

Technology Liability

Insurance Policy

Important Notices

Understanding the Policy

You should read the entire **Policy** carefully, including the definitions and the exclusions to ensure that it meets your requirements. We recommend that you consult an insurance adviser to ensure a clear understanding of your rights and obligations under this insurance contract.

Claims Made and Notified Policy

Some covers under Sections 1 and 3 of this Policy are on a claims made and notified policy. We shall only cover you for claims made against you during the **Policy Period** and notified to us as soon as practicable during the **Policy Period** or any applicable **Extended Reporting Period**.

Except as may be provided under Standard Extension 1.4 (Continuity of Cover), the **Policy** does not provide cover in relation to facts or circumstances known to you before the commencement of the **Policy**.

Your duty of disclosure

When you are completing the **Proposal** it is important that you understand you are answering questions for yourself and anyone else that you want to be covered by the **Policy**.

Before you enter into the **Policy**, you have a duty to tell us anything that you know, or could reasonably be expected to know, which may affect our decision to insure you and on what terms. You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate the **Policy**. You do not need to tell us anything that:

- reduces the risk we insure you for;
- is common knowledge;
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we shall pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

Notification of Facts that might give rise to a claim

Section 40(3) of the Insurance Contracts Act 1984 (Cth) provides that if you give notice in writing to us of facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of such facts but before the insurance cover provided by the **Policy** expires, then we are not relieved of liability under the **Policy** in respect of the claim, when made, by reason only that it was made after the expiration of the period of the insurance cover provided by the **Policy**.

Privacy Statement – Privacy Information

We are bound by the Australian Privacy Principles set out under the Privacy Act 1988 (Cth) when we collect and handle your personal and or sensitive information. We shall only collect personal and or sensitive information that is necessary in order for us to process and administer the **Policy** and any claims made under the **Policy**. Where possible, we shall collect personal information directly from you or, where that is not reasonably practical, from other sources. We may also use your personal and or sensitive information for the purpose of designing or underwriting new insurance products, for research and analytical purposes, to perform administrative functions, and to comply with our legal obligations.

We may disclose your personal and or sensitive information to third parties for the purposes described above, including insurers, reinsurers, reinsurance brokers, loss adjusters, external claims data collectors, investigators and others involved in the claims handling process, agents and service providers and related entities some of whom may be located in overseas countries, including Hong Kong, India, Singapore, Switzerland, the United States of America and the Slovak Republic.

In providing personal and or sensitive information, you consent to the collection, use and disclosure, including overseas disclosure of your personal and or sensitive information for the purposes described above. Where you provide us with personal and or sensitive information about others, you represent to us that you have made them aware of that disclosure and of our privacy policy and that you have obtained their consent.

If you do not consent to provide us with the personal and or sensitive information that we request, or withdraw your consent to the use and disclosure of your personal and or sensitive information at any stage, we may not be able to offer or continue to offer you the products or provide the services that you seek including claims assessment and handling.

We realise that this information is often very sensitive in nature and shall treat it with the utmost care and security. Information on how we handle your personal and or sensitive information is explained in our privacy policy, including:

- What information we collect and how we use it;
- When do we disclose your information overseas;
- How do we hold and protect your information;
- How we disclose the information;
- How you can check, update or change the information we are holding;
- What happens if you wish to complain.

A copy of our privacy policy is available by contacting your broker or available on our website: www.corporatesolutions.swissre.com

Contact Details

You may seek access to, and correction of, the personal information we hold about you by contacting our Privacy Compliance Officer on (02) 8295 9500 or by writing to:

Privacy Compliance Officer

Swiss Re International SE Australia Branch
Level 36, Tower Two, International Towers Sydney
200 Barangaroo Avenue, Sydney NSW 2000
Email: complaints_anz@swissre.com

We shall respond to your request within a reasonable time after we receive it.

Complaint & Dispute Resolution Process

We have Complaints Handling and Dispute Resolution processes in place. We aim to respond to a complaint or to a dispute within 15 business days once we have all necessary information and have completed any investigation that may be needed.

If we cannot respond within 15 business days, we shall let you know as soon as practicable within the 15 business day time frame, and nominate a reasonable alternative time. When doing this we shall attempt where possible to meet any reasonable time requirements you express.

