

# CyberSelect

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## Policy Wording

Issued by Agile Underwriting Services Pty Ltd  
ABN 48 607 908 243 – AFSL 483374



**Cyber**

Powered by  **AGILE.**

Coverholder at **LLOYD'S**

## Policy Schedule

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1. Policy Number:
2. Policy Period:

From:

To:

3. Named Insured:
4. Address:
5. Proposal Form Dated:
6. Broker:
7. Premium:
8. Policy Limits:

- (a) Total Aggregate Limit of Liability:
- (b) Insuring Agreements and Limits of Liability:

### Section I – First Party Insuring Agreements and Limits of Liability

A. Data Breach Incident Response Costs:	Not Applicable
B. Data and Program Restoration Costs:	Not Applicable
C. Your Network Failure:	Not Applicable
D. Outsource Service Provider/Cloud Service Provider Failure	Not Applicable
E. Reputational Harm:	Not Applicable
F. Cyber Deception:	Not Applicable
G. Cyber Extortion and Ransomware Loss and Expenses:	Not Applicable

### Section 2 – Third Party Insuring Agreements and Limits of Liability

H. Network Security, Privacy and Data Breach Liability	Not Applicable
I. Regulatory Liability (Penalties)	Not Applicable
J. Media Liability	Not Applicable

### Section 3 – Payment Card Industry Fines and Penalties

K. Payment Card Industry Fines and Penalties	Not Applicable
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### Section 4 – Extensions

L. Advancement of Data Breach Incident Response Costs	Not Applicable
M. Limitation of Liability Contracts	Not Applicable
N. Computer Hardware Cover	Not Applicable
O. Court Attendance Costs	Not Applicable
P. Cyber Terrorism	Not Applicable

9. Retroactive Date:
10. Retention applicable to Insuring Agreements: A, B,F,G,H,I,J: \$XXX  
Retention applicable to Insuring Agreements: E: \$XXX  
Retention applicable to Insuring Agreement K: \$XXX
11. Waiting period applicable to Insuring Agreements C & D: Hours

- 12. Choice of Law: xxxxx
  - 13. Applicable Endorsements: xxxxx
  - 14. (a) Pre-Approved Providers from the Cyber Incident Response Panel: xxxxx
    - (b) (i) Time Limit for Pre-Approved Provider Expenses xxxxx
    - (ii) Allowable amount of Pre-Approved Provider Expenses xxxxx
  - 15. Underwriters' Representative for Claims Notification: xxxxx
  - 16. Underwriters' Representative for all Other Notifications under this Policy: xxxxx
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**SIGNED: \_\_\_\_\_ DATE: 11 SEPTEMBER 2018**

**AUTHORISED SIGNATORY:**

**Agile Underwriting Services Pty Ltd (ABN 48 467 908 243, AFS Licence No. 483373) on behalf of certain Underwriters at Lloyd's, and acts as agent for the Underwriters in performing its duties under its Binding Authority Agreement UMR:**

## Important information

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### **ABOUT AGILE UNDERWRITING SERVICES**

This insurance is issued by Agile Underwriting Services Pty Ltd (ABN 48 607 908 243, AFS Licence No. 483374) (AGILE). AGILE arranges policies for and on behalf of certain Underwriters at Lloyd's (the Insurer).

In all aspects of this Policy, AGILE acts as agent for the Insurer and not for the Insured. In this PDS, "We", "Us", "Our" means Agile Underwriting Services Pty Ltd.

**Head Office:** Level 5, 63 York St, SYDNEY NSW 2000  
**Postal Address:** Level 5, 63 York St, SYDNEY NSW 2000  
**Telephone:** 1300 705 031  
**E-mail:** [service@agileunderwriting.com](mailto:service@agileunderwriting.com)  
**Website:** [www.agileunderwriting.com](http://www.agileunderwriting.com)

### **ABOUT LLOYD'S**

Lloyd's is the world's specialist insurance and reinsurance market. With expertise earned over centuries, Lloyd's is the foundation of the insurance industry and the future of it. Led by expert underwriters and brokers who cover more than 200 territories, the Lloyd's market develops the essential, complex and critical insurance needed to underwrite human progress.

Backed by diverse global capital and excellent financial ratings, Lloyd's works with a global network to grow the insured world – building resilience for businesses and local communities and strengthening economic growth around the world.

### **ABOUT THIS POLICY**

We agree to provide You with insurance in accordance with the terms, Conditions of Cover and exclusions of the Policy based on the information You have provided or was provided on Your behalf to Us subject to payment of the Premium required. The Policy consists of this document, the Schedule and any endorsements affixed (or intended to be affixed) to it and the Application. All of them should be read as if they were one document. This Policy is subject to Australian law and practice.

Throughout this document, certain words begin with capital letters or appear in bold type. These words have special meaning and are included in the Definitions, in Section 4 of this Policy Wording. Please refer to the Definitions for their meaning. Any reference to an Act, legislation or legislative instrument in this document also refers to that Act, legislation or legislative instrument as amended and may be in force from time to time.

## **YOUR DUTY OF DISCLOSURE**

### **What You must tell Us**

We will ask You various questions when You apply for cover. Before you start, renew, extend, reinstate, or vary a Policy with us, you have a duty under the Insurance Contracts Act 1984 (Cth). When You answer those questions, you must be honest and You have a duty under law to tell Us anything known to You, and which a reasonable person in the circumstances, would include in answer to the question. We will use the answers in deciding whether to insure You, and anyone else to be insured under the Policy, and on what terms. You have this same duty to disclose those matters to Us before You renew, extend, vary or reinstate Your Policy.

### **If You do not tell Us**

If You do not answer Our questions in this way, we may reduce Our liability under contract in respect of a claim or refuse to pay a claim, or cancel the Policy. If You answer Our questions fraudulently, we may refuse to pay a claim and treat the Policy as never having commenced.

## **DISCOVERY & CLAIMS MADE INSURANCE**

Section 1 of this Policy operates on a 'losses occurring and discovered' basis whereas Section 2 and Section 3 of this Policy operates on a 'claims made and notified basis'. This means that the Policy covers you for Claims made against you and notified to us during the Policy Period.

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. Any such rights arise under legislation only. The terms of this Policy and the effect of this Policy are that you are not covered for claims made against you after the expiry of the Policy Period.

## **COMPLAINTS AND DISPUTE RESOLUTION**

AGILE takes the concerns of its customers very seriously. AGILE has detailed complaint handling and dispute resolution procedures that You may access, at no cost to You. To obtain a copy of Our procedures, please contact Us on 1300 475 092 or [complaints@agileunderwriting.com](mailto:complaints@agileunderwriting.com).

To assist AGILE with Your enquiries, please provide Us with Your claim or policy number (if applicable) and as much information You can about the reason for Your complaint or dispute. AGILE's complaints and dispute procedures are as follows:

### **Stage 1 - Complaint Handling Procedure**

If You are dissatisfied with any of AGILE's products or services and You wish to lodge a complaint, please contact Us at:

**Postal address:** The Complaints Officer  
AGILE Underwriting Services Pty Ltd  
Level 5, 63 York St, Sydney NSW 2001

**Telephone:** 1300 705 031

**Facsimile:** (+61 2) 9335 3467

**Email:** [complaints@agileunderwriting.com](mailto:complaints@agileunderwriting.com)

We will respond to Your complaint within fifteen (15) business days, or if further investigation or information is required, We will work with You to agree on reasonable alternative timeframes.

