condition or the termination of any statutory registration, license or accreditation relevant to the **named insured's** business.

7.8 **Other insurance**

- (a) The **named insured** must immediately advise the addressee stated in Item 8 of the Schedule of any other insurance in place (or which may subsequently be put in place after inception of this Policy) that covers, in total, in part or in excess of, the risk, covered by this Policy ("other insurance").
- (b) The details of any "other insurance" (including the insurer and policy number) shall be specified in Item 12 of the Schedule.
- (c) If (whether or not communicated to **underwriters** and / or stated in Item 12 of the Schedule) the "other insurance" covers in total, in part or in excess of, the risk covered by this Policy, and any **insured** is indemnified by the "other insurance" in respect of a **claim** or any payment in which indemnity is available under this Policy, any cover afforded by this Policy will only attach in excess of the indemnity provided by the "other insurance".
- (d) If the other insurance referred to above is provided by the **underwriters** or any other member company, associate or affiliate of **underwriters**, then the **limit of liability** under this Policy shall be reduced by any amount paid by **underwriters** (or member company, associate or affiliate) under such other insurance to the extent permitted by law.

7.9 **Underwriters' several liability**

The obligations of **underwriters** shall be several and not joint and shall be solely to the extent of each underwriter's individual subscription. No one underwriter shall be responsible for the

subscription of any other underwriter if, for any reason, any underwriter does not satisfy all or part of its obligations under the Policy.

7.10 **Dispute resolution**

- (a) No action shall lie against **underwriters** unless, as a condition precedent thereto, there shall have been full compliance with all terms of this Policy, nor until the amount of the **insured's** obligation to pay shall have been finally determined either by judgment or award against the **insured** after actual trial or arbitration or by written agreement of the **insured**, the claimant, and **underwriters**.
- (b) No person or organisation or any legal representative thereof who has secured such judgment, award, or written agreement shall thereafter be entitled to make a **claim** under this Policy to the extent of the insurance afforded by this Policy. No person or organisation shall have any right under this Policy to join **underwriters** as a party to an action or other proceeding against an **insured** to determine that **insured's** liability nor shall an **insured** be entitled to join **underwriters** to any proceedings against an **insured** by a third party.
- (c) Bankruptcy or insolvency of an **insured** or of an **insured's** estate shall not relieve **underwriters** of their obligations hereunder.
- (d) If any dispute arises between any **insured** and **underwriters** involving this Policy and/or a **claim** hereunder, it is hereby mutually agreed by the **insured** and **underwriters** that such dispute shall be referred to a qualified mediator in a good faith effort to negotiate a resolution of the dispute, prior to the initiation of any arbitration or other proceedings. The party electing to mediate shall provide written notice to the other party setting forth its request to mediate and a brief statement regarding the issue to be mediated. The persons named in Item 9 of the Schedule are authorised and directed to accept any notice of mediation on behalf of **underwriters**. The **named insured** is authorised and directed to accept any notice of mediation on behalf of any **insured**.
- (e) As a condition precedent to any right of action hereunder, in the event that a good faith effort to mediate pursuant to Clause 7.10(d) above cannot resolve a dispute between any **insured** and **underwriters** involving this Policy or a **claim** or circumstance hereunder, it is hereby mutually agreed that such dispute shall be determined by final and binding arbitration before a single arbitrator. If the parties cannot mutually select the arbitrator, the parties will refer the selection of the arbitrator to the President of the Law Society of the relevant jurisdiction in which the Policy is issued.

7.11 **Endorsements**

Any endorsement(s) agreed by **underwriters** to vary the terms and conditions of this Policy are stated in Item 14 of the Schedule. Unless specifically stated in the endorsement, any endorsement:

- (a) forms part of, and is not in addition to the **limit of liability** as specified in Item 4(A) of the Schedule; and
- (b) is subject to all the terms of this Policy and does not affect or alter any term of this Policy.

7.12 **Confidentiality**

The existence and terms of this Policy shall be confidential as between the **insured(s)** and **underwriters** and shall not be disclosed except where:

- (a) compelled to do so by a court of law;
- (b) the law requires disclosure in annual reports and financial statements of the payment of the premium by the **named insured**; or
- (c) the **underwriters** have consented in writing of the disclosure of the existence and terms of the Policy.

7.13 **Inspection and audit**

Underwriters shall be permitted, but not obligated, to inspect any of **your** property, operations, or records at any time upon reasonable notice.

7.14 **Goods and service tax (GST)**

Any payment made by **underwriters** under this Policy will be reduced by the amount of any input tax credit to which the **named insured** is entitled to for GST in accordance with the provisions of *A New Tax System (Goods and Services Tax) Act 1999* (Cth). This Policy does not cover the **named insured** for such or any GST liability or for any fine, penalty or charge that the **named insured** may be liable due to a failure to disclose a misstatement made in relation to any entitlement to an input tax credit for the premium.



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