



# Technology

Policy document

United States

## PREAMBLE

**IMPORTANT: COVERAGE TRIGGERS.** It is important for **you** to review this Policy in its entirety carefully, including **CONDITION 1**, as the trigger for coverage, including when **you** must notify **us** of a claim, under each Section and Insuring Clause may differ.

Where **cyber events** or **technology errors** are not specifically excluded from a Section or Insuring Clause of this Policy, then a claim arising out of a **cyber event** or **technology error** which is otherwise covered under that Section or Insuring Clause will be payable, subject to all other terms, conditions and exclusions of this Policy.

This Policy is a contract of insurance between **you** and **us**. **Your** Policy contains all the details of the cover that **we** provide. This Policy consists of and must be read together with the Declarations page and any Endorsements. This Policy is not complete unless it is signed and a Declarations page is attached.

The sections of this Policy are identified by the blue lines across the page with white upper case print, these are for information purposes only and do not form part of the cover given by this Policy. Terms in bold upper case print are references to specific Insuring Clauses, Sections or Conditions. Other terms in bold lower case print are defined terms and have a special meaning as set forth in the Definitions section and elsewhere. Words stated in the singular will include the plural and vice versa.

In consideration of the **premium** and in reliance upon the information that **you** have provided to **us** prior to the commencement of this insurance, **we** agree to provide the cover as set out below:

## INSURING CLAUSES

### INSURING CLAUSE 1: PROFESSIONAL LIABILITY

#### SECTION A: PRODUCTS AND SERVICES LIABILITY

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** during the **period of the policy** or any applicable optional extended reporting period arising out of **your technology services** for any:

- a. negligent act, error, omission, misstatement or misrepresentation;
- b. breach of any contractual term implied by law concerning necessary quality, safety or fitness, or **your** duty to use reasonable care and skill;
- c. failure of a product to perform or function as intended;
- d. **bodily injury** or **property damage** and any consequential financial loss related to the **bodily injury** or **property damage**; or

- e. other act, error or omission giving rise to civil liability but not any breach of contract other than as specified above.

We will also pay **costs and expenses** on **your** behalf.

#### SECTION B: BREACH OF CONTRACT

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** during the **period of the policy** or any applicable optional extended reporting period as a direct result of any unintentional breach of a contract with a **client** for the provision of **your technology services**.

We will also pay **costs and expenses** on **your** behalf.

#### SECTION C: SUB-CONTRACTOR VICARIOUS LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** during the **period of the policy** or any applicable optional extended reporting period as a direct result of any act, error or omission committed by any sub-contractor engaged by **you** for the provision of **your technology services**.

We will also pay **costs and expenses** on **your** behalf.

#### SECTION D: INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND DEFAMATION

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** during the **period of the policy** or any applicable optional extended reporting period arising out of the provision of **your technology services** for any:

- a. infringement of any **intellectual property rights**, breach of any **intellectual property rights** license acquired by **you** or failure to attribute authorship or provide credit;
- b. act of passing-off, piracy or plagiarism or any misappropriation of content, concepts, format rights or ideas or breach of a contractual warranty relating to **intellectual property rights**;
- c. misappropriation of a trade secret;
- d. invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion, breach of confidence and commercial appropriation of name or likeness;
- e. breach of agreement, breach of confidentiality or promissory estoppel, in connection with the failure to maintain the confidentiality of a source or materials furnished by a source or the failure to portray a source or a subject in a certain light; or
- f. defamation, including but not limited to libel, slander, trade libel, product disparagement, injurious falsehood, emotional distress or outrage based on harm to the character or reputation of any person or entity.

We will also pay **costs and expenses** on **your** behalf.

#### SECTION E: REGULATORY COSTS AND FINES

We agree to pay on **your** behalf **costs and expenses** and any fines or penalties as a result of any **regulatory investigation** first initiated against **you** during the **period of the policy** or any applicable optional extended reporting period arising directly out of the provision of **your technology services**.

However, **we** will not pay **costs and expenses**, fines or penalties in respect of any **regulatory investigation** affecting the wider environment in which **you** conduct **your technology services**, as opposed to any **regulatory investigation** solely affecting **you**.

#### SECTION F: DISHONESTY OF EMPLOYEES

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** during the **period of the policy** or any applicable optional extended reporting period arising out of any dishonesty by any **employee** in the provision of **your technology services**.

We will also pay **costs and expenses** on **your** behalf.

#### SECTION G: PAYMENT OF WITHHELD FEES

We agree to pay **your withheld fees** in the event that a **client** of **yours** brings or threatens to bring a **claim** against **you** that would be covered under **INSURING CLAUSE 1 (SECTIONS A, B, C and F only)** for an amount greater than **your withheld fees** if **you** attempt to recover the **withheld fees** from them. Prior to payment of **your withheld fees** **you** must obtain written confirmation from the **client** that they will not bring a **claim** against **you** if **you** agree not to pursue them for **your withheld fees** and provide it to **us**.

### INSURING CLAUSE 2: NETWORK SECURITY & PRIVACY LIABILITY

#### SECTION A: NETWORK SECURITY LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including the establishment of any consumer redress fund and associated expenses) as a result of any **claim** arising directly out of a **cyber event** first discovered by **you** during the **period of the policy** that results in:

- a. the transmission of malware to a **third party's computer system**;
- b. **your computer systems** being used to carry out a denial of service attack;
- c. **your** failure to prevent unauthorized access to information stored or applications hosted on **your computer systems** or a **third party's computer systems**; and
- d. identity theft, experienced by **your employees** or any **third party**.

We will also pay **costs and expenses** on **your** behalf.

## SECTION B: PRIVACY LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including the establishment of any consumer redress fund and associated expenses) as a result of any **claim** arising directly out of a **cyber event** first discovered by **you** during the **period of the policy** that results in:

- a. an actual or suspected disclosure of or unauthorized access to any Personally Identifiable Information (PII), including payment card information or Protected Health Information (PHI);
- b. **your** failure to adequately warn affected individuals of a **privacy breach**, including the failure to provide a data breach notification in a timely manner;
- c. a breach of any rights of confidentiality as a direct result of **your** failure to maintain the confidentiality of any data pertaining to an **employee**;
- d. a breach of any rights of confidentiality, including a breach of any provisions of a non-disclosure agreement or breach of a contractual warranty relating to the confidentiality of commercial information, PII, or PHI;
- e. a breach of any part of **your** privacy policy; or
- f. actual or suspected disclosure of or unauthorized access to **your** data or data for which **you** are responsible.

We will also pay **costs and expenses** on **your** behalf.

## SECTION C: MANAGEMENT LIABILITY

We agree to pay on behalf of any **senior executive officer** all sums they become legally obliged to pay as a result of any **claim** made against them arising directly out of a **cyber event** first discovered by **you** during the **period of the policy**.

We will also pay **costs and expenses** on behalf of **your senior executive officers**.

However, **we** will not make any payment under this Section for which the **senior executive officer** is entitled to indemnity under any other insurance, except for any additional sum which is payable over and above the other insurance.

## SECTION D: REGULATORY INVESTIGATION COSTS

We agree to pay on **your** behalf any fines and penalties resulting from a **regulatory investigation** arising as a direct result of a **cyber event** first discovered by **you** during the **period of the policy**.

We will also pay **costs and expenses** on **your** behalf.

## SECTION E: PCI FINES, PENALTIES AND ASSESSMENTS

We agree to pay on **your** behalf any fines, penalties and card brand assessments including fraud recoveries, operational reimbursements, non-cooperation costs and case management fees

which **you** become legally obliged to pay **your** acquiring bank or payment processor as a direct result of a **payment card breach** first discovered by **you** during the **period of the policy**.

We will also pay **costs and expenses** on **your** behalf.

## INSURING CLAUSE 3: CYBER INCIDENT RESPONSE

### SECTION A: INCIDENT RESPONSE COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

- a. gain access to **our 24/7 cyber incident response hotline**;
- b. engage with **our cyber incident manager** who will coordinate the initial response;
- c. obtain initial advice and consultancy from **our cyber incident manager**, including threat intelligence in relation to the **cyber event**; and
- d. obtain initial remote support and assistance from **our cyber incident manager** to respond to the **cyber event**.

### SECTION B: LEGAL AND REGULATORY COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

- a. obtain initial legal advice to determine **your privacy breach** notification obligations;
- b. draft notification letters, substitute notices, website notices or e-mail notification templates; and
- c. notify any appropriate government, regulatory, law enforcement, professional or statutory body.

### SECTION C: IT SECURITY AND FORENSIC COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

- a. engage with an external IT security consultant to identify the source and scope of the **cyber event**;
- b. obtain initial advice to remediate the impact of the **cyber event**;
- c. conduct a forensic investigation of **your computer systems** where reasonable and necessary or as required by law or a regulatory body (including a requirement for a PCI Forensic Investigator);
- d. contain and remove any malware discovered on **your computer systems**; and
- e. engage with an IT security consultant to provide expert witness testimony at any trial or hearing arising from the **cyber event**.