## Stage 2 – Dispute Resolution Procedure

If You are dissatisfied with Our response to Your complaint, you may ask that Your complaint may be referred to:

**Postal address:** Lloyd’s Underwriters’ General Representative in Australia  
Lloyd’s Australia Limited  
Level 9, 1 O’Connell Street Sydney NSW 2000

**Telephone:** (+61 2) 8298 0700

**Facsimile:** (+61 2) 9223 1466

**Email:** [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)

It will be handled by either Lloyd’s Australia or the Lloyd’s Complaint team in London. Where your complaint is eligible for referral to the Australian Financial Ombudsman Service (FOS), your complaint will be reviewed by a person at Lloyd’s Australia with appropriate authority to deal with your dispute. If Your complaint or dispute is not resolved to Your satisfaction or a final response has not been provided within 45 days, you may refer the matter to the Financial Ombudsman Service (FOS) for review. FOS provides a free and independent dispute resolution service for consumers who have general insurance disputes falling within its terms of reference and its contact details are:

**Postal address:** Financial Ombudsman Service  
GPO Box 3, Melbourne  
VIC 3001

**Telephone:** 1800 367 287

## AUSTRALIAN LAW AND SERVICE OF SUIT

This Policy is subject to the laws of Australia. Any dispute relating to the Policy shall be submitted to the exclusive jurisdiction of a Court within the State or Territory of Australia in which the Policy was issued.

The Insurers hereon agree that:

- (i) In the event of a dispute arising under this Insurance, the Underwriters at your request will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- (ii) Any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia  
Level 9, 1 O'Connell Street  
Sydney NSW 2000  
Australia

who has authority to accept service and to enter an appearance on the Underwriters' behalf, and who is directed at your request to give a written undertaking to you that he/she will enter an appearance on the Underwriters' behalf.

- (iii) If a suit is instituted against any one of the Underwriters, all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

### **PRIVACY STATEMENT**

At AGILE, we are committed to protecting your privacy in accordance with the *Privacy Act 1988* (Cth). We use your personal information to assess the risk of and provide insurance and other insurance services to service your account. We may use your contact details to send you information and offers about products and services that we believe will be of interest to you.

If you don't provide us with full information, we may not be able to provide insurance or assess a claim to service your account. If you provide us with information about someone else you must obtain their consent to do so. We provide your information to the insurer we represent when we issue and administer your insurance (who may be overseas) and their reinsurers. We are part of the Agent Zero Group and may provide your information to the entity that provides us with business support services.

We may also provide your information to your broker and contracted third party service providers (e.g. Loss adjuster companies, lawyers or others who may be engaged to assist in claims handling, underwriting or for the purpose of fulfilling compliance and/or regulatory requirements), but will take all reasonable steps to ensure that they comply with the Privacy Act. Our Privacy Policy contains information about how you can access the information we hold about you, ask us to correct it, or make a privacy related complaint.

You can obtain a copy from Our Privacy Officer by telephone 1300 475 092 email ([privacy@agileunderwriting.com](mailto:privacy@agileunderwriting.com)) or by visiting Our Website ([www.agileunderwriting.com](http://www.agileunderwriting.com)). By providing Us with Your personal information, You consent to its collection and use as outlined above and in Our Privacy Policy.

## Section 1 – Insuring Agreements (First Party)

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### A. Data Breach Incident Response Costs

We shall pay on **your** behalf **breach response costs** in excess of the **retention**, arising from an actual or suspected **data breach** that first occurs on or after the **retroactive date** and is first discovered by **you** and notified to **us** during the **policy period** or any **extended reporting period**.

### B. Data and Program Restoration Costs

We shall indemnify **you** for **data and program restoration costs**, in excess of the **retention**, incurred as a result of a **network security breach** that first occurs on or after the **retroactive date** which is discovered by **you** and notified to **us** during the **policy period** or any **extended reporting period**.

### C. Your Network Failure

We shall indemnify **you** for **income loss** and associated **extra expense**, in excess of the **waiting period**, incurred during the **period of restoration** due to the suspension or deterioration of **your** Business during the **period of restoration** directly as a result of the total or partial interruption, degradation in service or failure of **your network**, provided that the duration of such interruption, degradation or failure exceeds the **waiting period** and was directly caused by:

- a) **computer attack**;
- b) **operational error**;
- c) Accidental damage of hardware;
- d) Failure of back-up generators;
- e) Electrostatic build-up and static electricity;
- f) **administrative error**; or
- g) **programming error**

which first occurred on or after the **retroactive date** and was discovered by **you** during the **policy period** or any **extended reporting period**.

We will not be liable for any **income loss** and associated **extra expense** incurred during the **waiting period**. The **waiting period** will apply to each **period of restoration**.

Calculation of **income loss** and associated **extra expense** is described in Section 6 of this Policy.

## D. Outsource Service Provider or Cloud Service Provider Failure

We shall indemnify you for **income loss** and associated **extra expense**, in excess of the **waiting period**, incurred during the **period of restoration** due to the suspension or deterioration of your Business during the **period of restoration** directly as a result of the total or partial interruption, degradation in service or failure of a **network** operated by an **outsource service provider** or **cloud service provider** for you, provided that the duration of such interruption, degradation or failure exceeds the **waiting period** and was directly caused by:

- h) **computer attack**;
- i) **operational error**;
- j) accidental damage of hardware;
- k) failure of back-up generators; or
- l) electrostatic build-up and static electricity;

which first occurred on or after the **retroactive date** and was discovered by you during the **policy period** or any **extended reporting period**.

We will not be liable for any **income loss** and associated **extra expense** incurred during the **waiting period**. The **waiting period** will apply to each **period of restoration**.

Calculation of **income loss** and associated **extra expense** is described in Section 6 of this Policy.

## E. Reputational Harm

We shall indemnify you for **reputational harm** and associated **crisis communications expenses**, in excess of the **retention**, incurred during the **period of indemnity** as a result of an **adverse media event** sustained by you and notified to us during the **policy period** or any **Extended Reporting Period**, if applicable, provided that the **adverse media event** occurred on or after the **retroactive date**.

## F. Cyber Deception

We shall reimburse you for any **cyber deception loss** in excess of the **retention**, which first occurs on or after the **retroactive date** and which was discovered during the **policy period**. As a condition precedent to coverage under this Insuring Agreement, all instructions purportedly received by you for the transfer of **money, securities or other asset** of value, must be authenticated by a call back to the telephone number held on file for the individual or entity requesting the transfer, and you must receive oral confirmation from the individual at that telephone number to proceed with the transfer.

## G. Cyber Extortion and Ransomware loss and expenses

We shall indemnify you to the extent insurable by law for **extortion loss and expenses**, in excess of the **retention**, incurred as a result of a **cyber extortion and ransomware event** that first occurs on or after the **retroactive date** and is discovered by you and notified to us during the **policy period** or any **extended reporting period**.