We shall keep you informed about the progress of your complaint or dispute every 10 business days until we have responded to you on it.

Should you wish to make a complaint, you can contact our Complaints Officer on (02 8295 9500) or by writing to:

The Complaints Manager

Swiss Re International SE, Australia Branch
Level 36, Tower Two, International Towers Sydney
200 Barangaroo Avenue, Sydney NSW 2000
Email: complaints_anz@swissre.com

If you feel our response does not resolve your complaint you may tell us and ask us to treat it as a dispute. It will then be independently reviewed by our Internal Dispute Resolution Panel comprising employees with appropriate experience, knowledge and authority who have not been involved in the matter before.

The General Insurance Code of Practice

We abide by the General Insurance Code of Practice (Code). The Terms of the Code require us to be open, fair and honest in our dealings with you. The Code outlines the standards by which we have agreed to deal with you in relation to the standards for our employees, authorised representatives, financial hardship, information and education and access to information. The Code aims to:

- Commit us to high standards of service.
- Promote more informed relations between you and us.
- Promote trust and confidence in the insurance industry.

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Schedule

1. Policy Number:		
2. Policyholder:	Company Name	
3. Inception Date:	4.00pm. Local Standard Time, <Date> at the Policyholder's principal place of business	
4. Expiry Date:	4.00pm Local Standard Time, <Date> at the Policyholder's principal place of business	
5. Retroactive Date:	Unlimited	Date
6. Limit of Liability:	Section 1	
	Professional Liability:	each and every Claim and in the aggregate inclusive of Costs and Expenses
	Section 2:	
	Public Liability:	each and every Occurrence
	Technology Product Liability:	each and every Occurrence and in the aggregate any one Policy Period
7. Sub-limits of Liability:		

Section 1: Professional Liability Extensions

1.3	Competition and Consumer Act	\$ Amount
1.4	Continuity of Cover	
1.5	Contractual Penalties	\$ Amount
1.6	Court and Inquiry Attendance Costs	\$ Amount
1.7	Criminal Prosecutions	\$ Amount
1.8	Defamation	\$ Amount
1.9	Emergency Costs	
1.10	Extended Reporting Period	
1.11	Innocent Insured	
1.12	Inquiry Costs	\$ Amount
1.13	Intellectual Property	\$ Amount
1.14	Loss Mitigation	\$ Amount

1.15	Principal's Liability	\$ Amount
1.16	Professional Liability for Cyber Events	\$ Amount
1.17	Vicarious Liability	

Section 1: Professional Liability Optional Extensions

1.18	Reinstatement	Not Included
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Section 3: Extensions Applicable to all Sections

3.1	Automatic Cover for New Subsidiaries	
3.2	Complimentary Legal Advice	
3.3	Financial Interest in Covered Entities	
3.4	Proportionate Liability	\$ Amount
3.5	Public Relations Expenses	\$ Amount
3.6	Recoveries	\$ Amount
3.7	Reputation Protection Expenses	\$ Amount
3.8	Runoff Cover for Past Subsidiaries	

8. Retention

Section 1

Professional Liability:

each and every **Claim** and **Inquiry**
inclusive of **Costs and Expenses**

Section 2

Public and Technology Products Liability:

each and every **Occurrence**
inclusive of all costs and expenses

9. Jurisdictional Cover:	World Wide Excluding North America	Other:
10. Currency:	AUD Other:	Other:
11. Premium:	As Agreed	
12. Business:		

For and on behalf of the **Insurer**

Dated:

Authorised **Employee:**

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Preamble

Subject to payment of the **Premium**, and subject to all the provisions of the **Policy**, and, in reliance upon the disclosures made in the **Proposal**, the **Insured** and the **Insurer** agree as follows:

Section 1: Professional Liability

Insuring Clauses

1.1 Civil Liability

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period** alleging civil liability arising from the **Provision of Technology Services**.

1.2 Costs and Expenses

The **Insurer** shall pay for, or on behalf of the **Insured**, **Costs and Expenses** in the defence or settlement of any **Claim** covered under Section 1.