### SECTION D: CRISIS COMMUNICATION COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

- a. engage with a crisis communications consultant to obtain specific advice in direct relation to the **cyber event**;
- b. coordinate media relations in response to the **cyber event**;
- c. receive training for relevant spokespeople with respect to media communications in direct relation to the **cyber event**; and
- d. formulate a crisis communications plan in order to reduce damage to **your** brand and reputation as a direct result of the **cyber event**.

#### SECTION E: PRIVACY BREACH MANAGEMENT COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered during the **period of the policy** to:

- a. print and post appropriate notices for any individual affected by the actual or suspected **cyber event** or to send e-mail notices or issue substitute notices;
- b. provide credit monitoring services, identity monitoring services, identity restoration services or identity theft insurance to affected individuals;
- c. set up a call center to manage inbound and outbound calls in direct relation to the **cyber event**; and
- d. provide translation services to manage communications with affected individuals.

#### SECTION F: THIRD PARTY PRIVACY BREACH MANAGEMENT COSTS

We agree to pay on behalf of any **third party** any reasonable sums necessarily incurred as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

- a. print and post appropriate notices for any individual affected by the actual or suspected **cyber event** or to send e-mail notices or issue substitute notices;
- b. provide credit monitoring services, identity monitoring services, identity restoration services or identity theft insurance to affected individuals;
- c. set up a call center to manage inbound and outbound calls in direct relation to the **cyber event**; and
- d. provide translation services to manage communications with affected individuals;

provided that **you** have contractually indemnified the **third party** against this **cyber event** and they have a legal obligation to notify affected individuals and that any costs incurred are with a provider that **we** have selected and approved in conjunction with **you**.

#### SECTION G: POST BREACH REMEDIATION COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, with **our cyber incident manager** for any services that will mitigate the potential of a future **cyber event** following a **cyber event** covered under **INSURING CLAUSE 3**.

## INSURING CLAUSE 4: CYBER CRIME

### SECTION A: ELECTRONIC THEFT OF YOUR FINANCIAL ASSETS

We agree to reimburse **you** for **loss** first discovered by **you** during the **period of the policy** as a direct result of any **third party** committing:

- a. an unauthorized electronic transfer of **your** financial assets from a bank or other financial institution, including an asset management firm, pension or investment fund; or
- b. any phishing, vishing or other social engineering attack against any **employee** that results in the electronic transfer of **your** funds to an unintended **third party**.

### SECTION B: ELECTRONIC THEFT OF THIRD PARTY FUNDS HELD IN ESCROW

We agree to reimburse **you** for **loss** (including compensation **you** are legally obliged to pay) first discovered by **you** during the **period of the policy** as a direct result of **you** having to reimburse any **third party** for theft from a bank account held in **your** name of money or other financial assets held by **you** on behalf of that **third party**, provided that the theft was committed by any other **third party** by electronic means, including any phishing, vishing or other social engineering attack against **you**.

### SECTION C: THEFT OF PERSONAL FINANCIAL ASSETS

We agree to reimburse any **senior executive officer** for personal financial loss first discovered by them during the **period of the policy** as a direct result of any **third party** compromising the **company's** network security which results in:

- a. theft of money or other financial assets from a personal bank account of the **senior executive officer**; or
- b. identity theft of the **senior executive officer** as a result of a **privacy breach** suffered by **you**.

### SECTION D: EXTORTION

We agree to reimburse **you** for any ransom paid by **you**, or on **your** behalf, in response to an extortion demand first discovered by **you** during the **period of the policy** as a direct result of any threat to:

- a. introduce malware, including ransomware, into **your computer systems**;
- b. prevent access to **your computer systems** or data or any **third party** systems hosting **your** applications or data;
- c. release **your** confidential information or confidential information entrusted to **you**; or
- d. damage **your** brand or reputation by posting false or misleading comments about **you** on social media sites.

### SECTION E: TELEPHONE HACKING

We agree to reimburse **you** for **loss** associated with the cost of unauthorized calls or unauthorized use of **your** bandwidth first discovered by **you** during the **period of the policy** as a direct result of **your** telephone system being hacked by a **third party**.



## SECTION F: PUSH PAYMENT FRAUD

We agree to reimburse **you** in the event of fraudulent electronic communications or websites designed to impersonate **you** or any of **your** products first discovered by **you** during the **period of the policy**, for:

- a. the cost of creating and issuing a specific press release or establishing a specific website to advise **your** customers and prospective customers of the fraudulent communications;
- b. the cost of reimbursing **your** existing customers for their financial loss arising directly from the fraudulent communications, including fraudulent invoices manipulated to impersonate **you**;
- c. **your loss** sustained following **your** discovery of the fraudulent communications as a direct result of the fraudulent communications; and
- d. external costs associated with the removal of websites designed to impersonate **you**.

## SECTION G: UNAUTHORIZED USE OF COMPUTER RESOURCES

We agree to reimburse **you** for **loss** associated with increased electricity costs and cloud service billing first discovered by **you** during the **period of the policy** as a direct result of **cryptojacking** or **botnetting**.

## INSURING CLAUSE 5: SYSTEM DAMAGE AND BUSINESS INTERRUPTION

### SECTION A: SYSTEM DAMAGE AND RECTIFICATION COSTS

We agree to reimburse **you** for the additional cost of employing:

- a. contract staff or overtime costs for **employees** to rebuild **your** data, including the cost of data re-entry or data re-creation;
- b. specialist data recovery consultants, including IT forensic consultants, to recover **your** data or applications; and
- c. specialist consultants or overtime costs for **employees** working within **your** IT department to reconstitute **your computer systems** to the position they were in immediately prior to the **cyber event**;

reasonably and necessarily incurred as a direct result of a **cyber event** first discovered by **you** during the **period of the policy**.

### SECTION B: INCOME LOSS AND EXTRA EXPENSE

We agree to reimburse **you** for **your income loss** and **extra expense** sustained during the **indemnity period** as a direct result of an interruption to **your** business activities caused by **your computer systems** downtime arising directly out of a **cyber event** or **system failure** which is first discovered by **you** during the **period of the policy**, provided that the **computer systems** downtime lasts longer than the **waiting period**.

## SECTION C: ADDITIONAL EXTRA EXPENSE

We agree to reimburse **you** for any reasonable sums necessarily incurred during the **indemnity period** that are in addition to **your** normal operating expenses and the **extra expense** recoverable under **INSURING CLAUSE 5 (SECTION B only)**:

- a. to source **your** products or services from alternative sources in order to meet contractual obligations to supply **your** customers;
- b. to employ contract staff or overtime costs for **employees** in order to continue **your** business activities;
- c. to employ specialist consultants, including IT forensic consultants to diagnose the source of the **computer systems** downtime; and
- d. for **employees** working overtime within **your** IT department to diagnose and fix the source of the **computer systems** downtime;

to mitigate an interruption to **your** business activities covered under **INSURING CLAUSE 5 (SECTION B only)**.

## SECTION D: DEPENDENT BUSINESS INTERRUPTION

We agree to reimburse **you** for **your income loss** and **extra expense** sustained during the **indemnity period** as a direct result of an interruption to **your** business activities arising directly out of any sudden, unexpected and continuous downtime of **computer systems** used directly by a **supply chain partner** which is first discovered by **you** during the **period of the policy**, provided that the **computer systems** downtime lasts longer than the **waiting period** and arises directly out of any **cyber event** or **system failure**.

## SECTION E: CONSEQUENTIAL REPUTATIONAL HARM

We agree to reimburse **you** for **your income loss** sustained during the **reputational harm period** as a direct result of the loss of current or future customers caused by damage to **your** reputation solely as a result of a **cyber event** first discovered by **you** during the **period of the policy**.

## SECTION F: CLAIM PREPARATION COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred for professional fees to determine the amount of **your income loss** and **extra expense** sustained following an event covered under **INSURING CLAUSE 5 (SECTIONS B, D and E only)**.

## SECTION G: HARDWARE REPLACEMENT COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred to replace any hardware forming part of **your computer systems**, in the event **your** software or firmware has been corrupted by a **cyber event** first discovered by **you** during the **period of the policy** which directly results in the software or firmware being rendered unusable, provided that replacing the hardware is a more time efficient and cost effective solution than installing new firmware or software onto **your** existing hardware.

For the purposes of this Section **we** will only pay for the costs to replace **your** existing hardware with a model of hardware that meets the minimum requirements to support the installation and operation of new firmware or software.

## **INSURING CLAUSE 6: COMMERCIAL GENERAL LIABILITY**

### **SECTION A: BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of **bodily injury** or **property damage** first occurring during the **period of the policy**, except when it is caused directly by **your technology services**.