## Section 2 – Insuring agreements (Third Party)

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### H. Network Security, Privacy and Data Breach Liability

We shall pay on **your** behalf **damages** and **claim expenses**, in excess of the **retention**, which **you** become legally obligated to pay as a result of a **claim** arising from a **network security breach, privacy violation** or **data breach** that first occurs on or after the **retroactive date**, provided that such **claim** is first made against **you** and notified to **us** during the **policy period** or any **extended reporting period**.

### I. Regulatory Liability (Penalties)

We shall pay on **your** behalf, to the extent **we** are permitted by law to pay, **penalties** and **claim expenses** in excess of the **retention** which **you** become legally obligated to pay as a result of a **claim** in the form of a **regulatory proceeding** arising from a **privacy violation** or **data breach** that first occurs on or after the **retroactive date**, provided that such **regulatory proceeding** is first made against **you** and notified to **us** during the **policy period** or any **extended reporting period**.

### J. Media Liability

We shall pay on **your** behalf **damages** and **claim expenses**, in excess of the **retention**, that **you** become legally obligated to pay as a result of a **claim** for a **media wrongful act** that first occurs on or after the **retroactive date**, provided that such **claim** is first made against **you** and notified to **us** during the **policy period** or any **extended reporting period**.

## Section 3 – Insuring agreement

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### K. Payment Card Industry Fines and Penalties

We shall pay on **your** behalf **PCI fines and assessments** and **claim expenses**, in excess of the **retention**, which **you** become legally obligated to pay as a result of a **claim** arising from a **data breach** that first occurs on or after the **retroactive date**, provided that such **claim** is first made against **you** and notified to **us** during the **policy period** or any **extended reporting period**.

## Section 4 - Extensions

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### L. Advancement of Data Breach Incident Response Costs

Should **you** retain a firm or company from the list of pre-approved providers from **our cyber incident response panel** as stated in Item 14 (a) of the **schedule**, and the retention of such provider has been recommended by **breach counsel** then, **you** may incur reasonable and necessary **breach response costs** without first obtaining **our** prior written consent for the period of time listed in Item 14 b. (i.) of the **schedule** only and for an amount not to exceed the amount listed in Item 14 b. (ii.) of the **schedule**. No Limits of Liability are provided by this extension in addition to the Limits of Liability already provided. Within 72 hours of retaining such vendor, **you** must provide notification to **us** that such firm or company has been retained.

Any **breach response costs** incurred consistent with the foregoing paragraph but after the period of time listed in Item 14 b. (i.) of the **schedule** and any **breach response costs** incurred that do not utilise a vendor from the list of pre-approved providers from **our cyber response panel** are subject to **our** prior written consent.

### M. Limitation of Liability Contracts

Notwithstanding Section – 10 (f) in respect of “Subrogation”, **we** recognise that in the performance of your normal business operations **you** may from time to time enter into commercial contracts or agreements with other parties which may limit the liability of such parties and **we** agree that such agreements will not prejudice your right to claim under this policy.

### N. Computer Hardware Cover

**We** will indemnify **you** for the costs of the replacement of any of **your network** that is physically damaged solely and directly because of **network security breach** which occurred during the **policy period** or any **extended reporting period** and:

- (a) cannot be restored to functionality after reasonable efforts have been made;  
and
- (b) it would be commercially unreasonable to incur costs to restore functionality.

No Limits of Liability are provided by this extension in addition to the Limits of Liability already provided by the specific Insuring Agreements. The maximum payable under this extension is \$25,000, but only if this Section 4 Insuring Agreement N. is marked as applicable in the **schedule**.

## O. Court Attendance Costs

We will indemnify you for court attendance costs incurred during the **policy period** by any past, present or future director, officer, board member, trustee, owner, partner or manager of the **insured organisation**, but only for acts performed within the scope of their duties on behalf of the **insured organisation** who is legally required to attend as a witness in a **claim** covered by the policy, to an amount not exceeding \$500 per day. No Limits of Liability are provided by this extension in addition to the Limits of Liability already provided. The maximum payable under this extension is \$15,000, but only if this Section 4 Insuring Agreement O. is marked as applicable in the **schedule**.

## P. Cyber Terrorism

Notwithstanding Exclusion 19, if a **loss** or **claim** is covered under one or more of the Insuring Agreements (A-K) listed above, coverage will still be provided under that Insuring Agreement(s) in the event of a **Cyber Terrorism Event**. No Limits of Liability are provided by this extension in addition to the Limits of Liability already provided by the specific Insuring Agreements, but only if this Section 4 Insuring Agreement P. is marked as applicable in the **schedule**.

## Section 5 – Definitions

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**Administrative error** means an operating error or omission, including the choice of the program used, an error in setting parameters or any error or omission in the input, processing, output of **your data** or operation or maintenance of **your network** by **you** or a third party providing services to **you**, which results in loss, alteration or destruction of the **your data**.

**Adverse media event** means a **data breach**, **network security breach**, **privacy violation** or **cyber extortion event** sustained by **you** and reported in the media including via newspapers, radio, television, internet, blogging, vlogging and social media, that has a negative impact on **your** business or reputation.

**Breach counsel** means the law firm listed in Item 14 (a) of the **schedule**.

**Breach response costs** means reasonable and necessary amounts paid by **you**, with our consent, to third party service providers for **computer forensics services**, **legal services**, **notification services**, **fraud monitoring and resolution services**, **call centre services** and **public relations services**.

**Call centre services** means establishing and operating a call centre in response to a **data breach**.

**Claim** means any:

1. civil proceeding commenced by the filing of a complaint, motion for judgment, injunctive relief or similar proceeding; or
2. written demand for monetary or non-monetary relief, written demand for arbitration or written request to toll or waive a statute of limitations;
3. with respect to Insuring Agreement I. Regulatory Liability only, **claim** also means a **regulatory proceeding**.

Multiple **claims** arising out of the same or a series of related acts, errors, omissions, **data breaches** or **network security breaches** will be considered a single **claim** for purposes of this **policy** and will be deemed to have been made at the time of the first such **claim**.

**Claim expenses** means the following amounts incurred with **our** consent:

1. reasonable and necessary legal fees and expenses in the investigation, defence or appeal of a **claim**; and
2. premiums on appeal bonds, attachment bonds or similar bond. However, **we** will have no obligation to furnish such bond.

**Cloud service provider** means an individual or entity that is not an **insured** that provides cloud computing resources that are delivered as a service over a network or the internet, and/or through a data centre or other premises where **your data** is stored or managed under a written contract.

**Computer forensics services** means investigation and analysis to determine the cause and scope of a **data breach** and the information impacted by such **data breach**.

**Computer attack** means a denial of service attack, use of malicious code/malware, computer virus or any other unauthorised use of **your network** (including use by an authorised person(s) for an unauthorised purpose), which is either intended to cause damage to **your network**, or as a result of an attack elsewhere, causes damage to **your network**.

**Computer security** means all controls, whether policy or technology based, implemented by **you** in order to prevent intrusions or unauthorised access to, a **network**, **extended network** or electronic data.

**Control group** means the CEO, CFO, CISO, CIO, General Counsel, Director of Risk Management or any individual in a functionally equivalent position of the **insured organisation**.