**We** will also pay **costs and expenses** on **your** behalf.

### **SECTION B: PERSONAL AND ADVERTISING INJURY**

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of **personal injury** or **advertising injury** first occurring during the **period of the policy**, except when it is directly caused by **your technology services**.

**We** will also pay **costs and expenses** on **your** behalf.

### **SECTION C: PRODUCTS AND COMPLETED OPERATIONS LIABILITY**

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of **bodily injury** or **property damage** first occurring during the **period of the policy** caused directly by any **product**.

**We** will also pay **costs and expenses** on **your** behalf.

### **SECTION D: POLLUTION LIABILITY**

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of **bodily injury** or **property damage** caused directly by **pollution** first occurring during the **period of the policy**, on condition that the **pollution** was the direct result of a sudden, identifiable, unintended and unexpected incident and was not directly caused by **your technology services**.

**We** will also pay **costs and expenses** on **your** behalf.

### **SECTION E: TENANTS' LEGAL LIABILITY**

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of **property damage** to premises leased to, hired by, on loan to or held in trust by **you** or otherwise in **your** care, custody or control first occurring during the **period of the policy**.

**We** will also pay **costs and expenses** on **your** behalf.

## SECTION F: MEDICAL EXPENSES

We agree to pay **medical expenses** for **bodily injury** to a **third party** caused by an accident first occurring during the **period of the policy** in the course of **your** business activities, provided that:

- a. the **third party**, at the time of the accident, is not entitled to benefits under any workers' compensation or disability benefits law or similar law;
- b. the **medical expenses** are incurred and notified to **us** within one year of the date of the accident; and
- c. the **third party** submits to examination, at **our** expense, by physicians of **our** choice and as often as **we** reasonably require.

We will make these payments regardless of fault.

## SECTION G: EMPLOYEE BENEFITS LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** during the **period of the policy** or any applicable optional extended reporting period arising out of any act, error or omission committed by **you** or on **your** behalf in the **administration** of **your employee benefit program**.

We will also pay **costs and expenses** on **your** behalf.

## SECTION H: NON-OWNED AND HIRED AUTOMOBILE LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' **costs and expenses**) as a result of any **claim** arising out of **bodily injury** or **property damage** occurring during the **period of the policy** in the course of **your** business activities resulting from the use or operation by **you** of any automobile that is not owned in whole or in part by the **company** or licensed in the name of the **company**.

We will also pay **costs and expenses** on **your** behalf.

## SECTION I: LIABILITY FOR DAMAGE TO HIRED OR LEASED AUTOMOBILES

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of **property damage** to an automobile leased to or hired by **you** from a **third party** occurring during the **period of the policy** in the course of **your** business activities.

We will also pay **costs and expenses** on **your** behalf.

## INSURING CLAUSE 7: LOSS MITIGATION

In respect of **INSURING CLAUSE 1**, we agree to reimburse **you** for any reasonable costs necessarily incurred by **you** with **our** prior written agreement (which will not be unreasonably withheld) in respect of measures taken by **you** to rectify any act, error or omission that resulted in a **claim** or

may result in a **claim** for which **you** would be entitled to indemnity under this Policy had these measures not been taken, provided that:

- a. these rectification measures are taken for the sole purpose of mitigating the **claim** or avoiding a **claim**; and
- b. the costs in respect of these rectification measures taken by **you** are less than the expected value of the **claim**.

**We** will not make any payment under this Insuring Clause in respect of any costs that include any provision for:

- a. salaries or other remuneration of **employees**;
- b. **your** loss of profit;
- c. **your** normal operating expenses; or
- d. goodwill payments or other amounts that **you** are not contractually obliged to pay.

#### INSURING CLAUSE 8: REPUTATION AND BRAND PROTECTION

**We** agree to reimburse **you** for any reasonable sums necessarily incurred with **our** prior written agreement (which will not be unreasonably withheld) for the services of a public relations consultancy to avert or mitigate damage to **your** reputation or brand as a direct result of any media report that names **you** and publicizes an act or event that is the subject of a claim for which **you** are entitled to indemnity under this Policy.

#### INSURING CLAUSE 9: COURT ATTENDANCE COSTS

**We** agree to reimburse **you** for any reasonable sums necessarily incurred by **you** with **our** prior written agreement (which will not be unreasonably withheld) to attend court or any tribunal, arbitration, adjudication, mediation or other hearing in connection with any claim for which **you** are entitled to indemnity under this Policy.

### HOW MUCH WE WILL PAY

The maximum amount payable by **us** in respect of each Section and each Insuring Clause will not exceed the **limit of liability**.

Where any claim is covered under multiple Sections, each Section will cover its part of the claim to the extent of the available **limit of liability**. In the event any Section covering the claim is exhausted, no other Section of the Policy covering the claim will provide additional cover. Regardless of how many Sections cover any claim, only one overall **limit of liability** will be available and this will be the highest **limit of liability** of the Sections covering the claim. The **limits of liability** available, other than the highest **limit of liability**, under the Sections covering the claim will always be a part of and not in addition to the highest **limit of liability**. For the purposes of this paragraph, **INSURING CLAUSES 7, 8 and 9** will each be considered a Section.

Where more than one claim under this Policy arises from the same original cause or single source or event, all of those claims will be deemed to be one claim and only one **limit of liability** will be payable.

**We** may at any time pay to **you** in connection with any **claim** the amount of the **limit of liability** (after deduction of any amounts already paid). Upon that payment being made **we** will relinquish the conduct and control of the **claim** and be under no further liability in connection with that **claim** except for the payment of **costs and expenses** incurred prior to the date of such payment (unless the **limit of liability** is stated to be inclusive of **costs and expenses**).

If **costs and expenses** are stated in the Declarations page to be in addition to the **limit of liability**, or if the operation of local laws require **costs and expenses** to be paid in addition to the **limit of liability**, and if a damages payment in excess of the **limit of liability** has to be made to dispose of any **claim**, **our** liability for **costs and expenses** will be in the same proportion as the **limit of liability** bears to the total amount of the damages payment.

## YOUR DEDUCTIBLE

**We** will only be liable for that part of each and every claim which exceeds the amount of the **deductible**. If any expenditure is incurred by **us** which falls within the amount of the **deductible**, then **you** will reimburse that amount to **us** upon **our** request.

Where more than one claim under this Policy arises from the same original cause or single source or event all of those claims will be deemed to be one claim and only one **deductible** will apply.

In respect of **INSURING CLAUSE 5 (SECTIONS B and D only)**, a single **waiting period, deductible and indemnity period** will apply to each claim. Where the same original cause or single source or event causes more than one period of **computer systems** downtime these will be considered one period of **computer systems** downtime whose total duration is equal to the cumulative duration of each individual period of **computer systems** downtime

Where cover is provided under multiple Sections or multiple Insuring Clauses only one **deductible** will apply to that claim and this will be the highest **deductible** of the Sections under which cover is provided.

## DEFINITIONS

1. "Administration" means
  - a. advising **employees**, including their dependents and beneficiaries, in respect of **your employee benefit program**;
  - b. handling records in respect of **your employee benefit program**; and
  - c. effecting enrolment or termination of any **employee's** participation in a plan included in **your employee benefit program**.
2. "Advertising injury" means
  - a. oral or written publication of defamatory content;
  - b. oral or written publication of content that violates a person's right of privacy; or
  - c. infringement of copyright, trade dress, slogan or a **third party's** advertising idea;in **your** advertising or promotional material.
3. "Approved claims panel providers" means  
the approved claims panel providers stated in the Declarations page.
4. "Bodily injury" means  
death, bodily injury, mental injury, illness or disease.
5. "Botnetting" means  
the unauthorized use of **your computer systems** by a **third party** for the purpose of launching a denial of service attack or hacking attack against another **third party**.
6. "Claim" means
  - a. a written demand for compensation;
  - b. a written request for a retraction or a correction;
  - c. a threat or initiation of a lawsuit; or
  - d. in respect of **INSURING CLAUSES 1 (SECTION E only) and 2 (SECTION D only)**, a **regulatory investigation**;made against **you**.
7. "Claims managers" means  
the claims managers stated in the Declarations page.
8. "Client" means  
any **third party** with whom **you** have a contract in place for the supply of **your technology services** in return for a fee, or where a fee would normally be expected to be paid.