**Crisis communications expenses** means expenses reasonably incurred by **you** and approved in writing in advance by **us** for the employment of a public relations consultant if **you** reasonably consider that action is needed in order to avert or mitigate **an income loss** or **adverse media event**.

**Cyber deception loss** means a misrepresentation of fact or an intentional, malicious, wilful or fraudulent act undertaken by a third party that misleads an **employee** and directly results in any or all of the following:

1. **Money, securities** or **other asset** owned by **you** being transferred, disbursed, paid, delivered, altered, corrupted or lost;

2. **Money, securities or other asset** of the **your** customers or clients being disbursed, paid, delivered, altered, corrupted, or lost from an account that is in **your** trust or control.

**Cyber extortion and ransomware event** means actual or threatened malicious activity directed at **your network** or electronic data, where payment or other action from you is demanded by a third party. Including the installation of malware onto **your network** by a third party or employee, which encrypts any **data** or **programs**, accompanied by a demand for the payment of **money**, bitcoin, **securities** or **other asset** of value in return for unencrypting the **data** or **programs**.

**Cyber terrorism event** for the purpose of the Cyber Terrorism Extension shall mean an act or series of acts of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s), committed for political, religious or ideological purposes. This shall include, but is not limited to, the intention to influence any government and/or to put the public in fear for such purposes by using activities perpetrated electronically or otherwise that are directed towards the destruction, disruption or subversion of communication and information systems, infrastructure, computers, the internet, telecommunications or electronic networks and/or the contents thereof or sabotage and/or threat there from.

**Cyber incident response panel** means the firms and companies listed in Item 14 (a) of the schedule.

**Damages** means a monetary judgment, award (including pre and post-judgment interest), or settlement. **Damages** does not mean and shall not include:

1. past or future royalties, **your** past or future profits, restitution, disgorgement of profits, or the costs of complying with orders granting injunctive relief or other non-monetary relief;
2. return or offset of **your** fees, charges, or commissions for goods or services already provided or contracted to be provided;
3. punitive, multiple, or exemplary damages, unless insurable by the law of an applicable venue that most favours coverage for such amounts;
4. taxes, sanctions, fines or civil or criminal penalties, unless insurable by the law of an applicable venue that most favours coverage for such amounts;
5. any amounts for which **you** are not liable, or for which there is no legal recourse against **you**;
6. unpaid licence fees;
7. liquidated damages, but only to the extent such liquidated damages
8. exceed the amount which **you** would have been liable in the absence of such liquidated damages agreement;
9. **Penalties**; or
10. **PCI fines and assessments**.

**Data breach** means the acquisition, access or disclosure of **personally identifiable information** or non-public corporate information in **your** care, custody or control by a person or entity (including a rogue employee) that is unauthorised by the **insured organisation**.

**Data and program restoration costs** means reasonable and necessary amounts paid to a third party to restore, or attempt to restore, **your** electronic data assets and **programs** which are compromised as a result of a **network security breach**.

**Employee** means any natural person, other than a partner or principal of the **named insured** and any **subsidiary**, who is under a contract of service of apprenticeship with the **named insured** and any **subsidiary**.

**Event** means a **data breach, network security breach or cyber extortion and ransomware event**.

**Extended reporting period** means an Extended Reporting Period or Additional Extended Reporting Period as defined in Section 10 subsection (c) of the **policy**.

**Extortion loss and expenses** means the following costs, incurred with **our** consent, in response to a **cyber-extortion event**:

1. The ransom paid, or if the demand is for goods or services, the fair market value of such goods or services at the time of surrender; and
2. reasonable and necessary costs to execute such payment.
3. reasonable and necessary expenses incurred by **you** in order to meet, eliminate or remove the threat.

**Extra Expense** means reasonable and necessary expenses **you** have incurred, that are over and above the costs that **you** would have ordinarily incurred to conduct **your** business had no **network security breach** occurred, to:

1. avoid or minimise the suspension or deterioration in **your** business; preserve critical evidence of any criminal or malicious wrongdoing; and
2. discover and determine the nature of the **network security breach**.
3. The total expenses incurred under part 1. above shall not exceed the amount by which the **your income loss** is reduced by such expenses.

**Fraud monitoring and resolution services** means the offering of dark-web monitoring credit monitoring, identity monitoring or identity restoration services to an **impacted population** for two years (or longer, if required by law).

**Impacted population** means one or more individuals whose **personally identifiable information** was or may have been impacted as a result of a **data breach**.

**Income loss** means **your** income loss covered under Insuring Agreement C. and Insuring Agreement D. as calculated in Section 6, Paragraph a. of this **policy**.

**Legal services** means advice provided by a law firm to: determine **your** obligations under the breach notice laws, draft content for notifications and reports to regulatory entities, and coordinate service providers approved by **us** to provide **computer forensics services, legal services, notification services, fraud monitoring and resolution services, call centre services and public relations services**.

**Loss** means **breach response costs, damages, claim expenses, penalties, PCI fines and assessments, income loss and extra expense, data restoration costs, extortion loss and any other amounts covered under this policy**.

**Media Event** means a **data breach, network security breach, privacy violation or cyber extortion and ransomware event** which touches or concerns the whole or part of the industry sector or market and affects the revenue, reputation or goodwill of multiple (more than one) business.

**Media wrongful act** means any of the following acts in **your** course of releasing any content on **your** website or social media:

1. Defamation, slander, libel, injurious falsehood or product disparagement;
2. Invasion of privacy, intrusion upon seclusion or misappropriation of likeness, picture, name or voice;
3. Copyright infringement, misleading or deceptive conduct under the *Competition and Consumer Act 2010* (Cth) or similar legislation, passing off or trade mark infringement;
4. Plagiarism, piracy or misappropriation of ideas; or
5. Domain name infringement or improper deep-linking or framing.

**Merchant services agreement** means an agreement between the **insured organisation** and a credit or debit card company, credit or debit card processor, financial institution, or independent sales organisation allowing the **insured organisation** to accept payment by credit or debit card.

**Money** means a medium of exchange in current use and authorised or adopted by a domestic or foreign government and includes currency, coins, banknotes, bullions, or registered checks. Money also means virtual currencies including bitcoins.

**Named insured** means the entity named in Item 3 of the **schedule**.

**Network** means all desktops, laptops, servers, peripheral devices, mobile devices or other electronic end points under **your** direct operational control or under the operational control of a **cloud service provider**, whether owned or leased by **you**. However, with respect to indemnification for **income loss** and associated **extra expense** this definition is only extended to include **cloud service provider** if Section 1 Insuring Agreement D is marked as applicable in the **schedule**.

**Network security breach** means:

1. An actual or reasonably suspected unauthorised access to, or usage of, **your network** due to a circumvention of **your computer security**; or
2. The transmission of malicious code due to a failure of **your computer security**.

**Notification services** means communications to an **impacted population** advising them of a **data breach**.

**Operational error** means the unintentional, accidental, negligent act, error or omission in entering or modifying **your data** (including the damage or deletion thereof), or in creating, handling, developing, modifying, or maintaining your **data** or **programs**, or in the ongoing operation or maintenance of **your network**.