9. **"Company"** means  
the company named as the insured in the Declarations page or any **subsidiary**.
10. **"Computer systems"** means  
all electronic computers including operating systems, software, hardware, microcontrollers and all communication and open system networks and any data or websites wheresoever hosted, off-line media libraries and data back-ups and mobile devices including but not limited to smartphones, iPhones, tablets or personal digital assistants.
11. **"Continuity date"** means  
the **inception date** or if **you** have maintained uninterrupted insurance of the same type with **us**, the date this insurance was first incepted with **us**.
12. **"Costs and expenses"** means
- a. **third party** legal and professional expenses (including disbursements) reasonably incurred in the defense of **claims** or circumstances which could reasonably be expected to give rise to a **claim** or in quashing or challenging the scope of any injunction, subpoena or witness summons;
  - b. any post judgment interest; and
  - c. the cost of appeal, attachment and similar bonds including bail and penal bonds.
- Subject to all costs and expenses being incurred with the **claims managers'** prior written agreement (which will not be unreasonably withheld).
13. **"Cryptojacking"** means  
the unauthorized use of **your computer systems** by a **third party** for the sole purpose of cryptocurrency mining activities.
14. **"Cyber event"** means  
any actual or suspected:
- a. unauthorized system access or electronic attack on **computer systems** used directly by **you**, or in respect of **INSURING CLAUSE 5 (SECTION D only) computer systems** used directly by a **supply chain partner**, including any denial of service attack, cyber terrorism, hacking attack, Trojan horse, phishing attack, man-in-the-middle attack, application-layer attack, compromised key attack, malware infection (including spyware or ransomware) or computer virus; or
  - b. **privacy breach**.

**"Cyber event"** does not mean **technology error**.

15. **"Cyber incident manager"** means  
the company or individual named as the cyber incident manager in the Declarations page.



16. "Cyber incident response hotline" means  
the cyber incident response hotline stated in the Declarations page.
17. "Cyber war" means  
any unauthorized access to or electronic attack on **computer systems**, carried out by or on behalf of a **state**, that directly results in another **state** becoming an **impacted state**.
18. "Deductible" means  
the amount stated as the deductible in the Declarations page.
19. "Employee" means  
any employee of the **company**, any volunteer working for the **company** and any individual working for the **company** as an independent contractor.
20. "Employee benefit program" means  
the **company's** insurance, pension or other benefit programs.
21. "Expiry date" means  
the expiry date stated in the Declarations page.
22. "Extra expense" means  
**your** reasonable sums necessarily incurred in addition to **your** normal operating expenses to mitigate an interruption to and continue **your** business activities, provided that the costs are less than **your** expected **income loss** sustained had these measures not been taken.
23. "Impacted state" means  
any **state** that suffers a major detrimental impact on its:
- a. ability to function; or
  - b. defense and security capabilities;
- as a direct result of any unauthorized access to or electronic attack on **computer systems**, carried out by or on behalf of another **state**.
24. "Inception date" means  
the inception date stated in the Declarations page.
25. "Income loss" means  
**your** income that, had the **cyber event** or **system failure** which gave rise to the claim not occurred, would have been generated directly from **your** business activities (less sales tax) during the **indemnity period** or **reputational harm period**, less:
- a. actual income (less sales tax) generated directly from **your** business activities during the **indemnity period** or **reputational harm period**; and

b. any cost savings achieved as a direct result of the reduction in income.

26. **"Indemnity period"** means

the period starting from the first occurrence of the **computer systems** downtime and lasting for the period stated as the indemnity period in the Declarations page.

27. **"Intellectual property rights"** means

any intellectual property right including, but not limited to, copyright, trademark, trade dilution, trade dress, design rights, domain name rights, moral rights, service mark or service name, but not including any patent or trade name.

28. **"Limit of liability"** means

if expressed in the Declarations page as:

- a. "limit of liability", the maximum amount payable by **us** in respect of each claim under this Policy; or
- b. "aggregate limit of liability", the maximum amount payable by **us** in respect of all claims under this Policy.

29. **"Loss"** means

any direct financial loss sustained by the **company**.

30. **"Medical expenses"** means

reasonable and necessary expenses for:

- a. first aid administered at the time of an accident;
- b. medical, surgical, x-ray and dental services, including prosthetic devices; and
- c. ambulance, hospital, professional nursing and funeral services.

31. **"Payment card breach"** means

an actual or suspected unauthorized disclosure of payment card data stored or processed by **you** arising out of an electronic attack, accidental disclosure or the deliberate actions of a rogue **employee**.

**"Payment card breach"** does not mean a situation where payment card data is deliberately shared with or sold to a **third party** with the knowledge and consent of a **senior executive officer**.

32. **"Period of the policy"** means

the period between the **inception date** and the **expiry date** or until the Policy is canceled in accordance with **CONDITION 6**.

33. **"Personal injury"** means

- a. false arrest, detention or imprisonment;

- b. malicious prosecution; or
- c. wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies.

34. **"Pollutants"** means

any solid, liquid, gaseous, radiological or thermal irritant, toxic or hazardous substance, or contaminant including, but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste materials, including recycled, reconditioned or reclaimed materials.

35. **"Pollution"** means

the discharge, dispersal, release, migration, seepage or escape of **pollutants**.

36. **"Premium"** means

the amount stated as the premium in the Declarations page and any subsequent adjustments.

37. **"Privacy breach"** means

an actual or suspected unauthorized disclosure of information arising out of an electronic attack, accidental disclosure, theft or the deliberate actions of a rogue **employee** or **third party**, including Personally Identifiable Information (PII), Protected Health Information (PHI) and payment card information.

**"Privacy breach"** does not mean a situation where information is deliberately shared with or sold to a **third party** with the knowledge and consent of a **senior executive officer**.

38. **"Product"** means

any tangible property, other than a **technology product**, that has been manufactured, altered, distributed or installed by **you** or on **your** behalf.

39. **"Property damage"** means

direct physical damage to, destruction of, loss of possession or loss of use of tangible property.

40. **"Regulatory investigation"** means

a formal hearing, official investigation, examination, inquiry, legal action or any other similar proceeding initiated by a governmental, regulatory, law enforcement, professional or statutory body against **you**.

41. **"Reputational harm period"** means

the period starting from when the **cyber event** is first discovered and lasting for the period stated as the reputational harm period in the Declarations page.

42. **"Retroactive date"** means

the retroactive date stated in the Declarations page.

43. **"Senior executive officer"** means

board members, C-level executives, in-house lawyers and risk managers of the **company**.

44. **"State"** means

sovereign state.

45. **"Subsidiary"** means

any entity which the **company** has majority ownership of, meaning more than 50% ownership, on or before the **inception date**.

46. **"Supply chain partner"** means

any:

- a. **third party** that provides **you** with hosted computing services including infrastructure, platform, file storage and application level services; or
- b. **third party** listed as a supply chain partner in an endorsement attaching to this policy which **we** have issued.

47. **"System failure"** means

any sudden, unexpected and continuous outage of **computer systems** used directly by **you**, or in respect of **INSURING CLAUSE 5 (SECTION D only) computer systems** used directly by a **supply chain partner**, which renders them incapable of supporting their normal business function and is caused by an application bug, an internal network failure or hardware failure.

**"System failure"** does not mean **cyber event**.

48. **"Technology error"** means

any:

- a. unintentional human error in entering, processing or amending electronic data within any **computer systems** or in the upgrading, maintenance or configuration of any **computer systems**; or
- b. application bug, internal network failure, external network failure or hardware failure directly impacting any **computer systems** which renders them incapable of supporting their normal business function;

that does not arise directly or indirectly out of any **cyber event**.

49. **"Technology product"** means

any hardware, or any related electronic product, equipment, or device that is designed, manufactured, altered, repaired, distributed or installed, licensed, leased or sold by **you** or on **your** behalf.

50. "Technology services" means

the supply by **you** or on **your** behalf of **technology products** or technology services, including but not limited to software development, software installation and maintenance, hardware design, hardware installation and maintenance, data processing, internet services, data and application hosting, **computer systems** analysis, consulting, training, programming, systems integration, IT support and network management, and as more fully described in the Declarations page.

51. "Third party" means

any person who is not an **employee** or any legal entity that is not the **company**.

52. "Waiting period" means

the number of hours stated as the waiting period in the Declarations page.

53. "War" means

any physical:

- a. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- b. action taken in controlling, preventing, suppressing or in any way relating to a. above.

54. "We/our/us" means

the underwriters stated in the Declarations page.

55. "Withheld fees" means

any contractually due fee that **your client** refuses to pay **you**, but excluding any part of the fee that represents **your** profit or mark-up or liability for taxes.

56. "You/your" means

- a. the **company**;
- b. any past, present or future **employees**;
- c. the estates, heirs, legal representatives or assigns of any **employee** in the event of their death, incapacity, insolvency or bankruptcy but only with respect to any act, error or omission committed or alleged to have been committed by the **employee** while acting in their capacity as **employee**; and
- d. the parent, spouse, domestic partner, civil partner or child of any **employee** but only in respect of any **claim** made against them by reason of:
  - i. their status as parent, spouse, domestic partner, civil partner or child of the **employee**; or
  - ii. their ownership or interest in property which the claimant seeks as recovery for an alleged act, error or omission committed by the **employee** while acting in their capacity as **employee**.