**Other asset** means a tangible and physical product that is owned by **you** or is under **your** trust or control and:

1. Has an economic value; or
2. Is held as inventory for sale; or
3. Is sold or exchanged in trade or commerce; or
4. Is shipped via land sea or air,

**other asset** does not include **money** or **securities**.

**Outsource service provider** means an individual or entity that is not an **insured** and is not a **cloud service provider** that provides: a) business process services for **you** in accordance with a written contract with **you**, including human resource, call centre, fulfilment and logistical support; and/or b) information technology services for **you** in accordance with a written contract with **you**, including hosting, security management, co-location and data storage.

**PCI fines and assessments** means all amounts **you** are legally obligated to pay under a **merchant services agreement** following a **data breach** impacting credit or debit card information, including fines or penalties for non-compliance with the applicable PCI Data Security Standards, monetary assessments and case management fees. **PCI fines and assessments** does not include any ongoing obligation or audit following the imposition of an assessment, fine or penalty.

**Penalties** means a regulatory agency's civil penalties or civil fines, or monetary awards to a third party, including a sum of money which the Insured is legally required to deposit into a fund as equitable relief for the payment of consumer claims due to an adverse judgment or settlement of a regulatory proceeding. However, **Regulatory Penalties** does not include any criminal penalties or criminal fines issued by a regulatory agency of any kind, including federal, state, or local governmental agencies.

**Period of indemnity** means the period of time that begins on the date of the first **adverse media event** and ends at 5 pm on the 180<sup>th</sup> day post **adverse media event**.

**Period of restoration** means the period of time starting when the total or partial interruption of **your network** began and ending on the earlier of:

1. The date on which the **network** is restored to the same or equivalent condition that existed prior to the **network security breach** (or could have been had **you** acted with due diligence and dispatch); or
2. at 5 pm on the 180<sup>th</sup> day post **network security breach**.

**Personally identifiable information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not, including but not limited to an individual's name, tax file number, Medicare number, healthcare information, drivers licence number, bank account number, credit card and debit card numbers, access codes or passwords and any other personal information as defined in 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.

**Policy** means all terms, conditions and exclusions contained herein and includes the **schedule** and any extensions or endorsements attaching to and forming part of this policy document.

**Policy period** means the period of time stated in Item 2 of the **schedule**.

**Programming Error** means:

an error that occurs during the development or encoding of a program, application or operating system that would, once in operation, result in a malfunction of **your network** and/or an interruption and/or an incorrect result.

**Programs** means fully functional software, coding and operating instructions that interfaces with **your network** to perform tasks.

**Proof of loss** means a statutory declaration completed by **you** in a form approved by **us**.

**Proposal** means all information and documents that **you** have provided, or caused to be provided, to **us** in relation to your application to obtain the **policy** from **us**.

**Privacy violation** means a violation of:

1. Any statute, rule or regulation requiring you to limit or control the collection, use of, or access to **personally identifiable information**;
2. Any individual's right to privacy; or
3. **Your** written, public facing privacy policy.

**Public relations services** means services provided by a public relations or crisis management firm to minimise the reputational impact on **you** as a result of a **data breach** for up to a period of 12 months after **your** discovery of a **data breach**.

**Regulatory proceeding** means a request for information or assertion of liability by a local, state, federal or foreign governmental entity, in its official capacity.

**Reputational Harm** means a negative perception or harm to **your** reputation and a tangible and identifiable loss of net income directly resulting from an **adverse media event** sustained by **you**.

**Retention** is specified in the **schedule** in respect of each insuring clause and must be paid by **you** in accordance with Section 9 (c) of the **policy**.

**Retroactive date** means the date stated in Item 9 of the **schedule**. Provided, in the event a **subsidiary** is acquired during the **policy period**, the **retroactive date** for such **subsidiary** means the date the **named insured** acquired such **subsidiary**.

**Securities** means written negotiable and non-negotiable instruments or contracts which represent **money** or **other asset**, **securities** does not include the actual **money** or **other asset**.

**Schedule** means the schedule attached to this **policy** and signed by **us**.

**Subsidiary** means any entity that the **named insured**, either directly, or indirectly through one or more subsidiaries:

1. Owns more than 50% of its outstanding voting securities, partnership or membership interests;
2. Has the right to elect or appoint a majority of such entity's directors, managers or trustees; or
3. Has sole control over the management structure pursuant to a written agreement.

Any such entity that is acquired by the **insured organisation** during the **policy period**, and whose count of non-redundant **personally identifiable information** or annual revenues exceeds 15% of the **insured organisation's** will be deemed a **subsidiary**, but only for 90 days from the effective date of such acquisition. If **you** provide notice to **us** within 30 days of such entity becoming acquired and agree to any additional premium and/or amendment of the provisions of this **policy** required by **us** relating to such entity, **we** will

issue an endorsement including such entity within the definition of **subsidiary**. In all events, there is no coverage under this **policy** for any acts, errors, omissions or **events** that first occur prior to the time such entity became a **subsidiary**.

**Waiting period** means the period of time that commences when the partial or complete interruption, degradation or failure of the **network** begins, and expires after the number of hours specified in Item 11 of the **schedule**.

**We, us, and our** means the certain Underwriters at Lloyd's.

**You, your and insured** means:

1. The **named insured** and any **subsidiary** (together, the "**insured organisation**");
2. Any past, present or future director, officer, board member, trustee, owner, partner or manager of the **insured organisation**, but only for acts performed within the scope of their duties on behalf of the **insured organisation**;
3. Any past, present or future employee of the **insured organisation**, including any full-time, part-time, temporary or leased employees, independent contractors or volunteers, but only for acts performed within the scope of their duties on behalf of the **insured organisation**; and
4. The estate, heirs, executors, administrators, assigns, and legal representatives of any **insured** in the event of such **insured's** death, incapacity, insolvency, or bankruptcy, but only to the extent that such **insured** would otherwise be provided coverage under this **policy**.

## Section 6 – Conditions applicable to Insuring Agreement C. and Insuring Agreement D.

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### a) Calculation of Income Loss

**Income Loss** means a reduction in net profit before tax attributable to a loss of revenue arising from a **network security breach**, and continuing normal operating expenses incurred by **you** to the extent that such expenses would have been incurred had there been no **network security breach**.

Adjustments shall be made as may be necessary to provide for your business trends, reduction in fixed operating expenses, variations in or other circumstances affecting **your** business either before or after the **network security breach** occurred, or which would have affected **your** business had the **network security breach** not occurred.

The calculation of **income loss** under Insuring Agreement C. and Insuring Agreement D. shall be determined using the Net Income calculation method as follows.

**Your** net income (Net profit or loss) before tax achieved during the **period of restoration**, compared with **your** net income before tax in the twelve months immediately prior to the **network security breach**, taking into account:

- i. Seasonality of your net profit; and
- ii. Other variations affecting your net profit.

**You** continuing normal operating expenses or fixed costs (including payroll, rent and utility bills) which are redundant because of the suspension or deterioration of your business, to the extent that such expenses must continue during the **period of restoration**.

**Extra expense you** incurred solely as a consequence of the **network security breach** to minimise, avoid or reduce the period of interruption and loss of net income, provided the expense is over and above the expense that you would have incurred had there been no **network security breach**. **Extra expense** shall also include any expediting expenses to the extent such expenses are approved, in writing, by **us** before they are incurred.