## EXCLUSIONS

We will not make any payment under this Policy:

### EXCLUSIONS RELATING TO PROFESSIONAL LIABILITY

In respect of **INSURING CLAUSE 1** only:

#### 1. Unauthorised funds transfer

arising directly out of any authorized or unauthorized electronic transfer of funds or financial assets, including where this results in any outstanding debt.

### EXCLUSIONS RELATING TO SYSTEM DAMAGE AND BUSINESS INTERRUPTION

In respect of **INSURING CLAUSE 5** only:

#### 2. Business interruption liability

for that part of any **claim** that constitutes actual or alleged liability to a **third party**, or legal costs in the defense of any **claim**, including customer compensation.

#### 3. Property and hardware costs

for any tangible property repair or replacement including the cost of repairing any hardware or replacing any tangible property or equipment that forms part of **your computer systems**.

However, this Exclusion will not apply to **INSURING CLAUSE 5 (SECTION G only)**.

In respect of **INSURING CLAUSE 5, SECTION E**:

#### 4. Contractual cancellation

for any **income loss** arising directly or indirectly out of any **client** suspending or terminating their contract with **you**.

### EXCLUSIONS RELATING TO COMMERCIAL GENERAL LIABILITY

In respect of **INSURING CLAUSE 6** only:

#### 5. Communicable diseases

arising directly or indirectly out of, or in any way relating to any actual, threat or fear of any pathogen or disease, including any virus, bacterium, parasite or variation of these, which can be transmitted by any means directly or indirectly from any organism to another organism and can cause, or have the potential to cause:

- a. damage to human health or welfare; or
- b. physical damage or destruction to tangible property, including the deterioration, loss of use or reduction in value or marketability of the tangible property.

## 6. Cyber events

arising directly or indirectly out of any **cyber event**.

## 7. Faulty workmanship

for the cost to repair or replace, including any ensuing financial loss:

- a. that part of any property that has been damaged by **you**, or a **third party** operating on **your** behalf, during its construction, distribution or installation;
- b. that part of any property as a direct result of faulty workmanship by **you**, or a **third party** operating on **your** behalf, during its construction or installation; or
- c. any undamaged property that contains any **product**, unless the **product** which the property contains has been damaged as a direct result of a sudden, unintended and unexpected incident after it has left **your** care, custody or control.

## 8. Financial loss

arising directly or indirectly out of **third party** financial loss, other than **third party** financial loss directly resulting from **bodily injury, personal injury, advertising injury or property damage**.

## 9. Land or water

arising directly or indirectly from damage by any description to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by **you** or otherwise in **your** care, custody or control.

## 10. Long term hired or leased automobiles

arising directly or indirectly out of any **bodily injury or property damage** caused:

- a. whilst driving an automobile which has been on hire from or leased to **you** by a **third party** for more than 30 consecutive days; or
- b. by any trailer attached to an automobile stated in a. above.

## 11. Marine and aviation

arising directly or indirectly from the ownership, possession or use by **you**, or on **your** behalf, of any:

- a. watercraft, other than any hovercraft, in excess of 10 meters in length; or
- b. aircraft, drone, hovercraft, offshore installation, offshore rig or offshore platform.

## 12. Property in your care, custody or control

arising directly or indirectly out of **property damage** to **third party** property which is in **your** care, custody or control.

However, this Exclusion will not apply to **INSURING CLAUSE 6 (SECTIONS E, H and I only)**.

In respect of **INSURING CLAUSE 6, SECTION B**:

13. **Content advertised prior to the continuity date**

arising directly or indirectly out of any advertisement that was first published prior to the continuity date.

In respect of **INSURING CLAUSE 6, SECTION G**:

14. **Benefit laws**

arising directly or indirectly out of **your** failure to comply with the mandatory provisions of any law concerning workers' compensation, unemployment insurance, social security, disability benefits or pension benefits.

15. **Employee benefit program advice**

arising directly or indirectly from advice given to any person to participate or not to participate in any plan included in **your employee benefit program** or the failure of any investment to perform as represented by **you**.

**EXCLUSIONS RELATING TO ALL INSURING CLAUSES**

16. **Advertising injury**

arising directly or indirectly out of **advertising injury**.

However, this Exclusion will not apply to **INSURING CLAUSE 6 (SECTION B only)**.

17. **Antitrust**

for or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive advertising other than:

- a. where specifically covered under **INSURING CLAUSES 2, 3, 4 and 5** for which **you** have purchased cover; or
- b. any covered portion of any **claim** based on **your** alleged unauthorized use of a **third party's** trademark.

18. **Asbestos**

arising directly or indirectly out of the manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos or asbestos fibers or asbestos dust.

19. **Associated companies**

- a. in respect of any **claim** made by any company, firm or partnership in which the **company** has greater than a 15% executive or financial interest, unless the **claim** emanates from an independent **third party**;



- b. in respect of any **claim** made by any company, firm, partnership or individual which has greater than a 15% executive or financial interest in the **company**, unless the **claim** emanates from an independent **third party**;
- c. arising out of or resulting from any of **your** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the **company**; or
- d. in respect of any **claim** made by or on behalf of the **company** against a **third party**.

## 20. Auto

arising directly or indirectly from the ownership, possession or use of any motor vehicle or trailer other than **bodily injury** or **property damage**:

- a. caused by the use of any tool or equipment forming part of or attached to or used in connection with any motor vehicle or trailer;
- b. occurring beyond the limits of any carriageway or thoroughfare and caused by the loading or unloading of any motor vehicle or trailer;
- c. arising out of the use of any motor vehicle or trailer temporarily in **your** custody or control for the purpose of parking; or
- d. occurring beyond the limits of any carriageway or thoroughfare and caused by the use of any unlicensed vehicle, including but not limited to snowmobiles and all-terrain vehicles, in the course of **your** business activities;

provided always that **we** will not make any payment in respect of any legal liability for which compulsory insurance or security is required by legislation or for which a government or other authority has accepted responsibility.

However, this Exclusion will not apply to **INSURING CLAUSE 6 (SECTIONS H and I only)**.

## 21. Betterment

which results in **you** being in a better financial position or **you** benefitting from upgraded versions of **your computer systems** as a direct result of the event which gave rise to the **claim** under this policy.

However, this Exclusion will not apply to **INSURING CLAUSE 5 (SECTION G only)**.

## 22. Bodily injury

in respect of **INSURING CLAUSES 1 and 2**, arising directly or indirectly out of **bodily injury**.

However, this Exclusion will not apply to:

- a. **INSURING CLAUSE 1 (SECTION A only)**; and
- b. **INSURING CLAUSES 1 (SECTION D only) and 2 (SECTIONS A, B and C only)** for any **claim** as a direct result of mental injury or emotional distress.

### 23. Breach of contract

arising directly out of any breach of contract.

However, this Exclusion will not apply to:

- a. **INSURING CLAUSE 1 (SECTIONS A, B and D only);** and
- b. **INSURING CLAUSE 6**, if liability would have attached in the absence of that contract.

### 24. Chargebacks

for any credit card company or bank, wholly or partially, reversing or preventing a payment transaction, unless specifically covered under **INSURING CLAUSE 2 (SECTION E only)** for which **you** have purchased coverage.

### 25. Collection of private data without consent

arising directly or indirectly from **your** actual or alleged failure to obtain agreement from any private individual before collecting, storing or processing any of their personal information, including but not limited to internet search history and internet browsing habits.

### 26. Core internet infrastructure failure

in respect of **INSURING CLAUSES 2, 3, 4 and 5**, arising directly from a failure, material degradation or termination of any core element of the internet, telecommunications or GPS infrastructure that results in a regional, countrywide or global outage of the internet or telecommunications network, including a failure of the core DNS root servers, satellite network or the IP addressing system or an individual state or non-state actor disabling all or part of the internet.

### 27. Cryptocurrency

arising directly or indirectly out of any:

- a. theft or loss of; or
- b. provision of, or failure to provide, any advice, consultancy or any other services or activities relating to;

any crypto asset, including cryptocurrency, utility tokens, securities tokens, ecosystem tokens or any other type of digital currency.

### 28. Directors and officers liability

arising out of any personal liability incurred by **your senior executive officers** when they are acting in that capacity or managing **you**, or arising from any statement, representation or information regarding **your** business contained within any accounts, reports or financial statements.

However, this Exclusion will not apply to **INSURING CLAUSE 2 (SECTION C only)**.

29. **Domain name suspension or revocation**

in respect of **INSURING CLAUSES 2, 3, 4 and 5**, arising directly or indirectly from the suspension, cancellation, revocation or failure to renew any of **your** domain names or uniform resource locators.

30. **Employers' liability**

arising directly or indirectly out of **bodily injury** to **your employees**.