**Your** income loss shall be calculated on an hourly basis and shall apply only to that time during the period of restoration.

#### b) Proof of Loss

With respect to coverage under Insuring Agreement C. and Insuring Agreement D., **you** must complete and sign as soon as practicable, but in any event no later than 90 days after the **period of restoration**, a **proof of loss** detailing the **income loss** and associated **extra expense** for which you are seeking coverage. Such **proof of loss** must include, at a minimum: a description of the **network security breach**, the amount and type of **loss**, any data, software and equipment involved; copies of available system and security logs, and any reports of outside experts and consultants; and all underlying materials that reasonably relate to or form part of the basis of the proof of such **income loss** and associated **extra expense**.

**You** may provide an interim **proof of loss** and request interim payment from us if the **loss** is incapable of being fully quantified.

**We** will pay for costs incurred by **you** to engage one of **our** approved forensic accountants to assist **you** with preparing a **proof of loss**. Any other costs incurred by **you** to prepare a **proof of loss** will be **your** responsibility and not covered under this **policy**.

#### c) Dispute Resolution

With regard to any **loss** under Insuring Agreement C. and Insuring Agreement D., if **you** and **we** have a dispute as to the amount sustained, such dispute will be resolved through appraisal. If one of our approved forensic accountants prepared the **proof of loss** and **you** disagree with the amount sustained, then **you** will select an appraiser who will separately arrive at the amount of **income loss** and associated **extra expense** sustained. If one of our approved forensic accountants did not prepare the **proof of loss**, each party will select an appraiser who will separately arrive at the amount of **income loss** and associated extra expense sustained.

If **you** and **we** fail to then agree upon the amount, the dispute will be submitted to an impartial appraiser jointly selected. A decision agreed to by two of the three appraisers will be binding on both the **you** and **us**.

Except as otherwise provided in Section 6. Paragraph b. each party will bear their own costs for the work of the appraiser they each retain and will equally share the costs of the third, impartial appraiser. Any appraisal will be subject to the terms, conditions and exclusions of this **policy**.

## Section 7 – Conditions applicable to Insuring Agreement E.

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### a. Calculation of reputational harm

The calculation of the net income aspect of **reputational harm** shall be based on an analysis of the revenues and costs generated during each month of the twelve (12) months prior to the occurrence of the **adverse media event** 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. Proof of Loss

With respect to coverage under Insuring Agreement E., **you** must complete and sign as soon as practicable, but in any event no later than 90 days after the **period of indemnity** following an **adverse media event**, a **proof of loss** detailing the **reputational harm** **you** are seeking coverage for. This shall set out in detail how the loss has been calculated and what assumptions have been made. **You** shall produce any documentary evidence, including any applicable reports, books of accounts, bills, invoices, and other vouchers and copies of the such which **we** may require and **you** shall afford **us** or **our** agent every assistance in their investigations.

**You** may provide an interim **proof of loss** and request interim payment from **us** if the **loss** is incapable of being fully quantified.

**We** will pay for costs incurred by **you** to engage one of **our** approved forensic accountants to assist **you** with preparing a **proof of loss**. Any other costs incurred by **you** to prepare a **proof of loss** will be **your** responsibility and not covered under this Policy.

### c. Dispute Resolution

With regard to any **loss** under Insuring Agreement E., if **you** and **we** have a dispute as to the amount sustained, such dispute will be resolved through appraisal. If one of **our** approved forensic accountants prepared the **proof of loss** and **you** disagree with the amount sustained, then **you** will select an appraiser who will separately arrive at the amount of **reputational harm** sustained. If one of **our** approved forensic accountants did not prepare the **proof of loss**, each party will select an appraiser who will separately arrive at the amount of **reputational harm** sustained.

If **you** and **we** fail to then agree upon the amount, the dispute will be submitted to an impartial appraiser jointly selected. A decision agreed to by two of the three appraisers will be binding on both **you** and **us**.

Except as otherwise provided in Section 7., Paragraph b. each party will bear their own costs for the work of the appraiser they each retain and will equally share the costs of the third, impartial appraiser. Any appraisal will be subject to the terms, conditions and exclusions of this **policy**.

## Section 8 – Exclusions

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There is no coverage under this **policy** for any **loss**:

1. Based upon or arising out of any actual or alleged bodily injury, sickness or disease, including death, mental injury, mental anguish and emotional distress; however, this exclusion does not apply to a **claim** for mental injury, mental anguish or emotional distress under Insuring Agreement H. Network Security, Privacy and Data Breach Liability and Media Liability.
2. Based upon or arising out of any actual or alleged physical damage to or destruction of any real or tangible property, including loss of use.
3. Based upon or arising out of any liability assumed under a contract, or any actual or alleged breach of a contract, guarantee or warranty; however, this exclusion does not apply to:
  - a) Liability which would have existed even in the absence of such contract;
  - b) Breach of **your** publicly facing privacy policy;
  - c) Indemnity provisions regarding the protection of **personally identifiable information**;
  - d) A **claim** for **PCI fines and assessments** under Insuring Agreement K. PCI Fines and Assessments; and
4. Based upon or arising out of **your** capacity as a director, officer or trustee or arising or alleged to have arisen from any statement or information about **your** business activities contained in accounts, reports or financial statements.
5. Based upon or arising out of any deliberate, dishonest, fraudulent or criminal acts by **you** acting with the knowledge or consent of the **control group**; however, this exclusion shall not apply to **claim expenses** incurred in defending any such **claim** alleging the foregoing until such time that there is a final adjudication establishing such conduct, at which time **you** shall reimburse **us** for all such **claim expenses** incurred. Only facts pertaining to and knowledge possessed by the **control group** shall be imputed to other insured parties under this **policy**.
6. Based upon or arising out of any actual or alleged: (i) liability to any employee, former employee or prospective employee, or (ii) liability arising or alleged to have arisen from any superannuation, employee benefit plan or pension plan, including but not limited to the Employee Retirement Income Security Act of 1974 (ERISA); however, this exclusion does not apply to any **claim** or **loss** arising out of a **data breach** impacting **your** current or former employees.
7. Based upon or arising from any loss arising from a **media event** which touches or concerns the whole or part of the industry sector or market and affects the revenue, reputation or goodwill of multiple (more than one) businesses.
8. Based upon or arising out of any actual or alleged fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, an act of God or any other similar physical event howsoever caused or from any consequential losses arising or alleged to have arisen therefrom.

9. Based upon or arising out of any actual or alleged satellite, electrical or other infrastructure service interruptions, including any electrical disturbance, spike or blackout and any outage or disruption of power, utility services, Internet services or telecommunications unless such infrastructure is under **your** direct control.
10. Based upon or arising out of **your** insolvency or bankruptcy.
11. Based upon or arising out of any **claim** made by or on behalf of an **insured** against another **insured** however, this exclusion does not apply to a **claim** brought by an employee arising out of **data breach**.
12. Based upon or arising out of any actual or alleged patent infringement.
13. Based upon or arising out of any actual or alleged pollution, nuclear, radiation, chemical, biochemical, biological or asbestos related contamination or effects thereon, including electromagnetic radiation, electromagnetic fields and silica.
14. Based upon or arising out of;
  - a) any actual or alleged act, error, incident or **event** that first took place before the **retroactive date**;
  - b) or any related or continuing acts, errors, incidents or **events** where the first such act, error, incident or **event** took place before the **retroactive date**.