31. **Employment disputes**

arising directly or indirectly out of any:

- a. employer-employee relations, policies or practices;
- b. actual or alleged refusal to employ any person;
- c. actual or alleged breach by any **employee** of any term or condition of any express or implied contract between them and any past employer of theirs, including breaching any restrictive covenant, covenant not to compete, non-disparagement agreement, confidentiality agreement or non-solicitation agreement; or
- d. actual or alleged conduct by **you** that defames, libels, slanders, disparages or harasses any past employer of any **employee** or interferes with any past, present or prospective employment or contractual relationship between any **employee** and any past employer of theirs.

32. **ERISA**

based upon the Employment Retirement Income Security Act of 1974, and any amendment thereto, or any rules or regulations promulgated thereunder.

33. **Extended warranty**

arising directly or indirectly out of any extended warranty agreement, unless liability would have attached in the absence of that agreement.

34. **Insolvency**

arising out of or relating directly or indirectly to **your** insolvency or bankruptcy, or the insolvency or bankruptcy of any **third party**. However, **your** insolvency will not relieve **us** of any of **our** legal obligations under this contract of insurance where this insolvency does not give rise to a claim under this Policy.

35. **Intellectual property rights and defamation**

arising directly or indirectly out of defamation or any infringement of **intellectual property rights**.

However, this Exclusion will not apply to **INSURING CLAUSES 1 (SECTION D only) or 6 (SECTION B only)**.

### 36. Joint venture

arising directly or indirectly out of any:

- a. activities related to a joint business venture between **you** and any **third party** or any entity that is owned or controlled in part by **you** or any **third party** related to the joint business venture; or
- b. **claim** made against **you** by any **third party** related to a joint business venture or any entity that is owned or controlled in part by any **third party** related to the joint business venture.

### 37. Known claims and circumstances

arising out of any actual or suspected **cyber event**, **system failure**, **claim** or circumstance which might give rise to a claim under this Policy which a **senior executive officer** was aware of, or ought reasonably to have been aware of, prior to the **continuity date**, including any claim or circumstance notified to any other insurer.

### 38. Legal action

where any legal action is brought outside the legal action territories stated in the Declarations page, or where an action is brought within those territories to enforce a judgment outside of those territories whether by way of reciprocal agreement or otherwise.

### 39. Liquidated damages, service credits and penalty clauses

for liquidated damages or service credits, or arising out of penalty clauses unless **you** would have been liable in the absence of any contract stipulating the liquidated damages or service credits or penalty clauses.

### 40. Loss of economic value

for the reduction in economic or market value (including loss of potential future sales) of any of **your** intellectual property assets.

### 41. Misleading advertising

arising directly or indirectly from any advertisement, promotion or product description that is actually or alleged to be false or misleading.

However, this Exclusion will not apply to **INSURING CLAUSE 6 (SECTION B only)**.

### 42. Nuclear

arising directly or indirectly from or contributed to by:

- a. ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component.

#### 43. Other insurance

for which **you** are entitled to indemnity under any other insurance except for:

- a. any additional sum which is payable over and above the other insurance where that insurance has been declared to **us**; or
- b. any contribution that **we** are obliged to make by law and that contribution will be in proportion to the indemnity available under the Policies.

#### 44. Patent infringement

arising directly or indirectly out of the actual or alleged infringement or inducement of infringement of any patent, including any application for a patent that has not yet been granted.

#### 45. Payment card industry related fines, penalties and assessments

for fines, penalties and card brand assessments, including fraud recoveries, operational reimbursements, non-cooperation costs and case management fees which **you** become legally obliged to pay **your** acquiring bank or payment processor as a direct result of a **payment card breach**.

However, this Exclusion will not apply to **INSURING CLAUSE 2 (SECTION E only)**.

#### 46. Personal injury

arising directly or indirectly out of **personal injury**.

However, this Exclusion will not apply to **INSURING CLAUSE 6 (SECTION B only)**.

#### 47. Personal liability

in respect of any action brought against any past, present or future **employee**, unless arising directly out of work performed for the **company**.

#### 48. Pollution

arising directly or indirectly out of **pollution**.

However, this Exclusion will not apply to **INSURING CLAUSE 6 (SECTION D only)**.

#### 49. Power and utility failure

in respect of **INSURING CLAUSES 2, 3, 4 and 5**, arising directly or indirectly from any:

- a. failure in the power supply, including that caused by any surge or spike in voltage, electrical current or transferred energy; or
- b. failure, disruption or reduction in the supply of utilities, including telecommunications, gas and water infrastructure or services.

#### 50. Product recall

for the costs to withdraw, recall, dispose, remove, repair, adjust, alter, recondition, replace or reinstate, any product or part of a product.

However, this Exclusion will not apply to **INSURING CLAUSE 1** where **you** are legally liable for those costs as the direct result of any act, error or omission committed by **you**.

#### 51. Products liability

arising directly out of any **bodily injury** or **property damage** caused directly by any **product**.

However, this Exclusion will not apply to **INSURING CLAUSE 6 (SECTION C only)**.

#### 52. Property damage

in respect of **INSURING CLAUSES 1, 2, 3, 4 and 5**, arising directly or indirectly out of **property damage**.

However, this Exclusion will not apply to **INSURING CLAUSE 1 (SECTION A only)**.

#### 53. Property perils

in respect of **INSURING CLAUSES 2, 3, 4 and 5**, arising directly or indirectly from fire, theft, earthquake or earth movement of any kind, flood, hail, hurricane, lightning strike, solar storm, tornado, tsunami, volcano, wildfire or wind.

#### 54. Regular hours staff costs

in respect of **INSURING CLAUSES 2, 3, 4 and 5**, for contracted salary and bonus costs paid to **employees**.

#### 55. Related or associated company confidential business information

arising directly or indirectly out of any actual or alleged misappropriation, unauthorized use or disclosure by any **employee** of any idea, trade secret or other confidential business information which they were a party to or which they otherwise had possession of prior to being employed by the **company**.

However, this Exclusion will not apply to **INSURING CLAUSE 2 (SECTION A only)** solely in respect of any **claim** arising out of any actual or suspected electronic attack or unauthorized system access by any **third party**.

#### 56. Retroactive date

in respect of **INSURING CLAUSES 1 and 6 (SECTION G only)**, arising out of any act, error or omission committed or alleged to have been committed on or before the **retroactive date**, or any related or continuing acts, errors or omissions where the act, error or omission was first committed or alleged to have been first committed on or before the **retroactive date**.

57. **RICO**

for any actual or alleged violations of the Racketeer Influenced and Corrupt Organization Act and any subsequent amendments to this Act.

58. **Securities violations**

for any actual or alleged violation of any laws or regulations relating to the offer or sale of securities.

59. **Seizure of illegal property**

arising from an order by a public or government authority which deprives **you** of the use or value of **your** property or arising from acts of contraband or illegal transportation or illegal trade.

60. **Terrorism**

arising directly or indirectly out of:

- a. any act or threat of force or violence by an individual or group, whether acting alone or on behalf of or in connection with any organization or government, committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear; or
- b. any action taken in controlling, preventing, suppressing or in any way relating to a. above.

However, this Exclusion does not apply to a **cyber event** affecting **your computer systems** or a **supply chain partner's computer systems**.

61. **Toxic mold**

arising directly or indirectly from the toxic properties of any fungus, mold, mildew or yeast.

62. **Trade name**

arising directly or indirectly out of any trade name.

63. **Uninsurable fines**

for fines, penalties, civil or criminal sanctions, and for multiple, punitive or exemplary damages, unless insurable by law.

64. **Unjust enrichment**

for that part of any **claim** that results in **you** being in a better financial position as a direct result of **your** act, error or omission than **you** would have been if **you** had not committed the act, error or omission.

However, this Exclusion will not apply to any refund of any fee, other than the part of the fee that represents **your** profit or mark-up or liability for taxes.

#### 65. Unlawful surveillance

in respect of any actual or alleged eavesdropping, wiretapping, or unauthorized audio or video recording committed by **you** or by a **third party** on **your** behalf.

#### 66. Unsolicited communications

arising directly or indirectly from any actual or alleged violation of:

- a. the CAN-SPAM Act of 2003 or any subsequent amendments to that Act;
- b. the Telephone Consumer Protection Act (TCPA) of 1991 or any subsequent amendments to that Act; or
- c. any other law, regulation or statute relating to unsolicited communication, distribution, sending or transmitting of any communication via telephone or any other electronic or telecommunications device.

However, this Exclusion will not apply to **INSURING CLAUSE 2 (SECTION A only)**.

#### 67. War and cyber war

arising directly or indirectly out of:

- a. **war**; or
- b. **cyber war**.

However, part b. above will not apply to:

- a. **INSURING CLAUSE 3 (SECTIONS A and D only)**; and
- b. that part of any claim relating to any **computer systems** which are physically located outside of an **impacted state**.

#### 68. Website content accessibility

arising directly or indirectly out of the actual or alleged violation of any laws, regulations or guidelines relating to the accessibility of **your** website content or any website content **you** have created for any **third party**.

#### 69. Willful or dishonest acts of senior executive officers

arising directly or indirectly out of any willful, criminal, malicious or dishonest act, error or omission by a **senior executive officer** as determined by final adjudication, arbitral tribunal or written admission.



## CONDITIONS

### 1. What you must do in the event of a claim or cyber incident

If any **senior executive officer** becomes aware of any incident which may reasonably be expected to give rise to a claim under this Policy **you** must:

- a. notify the **claims managers** as soon as is reasonably practicable (in respect of cyber incidents, a telephone call to **our cyber incident response hotline** will constitute notification). However, in respect of **INSURING CLAUSES 1 and 6 (SECTION G only)**, this notification must be made no later than the end of any applicable extended reporting period;
- b. in respect of **INSURING CLAUSE 4**, report the theft or incident as soon as is reasonably practicable to the appropriate law enforcement authorities and provide **us** with a copy of this report on **our** request; and
- c. not admit liability for or settle or make or promise any payment or incur any **costs and expenses** without **our** prior written agreement (which will not be unreasonably withheld).

In respect of **INSURING CLAUSES 1 and 6 (SECTION G only)**, if **you** notify an incident that **we** agree is reasonably expected to give rise to a **claim**, **we** will accept any **claim** that arises out of the incident as being notified under this Policy.

**We** require **you** to provide full details of the incident, including but not limited to:

- a. the time, place and nature of the incident;
- b. the manner in which **you** first became aware of this incident;
- c. the reasons why **you** believe that this incident could give rise to a claim under this Policy;
- d. the identity of the potential claimant; and
- e. an indication as to the size of the claim that could result from this incident.

In respect of **INSURING CLAUSES 2, 3, 4 and 5**, if **you** discover a **cyber event** **you** may only incur costs without **our** prior written consent within the first 72 hours following the discovery and any **third party** costs incurred must be with a company forming part of the **approved claims panel providers**. All other costs may only be incurred with the prior written consent of the **claims managers** (which will not be unreasonably withheld).

### 2. Additional insureds

**We** will indemnify any **third party** as an additional insured under this Policy, but only in respect of sums which they become legally obliged to pay (including liability for claimants'.

costs and expenses) as a result of a **claim** arising solely out of an act committed by **you**, provided that:

- a. **you** contracted in writing to indemnify the **third party** for the **claim** prior to it first being made against them; and
- b. had the **claim** been made against **you**, then **you** would be entitled to indemnity under this Policy.

Before **we** indemnify any additional insured they must:

- a. prove to **us** that the **claim** arose solely out of an act committed by **you**; and
- b. fully comply with **CONDITION 1** as if they were **you**.

Where **we** indemnify a **third party** as an additional insured under this Policy, this Policy will be primary and non-contributory to the **third party's** own insurance, but only if **you** and the **third party** have entered into a contract that contains a provision requiring this.

Where a **third party** is treated as an additional insured as a result of this Condition, any **claim** made by that **third party** against **you** will be treated by **us** as if they were a **third party** and not as an insured.

### 3. Agreement to pay claims (duty to defend)

**We** have the right and duty to take control of and conduct in **your** name the investigation, settlement or defense of any **claim**. **We** will not have any duty to pay **costs and expenses** for any part of a **claim** that is not covered by this Policy.

**You** may ask the **claims managers** to consider appointing **your** own lawyer to defend the **claim** on **your** behalf and the **claims managers** may grant **your** request if they consider **your** lawyer is suitably qualified by experience, taking into account the subject matter of the **claim**, and the cost to provide a defense.

**We** will endeavor to settle any **claim** through negotiation, mediation or some other form of alternative dispute resolution and will pay on **your** behalf the amount **we** agree with the claimant. If **we** cannot settle using these means, **we** will pay the amount which **you** are found liable to pay either in court or through arbitration proceedings, subject to the **limit of liability**.

**We** will not settle any **claim** without **your** consent. If **you** refuse to provide **your** consent to a settlement recommended by **us** and elect to continue legal proceedings in connection with the **claim**, any further **costs and expenses** incurred will be paid by **you** and **us** on a proportional basis, with 50% payable by **us** and 50% payable by **you**. As a consequence of **your** refusal, **our** liability for the **claim**, excluding **costs and expenses**, will not be more than the amount for which the **claim** could have been settled.

#### 4. Application warranty

You agree that all statements made by **you** in the application form, including any renewal application form, and any supplemental materials **you** have supplied in support of the application for insurance, are **your** agreements and representations to **us** and the Policy is issued in reliance upon that information. The misrepresentation or non-disclosure of any matter by **you** or **your** agent will render this Policy null and void and relieve **us** from all liability under this Policy.

#### 5. Calculation of business interruption losses

Following an interruption to **your** business activities covered under **INSURING CLAUSE 5 (SECTIONS B, C or D only)**, **you** must provide **us** with **your** calculation of the loss including:

- a. how the loss has been calculated and what assumptions have been made; and
- b. supporting documents including account statements, sales projections and invoices.

#### 6. Cancellation

This Policy may be canceled with 30 days written notice by either **you** or **us**.

If **you** give **us** notice of cancellation, the return **premium** will be in proportion to the number of days that the Policy is in effect. However, if **you** have made a claim under this Policy there will be no return **premium**.

If **we** give **you** notice of cancellation, the return **premium** will be in proportion to the number of days that the Policy is in effect.

**We** also reserve the right of cancellation in the event that any amount due to **us** by **you** remains unpaid more than 60 days beyond the **inception date**. If **we** exercise this right of cancellation it will take effect from 14 days after the date the written notice of cancellation is issued.

The Policy Administration Fee will be deemed fully earned upon inception of the Policy.

#### 7. Continuous cover

In respect of **INSURING CLAUSES 1 and 6 (SECTION G only)**, if during the period of a previous renewal of this Policy **you** neglected, through error or oversight only, to report to **us** an incident that might give rise to a **claim**, then provided **you** have maintained uninterrupted insurance of the same type with **us** since expiry of the previous renewal of this Policy, **we** will permit the incident to be reported to **us** under this Policy and **we** will indemnify **you** under this Policy in respect of any **claim** that arises out of the incident, provided:

- a. the indemnity will be subject to the applicable limit of liability of the previous renewal of this Policy under which the incident should have been reported to **us** or the applicable **limit of liability**, whichever is the lower;

- b. **we** may reduce the indemnity entitlement by the monetary equivalent of any prejudice which has been suffered as a result of the delayed notification; and
- c. the indemnity will be subject to all other terms and conditions of this Policy.

**We** require **you** to provide full details of the incident, including but not limited to:

- a. the time, place and nature of the incident;
- b. the manner in which **you** first became aware of this incident;
- c. reasons why **you** believe that this incident could give rise to a **claim**;
- d. the identity of the potential claimant; and
- e. an indication as to the size of the **claim** that could result from this incident.

For the avoidance of doubt, this Condition only applies to incidents that might give rise to a **claim**.

## 8. Cross liability and severability

In respect of **INSURING CLAUSE 6** only, where there is more than one entity insured under this Policy, and subject to the **limit of liability**, any **claim** made by one insured entity against another insured entity will be treated as if they are a **third party** and knowledge possessed by one insured entity will not be imputed to any other insured entity.

## 9. Dispute resolution

All disputes or differences between **you** and **us** will be referred to mediation or arbitration and will take place in the country of registration of the company named as the insured in the Declarations page.

In respect of any arbitration proceeding **we** will follow the applicable rules of the arbitration association in the country where the company stated as the insured in the Declarations page is registered, the rules of which are deemed incorporated into this Policy by reference to this Condition. Unless the applicable arbitration association rules state otherwise, a single arbitrator will be appointed who will be mutually agreed between **you** and **us**. If **you** and **we** cannot agree on a suitable appointment then **we** will refer the appointment to the applicable arbitration association.

Each party will bear its own fees and costs in connection with any mediation or arbitration proceeding but the fees and expenses of the arbitrator will be shared equally between **you** and **us** unless the arbitration award provides otherwise.

Nothing in this Condition is intended to remove **your** rights under **CONDITION 21**. However, if a determination is made in any mediation or arbitration proceeding, **CONDITION 21** is intended only as an aid to enforce this determination.

## 10. Fraudulent claims

If it is determined by final adjudication, arbitral tribunal or written admission by **you**, that **you** notified **us** of any claim knowing it to be false or fraudulent in any way, **we** will have no responsibility to pay that claim, **we** may recover from **you** any sums paid in respect of that claim and **we** reserve the right to terminate this Policy from the date of the fraudulent act. If **we** exercise this right, **we** will not be liable to return any **premium** to **you**. However, this will not affect any non-fraudulent claim under this Policy which has been previously notified to **us**.