However this exclusion does not apply to Section 1 – Insuring Agreements A-G.

15. Based upon or arising from any acts, errors, incidents or **events** which could give rise to a **claim** or **loss** under this **policy** of which the **control group** was aware prior to the Inception Date of this **policy**.
16. Based upon or arising from any governmental investigation or enforcement of any state, federal or foreign regulation, including any regulation promulgated by the Australian Trade and Investment Commission, Australian Communications and Media Authority, or the Australian Securities and Investments Commission; however, this exclusion does not apply to Insuring Agreement I. Regulatory Liability.
17. Based upon or arising out of any actual or alleged purchase, sale or offer or solicitation of an offer to purchase or to sell securities, including any violation of any securities law including the *Corporations Act 2001 (Cth)* and the *Corporations Regulations 2001 (Cth)*, as amended, or any similar law.
18. Based upon or arising out of any actual or alleged failure to comply with the United States Children’s Online Privacy Protection Act 1998 or similar legislation protecting the rights of minors in the collection, storing, sharing and displaying of data, information or likenesses of minors, or in the access or use of **your** website(s) by minors.
19. Based upon or arising out of any act of terrorism; however, this exclusion does not apply to an act of terrorism involving a non-physical attack on **your network**.
20. Based upon or arising out of any actual or alleged antitrust violation, deceptive or unfair trade practices, anti-competitive business practices, unfair competition, consumer fraud or false or deceptive advertising; however, this exclusion does not apply to any **claim** arising out of a **data breach**, **network security breach** or **privacy violation** under Insuring Agreement H. - Network Security, Privacy and Data breach Liability.

21. Based upon or arising out of the confiscation, nationalisation, requisition, damage or destruction to property, **networks, extended networks** or data by or under the order of any government, public or local authority.
22. Based upon or arising out of strikes or similar labour actions, war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power.

## Section 9 – Limits of Liability and Retention

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- a) The Limit of Liability set forth in Item 8(a) of the **schedule** is **our** Aggregate Limit of Liability for all amounts paid under this **policy**, regardless of the number of **claims, insureds** or **events**.
- b) The Sub-Limits of Liability set forth in Item 8 (b) of the **schedule** is **our** aggregate limit of liability under each Insuring Agreement, regardless of the number of **claims, insureds** or **events**. The Sub-Limits are part of, and not in addition to, the Aggregate Limit of Liability. The Limits of Liability stated in Item 8 (b) of the **schedule** will be the maximum amount we will be liable to pay for any single **claim** or **event** under each Insuring Agreement. If **loss** arising out of the same **claim** or **event** is covered under more than one Insuring Agreement, **we** will only be liable to pay for such **loss** under one Insuring Agreement, which will be the Insuring Agreement that provides the most favourable coverage. The Each **claim** or **event** Limits of Liability are a part of, and not in addition to, the **policy** Limit of Liability.
- c) The **retention** amount(s) set forth in Item 10 of the **schedule** for each Insuring Agreement applies to each and every **claim** or **event**. Such **retention** amount(s) must be paid by **you** and cannot be insured.
- d) In the **event** a **claim** or **event** implicates coverage under more than one Insuring Agreement, the single highest **retention** shall apply

## Section 10 – Conditions

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- a) Duty to Defend
  1. **We** will have the right and duty to defend any **claim** against **you** seeking payment under the terms of this **policy**, even if any of the allegations of the **claim** are groundless, false, or fraudulent. **We** will have the right to appoint defence counsel upon being notified of such **claim**. Defence counsel will be mutually agreed between **you** and **us**, which agreement will not be unreasonably withheld. However, in the absence of such agreement, **our** decision will be final.
  2. The Limit of Liability shall be reduced, and may be completely exhausted, by payment of **claim expenses**. **We** shall not be obligated to pay any **loss** or any other amounts covered under this **policy**, or to undertake or continue to defend any **claim** after the applicable Limit of Liability has been exhausted.
  3. If **you** refuse to agree to any settlement recommended by **us** and that is acceptable to the claimant, then **our** total liability for any **damages, claim expenses, PCI fines and assessments** and **penalties** resulting from such **claim** will not exceed:

- i. The amount for which the **claim** could have been settled, less the remaining **retention**, plus the **claim expenses** incurred up to the time of such refusal, and
- ii. Fifty percent (50%) of any **damages, penalties, PCI fines and assessments and claim expenses** incurred after the date such settlement or compromise was recommended to **you**. The remaining fifty percent (50%) of such amounts will be uninsured under this **policy** and **your** responsibility.

b) Notice

1. With respect to a **claim** made against **you**, **you** must notify **us** in writing as soon as practicable after a member of the **control group** discovers such **claim**, provided such notice is made within the **policy period**, or within 30 days after the expiration of the **policy period** for **claims** made against **you** during the last 30 days of the **policy period**. Notice shall be issued to the person(s) or entity named in Item 15 of the **schedule**.
2. With respect to an **event**, **you** must notify **us** in writing as soon as practicable after a member of the **control group** discovers such **event**, provided such notice is made within the **policy period**, or within 30 days after the expiration of the **policy period** for **events** discovered during the last 30 days of the **policy period**. Notice shall be issued to person(s) or entity named in Item 15 of the **schedule**.
3. If during the **policy period**, **you** become aware of any acts, facts, or circumstances that could reasonably be a basis for a **claim**, **you** must give written notice to **us** of such acts, facts, or circumstances through the person(s) or entity named in Item 15 of the **schedule**, as soon as practicable during the **policy period**. Such notice must include: the specific details of the acts, facts, or circumstances that could reasonably be the basis for a **claim** and a description of the possible **damages** or other amounts that may result.
4. If **you** are unable to provide notification of an **event** required under the **policy** due to a prohibition by any governmental authority, **you** will use best efforts to provide **us** with allowable information to put **us** on notice of a covered or potentially covered **event** until such time that details can be legally provided.

c) Extended Reporting Periods

1. Automatic Extended Reporting Period

If either **you** or **us** cancel or non-renew this **policy**, then **you** shall have the right following the effective date of such cancellation or non-renewal, to a period of 60 days in which to give written notice to **us** of any **claim** first made against **you** prior to the end of the **policy period** or any **data breach, network security breach or cyber extortion and ransomware event** discovered by **you** prior to the end of the **policy period**. The limits of liability applicable during such extended reporting period will be the remaining available policy limit under the cancelled or non-renewed policy.

2. Optional Extended Reporting Period

In the event of cancellation or non-renewal of this insurance by **you** or **us**, and only if **you** do not purchase replacement coverage, the **named insured** shall have the right, upon payment of an additional premium as set forth in Item 7 of the **schedule** to purchase an Additional Extended Reporting Period for **claims** first made against **you** and notified to **us** during the Additional Extended Reporting Period or **events** first discovered by **you** and notified to **us** during the Additional Extended Reporting Period. In order for the **named insured** to invoke the Additional Extended Reporting Period option, the **named insured** must pay **us** the additional premium in full within 30 days of the non-renewal or cancellation.

- i. The Limits of Liability for the Additional Extended Reporting Period will be the remaining available policy limit under the cancelled or non-renewed policy.
- ii. The **named insured's** right to purchase the Additional Extended Reporting Period will not be available where cancellation or non-renewal by **us** is due to non-payment of premium.
- iii. All notices and premium payments with respect to the Additional Extended Reporting Period will be directed to **us** through the entity named in Item 6 of the **schedule**.
- iv. At the commencement of the Additional Extended Reporting Period the entire premium shall be deemed earned.

d) Change in Ownership

If during the **policy period**, the **named insured** is acquired by, consolidates with, or merges into another entity, this **policy** will continue to remain in effect, but only with respect to acts, errors, omissions or **events** first occurring before the date of acquisition, consolidation, merger or sale. No coverage will be provided by this **policy** for any other **claim** or **event** unless the **named insured** provides written notice to **us** prior to such acquisition, consolidation, merger, or sale, the **named insured** has agreed to any additional premium and terms of coverage required by **us** and **we** have issued an endorsement extending coverage under this **policy**. All notices and premium payments made under this section will be directed to **us** through the entity named in Item 6 of the **schedule**.

e) Duty to Cooperate

1. **You** will cooperate with **us** in all investigations. **We** will have the right to make any investigation **we** deem necessary with respect to coverage or otherwise, including with respect to any investigation with respect to the **proposal** or statements made in the **proposal**. **You** will execute or cause to be executed all papers and render all assistance as requested by **us**.
2. Upon **our** request, **you** will assist in making settlements and in enforcing any right of contribution or indemnity against any person or organisation who may be liable to **you**; and **you** will attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses at **your** own cost.
3. Unless specifically provided otherwise in this **policy**, **you** shall not admit liability, make any payment, assume any obligation, incur any expense, enter into any settlement, stipulate to any judgment or award, or dispose of any **loss** or **claim** without **our** written consent.
4. **You** shall take all reasonable steps to avoid or mitigate and prevent any **loss** or any other amounts covered under this **policy** and to assist in the defence of all legal actions brought against **you**.
5. Solely in respect of Insuring Agreement G. Cyber Extortion, **you** shall not disclose the existence of this **policy** to any third party without **our** prior consent.

f) Subrogation

In the event of any payment by **us** under this **policy**, **we** will be subrogated to all of **your** rights of recovery to such payment. **You** will do everything that may be necessary to secure and preserve such subrogation rights, including but not limited to the execution of any documents necessary to allow **us** to bring suit in **your** name. **You** will do nothing to prejudice such subrogation rights without first obtaining **our** written consent. Any recovery will first be paid to **us** up to the amount of any **loss** and other amounts that **we** have paid. Any remaining amounts will be paid to **you**.

## Section 11 – Allocation

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- a) Where any matter notified under the **policy** comprises of covered matters and uncovered matters, **we** will use best endeavours to agree a fair allocation between covered matters and uncovered matters having regard to the:
1. relative legal exposure; and
  2. relative financial exposure,

that is attributable to the covered matters and uncovered matters.

- b) This allocation will also apply to the reasonable and necessary legal fees and other professional fees, costs, and expenses (but not regular or overtime wages, salaries, or fees of any natural person covered by the **policy**, office overheads, travel costs unrelated to the cover provided by the **policy** or other administration costs of the **insured**) incurred by **you** with **our** prior written consent in respect of any matter notified under the **policy** (in respect of which **we** ultimately confirm cover).
- c) If there is a dispute between **us** and **you**, allocation will be resolved by a Senior Counsel that **we** and **you** both agree to instruct or, in the absence of agreement, as appointed by the President of the Bar Association in the state or territory of the first address for the **named insured** listed in the **schedule** or, if no address is shown there, as shown on the **proposal**.

Senior Counsel's fees in respect of clause c. above shall for the purpose of this **policy** be regarded as part of the fees, costs, and expenses specified in b. above.

The allocation determined by Senior Counsel will apply retrospectively to the fees, costs and expenses specified in clause b. above, paid by **us** or **you** notwithstanding any prior payment on a different basis.

## Section 12 – Other Insurance

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Coverage afforded hereunder shall apply only as excess over any other valid and collectible insurance or indemnity available to any **insured**, including any self-insured retention or deductible portion thereof, unless such other insurance is written only as specific excess insurance over the Limit of Liability of this **policy**.

## Section 13 – Cancellation

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This **policy** may be cancelled by the **named insured** by surrender thereof to **us** or by mailing to **us** through the entity named in Item 6 of the **schedule** written notice stating when thereafter the cancellation shall be effective. If **you** cancel this **policy** prior to any **claim** or **event** being reported, the remaining earned premium shall be computed in accordance with the Lloyd's short rate table and procedure.

**We** may cancel this **policy** in circumstances provided for by the *Insurance Contracts Act 1984* (Cth). If **we** intend to cancel this **policy**, we will notify **you** in writing.

If **we** cancel this insurance, earned premium will be computed pro rata. The premium will be deemed fully earned if any **claim** or **event** is notified to **us** or discovered by the **control group** on or before the date of cancellation.

## Section 14 – Choice of Law

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The interpretation of this **policy** and any disputes involving this **policy** are governed by the law of the jurisdiction stated in Item 12 of the **schedule**.

## Section 15 – Territory

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This **policy** applies worldwide to **claims** made and **events** committed or occurring anywhere in the world.

## Section 16 – Sanctions

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**We** will not be deemed to provide cover nor will **we** be liable to pay any **claim** or **loss**, or provide any benefit under this Policy to the extent that the provision of such cover, payment of such **claim** or **loss**, or provision of such benefit would expose **us** to any sanctions, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

## Section 17 – Authorisation

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By acceptance of this **policy**, each **insured** agrees that the **named insured** shall act on behalf of all **insureds** for all purposes including the negotiation of the terms of this policy, payment of or return of premiums, receipt and acceptance of any endorsement issued to form a part of this **policy** and giving and receiving notice of cancellation of this **policy**.

## Section 18 – Continuity

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In the absence of fraudulent non-disclosure or fraudulent misrepresentation, where a **claim** that would otherwise be covered by this **policy** is excluded by Section 8 Exclusion 14 relating to prior facts or circumstances, the **Insurer** shall provide cover under this **policy** for that **claim** provided that **you** first became aware, prior to the **Policy Period**, of the facts or circumstances that might give rise to a **claim**;

1. **You** had not notified **us** of such facts or circumstances, prior to the **policy period**;
2. the **claim** is dealt with in accordance with the **policy** under which the **claim**, or circumstance, could and should have been notified but only where such earlier **policy** affords no broader cover in respect of the **claim** than the provisions of this **policy**; and

if **we** are the insurer on risk for the **policy** in (2.) above, **you** agree to claim on this **policy** only and to make no claim on such earlier **policy**.

## Section 19 – Assignment

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The interest of any **insured** under this **policy** is not assignable.

## Section 20 – Singular Form of a Word

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Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

## Section 21 – Entire Agreement

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This **policy** embodies all agreements between **us** and **you** relating to this **policy**. The terms of this **Insurance** cannot be waived or changed, except by endorsement issued to form a part of this **policy** signed by **us**.