## 11. Extended reporting period

An extended reporting period of 60 days following the **expiry date** will be automatically granted at no additional premium. This extended reporting period will cover, subject to all other terms, conditions and exclusions of this Policy:

- a. in respect of **INSURING CLAUSES 1 and 6 (SECTION G only)**, any **claim** first made against **you** during the **period of the policy** and reported to **us** during this extended reporting period;
- b. in respect of **INSURING CLAUSES 2, 3, 4 and 5**, any **cyber event, system failure or loss** first discovered by **you** during the **period of the policy** and reported to **us** during this extended reporting period; and
- c. any circumstance that a **senior executive officer** became aware of during the **period of the policy** and reports to **us** during this extended reporting period.

No claim will be accepted by **us** in this 60 day extended reporting period if **you** are entitled to indemnity under any other insurance, or would be entitled to indemnity under such insurance if its limit of liability was not exhausted.

## 12. Optional extended reporting period

If **we** or **you** decline to renew or cancel this Policy then **you** will have the right to have issued an endorsement providing an optional extended reporting period for the duration stated in the Declarations page which will be effective from the cancellation or non-renewal date.

This optional extended reporting period will cover, subject to all other terms, conditions and exclusions of this Policy:

- a. in respect of **INSURING CLAUSES 1 and 6 (SECTION G only)**, any **claim** first made against **you** and reported to **us** during this optional extended reporting period, provided that the **claim** arises out of any act, error or omission committed prior to the date of cancellation or non-renewal; and
- b. in respect of **INSURING CLAUSES 2, 3, 4 and 5**, any **cyber event, system failure or loss** first discovered by **you** during this optional extended reporting period, provided that the **cyber event, system failure or loss** first occurred during the **period of the policy**.

If **you** would like to purchase the optional extended reporting period **you** must notify **us** and pay **us** the optional extended reporting period premium stated in the Declarations page within 30 days of cancellation or non-renewal.

The right to the optional extended reporting period will not be available to **you** where cancellation or non-renewal by **us** is due to non-payment of the **premium** or **your** failure to pay any amounts in excess of the applicable **limit of liability** or within the amount of the applicable **deductible** as is required by this Policy in the payment of claims.

At the renewal of this Policy, **our** quotation of different **premium, deductible**, limits of liability or changes in policy language will not constitute non-renewal by **us**.

### 13. Maintenance of employee automobile liability insurance

It is a condition precedent to indemnity under **INSURING CLAUSE 6 (SECTIONS H and I only)** that all **employees** who operate an automobile in the course of **your** business activities will maintain in full force and effect for the **period of the policy** primary automobile liability insurance in an amount equal to, or greater than, the minimum primary automobile liability limits required in the state of registration of the automobile. If **you** make a **claim** under **INSURING CLAUSE 6 (SECTIONS H and I only)** and the **employee** has failed to meet these requirements then this Policy will only respond to provide excess coverage as though the requirements had been met, whereby **you** agree to pay all sums within and up to the required minimum limit.

### 14. Mergers and acquisitions

If **you** acquire an entity during the **period of the policy** whose annual revenue does not exceed 20% of the **company's** annual revenue, as stated in its most recent annual financial statements, cover is automatically extended under this Policy to include the entity as a **subsidiary**.

If **you** acquire an entity during the **period of the policy** whose annual revenue exceeds 20% of the **company's** annual revenue, as stated in its most recent annual financial statements, cover is automatically extended under this Policy to include the entity as a **subsidiary** for 45 days.

**We** will consider providing cover for the acquired entity after the period of 45 days if:

- a. **you** give **us** full details of the entity within 45 days of its acquisition; and
- b. **you** accept any amendment to the terms and conditions of this Policy and agree to pay any additional **premium** required by **us**.

In the event **you** do not comply with a. and b. above, cover will automatically terminate for the entity 45 days after the date of its acquisition.

Cover for any acquired entity is only provided under this Policy for any act, error or omission committed or alleged to have been committed on or after the date of its acquisition.

No cover will be automatically provided under this Policy for any acquired entity:

- a. whose business activities are materially different from **your** business activities;
- b. that has been the subject of any lawsuit, disciplinary action or regulatory investigation in the 3 year period prior to its acquisition; or
- c. that has experienced a **cyber event** in the 3 years period prior to its acquisition, if **you** have purchased **INSURING CLAUSES 2, 3, 4 or 5** and the **cyber event** cost more than the highest **deductible** of **INSURING CLAUSES 2, 3, 4 or 5**

If during the **period of the policy** **you** consolidate, merge with or are acquired by another entity then all coverage under this Policy will terminate at the date of the consolidation, merger or acquisition unless **we** have issued an endorsement extending coverage, and **you** have agreed to any additional **premium** and terms of coverage required by **us**.

#### 15. New subsidiaries

If **you** create an entity during the **period of the policy** cover is automatically extended under this Policy to include the entity as a **subsidiary** for 45 days.

**We** will consider providing cover for the created entity after the period of 45 days if:

- a. **you** give **us** full details of the entity within 45 days of its creation; and
- b. **you** accept any amendment to the terms and conditions of this Policy and agree to pay any additional **premium** required by **us**.

In the event **you** do not comply with a. and b. above, cover will automatically terminate for the entity 45 days after the date of its creation.

Cover for any created entity is only provided under this Policy for any act, error or omission committed or alleged to have been committed on or after the date of its creation.

No cover will be automatically provided under this Policy for any created entity whose business activities are materially different from **your** business activities.

#### 16. Our rights of recovery

If **we** make any payment under this Policy and **you** have any right of recovery against a **third party** in respect of this payment, then **we** will maintain this right of recovery. **You** will do whatever is reasonably necessary to secure this right and will not do anything after the event which gave rise to the claim to prejudice this right.

**We** will not exercise any rights of recovery against any **employee**, unless this is in respect of any fraudulent or dishonest acts or omissions as proven by final adjudication, arbitral tribunal or written admission by the **employee**.

Any recoveries will be applied as follows:



- a. towards any recovery expenses incurred by **us**;
- b. then to **us** up to the amount of **our** payment under this Policy, including **costs and expenses**;
- c. then to **you** as recovery of **your deductible**.

#### 17. Prior subsidiaries

Should an entity cease to be a **subsidiary** after the **inception date**, cover in respect of the entity will continue as if it was still a **subsidiary** during the **period of the policy**, but only in respect of an act, error, omission or event occurring prior to the date that it ceased to be a **subsidiary**.

#### 18. Process for paying privacy breach notification costs

Any **privacy breach** notification transmitted by **you** or on **your** behalf must be done with **our** prior written consent. **We** will ensure that notification is compliant with any legal or regulatory requirements and contractual obligations. No offer must be made for financial incentives, gifts, coupons, credits or services unless with **our** prior written consent which will only be provided if the offer is commensurate with the risk of harm.

**We** will not be liable for any portion of the costs **you** incur under **INSURING CLAUSE 3 (SECTION E)** only) that exceed the costs that **you** would have incurred had **you** gained **our** prior written consent. In the absence of **our** prior written consent **we** will only be liable to pay **you** the equivalent cost of a notification made using the most cost effective means permissible under the governing law.

#### 19. Waiver of subrogation

Notwithstanding **CONDITION 16**, **we** agree to waive **our** rights of recovery against any **third party** if, prior to the claim or incident which **you** reasonably expected to give rise to a claim, **you** entered into a contract that contains a provision requiring **you** to do this.

#### 20. Sanctions suspension

It is a condition under this Policy that the provision of cover, the payment of any claim and the provision of any benefit will be suspended, to the extent that the provision of the cover, payment of the claim or provision of the benefit would expose **us** to any sanction, prohibition or restriction under the United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, Canada, the European Union, United Kingdom or United States of America. The suspension will continue until such time **we** would no longer be exposed to the sanction, prohibition or restriction.

#### 21. Choice of law, jurisdiction and service of suit

In the event of a dispute between **you** and **us** regarding this Policy, the dispute will be governed by the laws of the State of the United States of America shown as the choice of law



stated in the Declarations page. **We** agree, at **your** request, to submit to the jurisdiction of a court of competent jurisdiction within the United States of America.

Nothing in this Condition constitutes or should be understood to constitute a waiver of **our** rights to commence an action in any court of competent jurisdiction in the United States of America, to move an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States of America or the laws of any State of the United States of America.

It is further agreed that service of process in such suit may be made upon the representative stated in the Declarations page and that in any suit instituted against **us**, **we** will abide by the final decision of such court or of any appellate court in the event of an appeal. The representative stated in the Declarations page is authorized and directed to accept service of process on **our** behalf in any such suit and, at **your** request, to give a written undertaking to **you** that they will enter a general appearance on **our** behalf in the event such suit is instituted.

Additionally, in accordance with the statute of any state, territory or district of the United States which makes such a provision, **we** hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as **our** true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by **you** arising out of this Policy. The representative stated in the Declarations page is hereby designated as the person to whom the above mentioned officer is authorized to mail such process or a copy thereof.