Section 1: Professional Liability Extensions

The Extensions in this “Extensions” Section apply in respect of Section 1 (Professional Liability) of the **Policy** but only if they are specified as “Included” in the Schedule.

1.3 Competition and Consumer Act

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period** alleging misleading or deceptive conduct under the *Competition and Consumer Act 2010* (Cth), or any equivalent state or territory provisions, by the **Insured** in the **Provision of Technology Services**.

1.4 Continuity of Cover

Notwithstanding Exclusion 1.29 (b) and (c) (Prior or Pending Matters), the **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** or **Inquiry Costs** which the **Insured** is legally liable to pay for any **Claim** or **Inquiry** first made against, or served upon, the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period**, resulting from facts or circumstances which were known to the **Insured** but notified to the **Insurer** after the **Inception Date**, provided that:

- a) such facts or circumstances were not notified under any earlier insurance policy;
- b) such facts or circumstances did not constitute a **Claim** or **Inquiry** as at the **Inception Date**; and
- c) the **Insured** has held a comparable Technology Liability policy issued by the **Insurer** which has been continually renewed without any interruption since the **Insured** could or should first become aware of such facts or circumstances.

The **Insurer** may reduce its liability to the extent of any prejudice suffered in connection with the failure to notify such facts or circumstances. The cover provided by this **Extension** shall not result in any payment greater than the amount that would have been paid under the earliest policy to which the notification could have been made.

Any limit of liability applying to that policy is part of, and not in addition to, the **Limit of Liability** of the **Policy** and any amount paid under this **Extension** shall erode the **Limit of Liability** and **Sub-Limits of Liability**.

1.5 Contractual Penalties

Notwithstanding Exclusion 1.20(d), the **Insurer** shall pay for, or on behalf of the **Insured**, contractual penalties which the **Insured** is legally liable to pay arising directly from a **Claim** first made against the **Insured**, or **Inquiry** first served upon the **Insured**, during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period**, provided that such penalties arise from a contract for the **Provision of Technology Services**, are insurable at law and do not result from **Fraud** or **Dishonesty**.

This shall not apply to PCI (Payment Card Industry) fines and penalties.

1.6 Court and Inquiry attendance Costs

The **Insurer** shall pay for, or on behalf of the **Insured**, **Court and Inquiry Attendance Costs** incurred by an **Insured** who is required to attend any legal proceeding or at an **Inquiry** which is the subject of cover under the **Policy**.

1.7 Criminal Prosecution

Notwithstanding Exclusion 4.4 (Fraud or Dishonesty), the **Insurer** agrees to pay for, or on behalf of the **Insured**, **Costs and Expenses** of legal representation arising out of a criminal prosecution first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period** alleging criminal liability arising from the **Provision of Technology Services**, provided that:

- a) the **Insurer** shall be entitled to nominate a solicitor or barrister to represent the prosecuted **Insured**;
- b) the **Insured** shall give to the **Insurer** written notice of any such criminal prosecution or notice of any criminal prosecution made against the **Insured** as soon as practicable but in no event later than fourteen (14) days of the **Insured** becoming aware of any criminal prosecution or notice of criminal prosecution, and always within the **Policy Period** or any applicable **Extended Reporting Period**;
- c) shall keep the **Insurer** fully informed as regards all developments relating thereto as soon as practicable; and
- d) in the event that the **Insured** is found guilty the **Insured** shall repay to the **Insurer** within fourteen (14) days of such conviction all of the **Costs and Expenses** incurred or paid by the **Insurer** under this Extension.

1.8 Defamation

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period** alleging any unintentional libel, slander, defamation or injurious falsehood by the **Insured** in the **Provision of Technology Services**.

1.9 Emergency Costs

Notwithstanding Claims Condition 5.2 (Reporting and Notice) and 5.5 (Consent to Payments), the **Insurer** shall pay for, or on behalf of the **Insured**, **Costs and Expenses** and **Inquiry Costs** insured under Section 1 (Professional Liability) of the **Policy** which are incurred by the **Insured** in cases of emergency or legal restraint where it was not possible for the **Insured** to obtain the **Insurer's** prior written consent provided that:

- a) the **Insured** shall not admit liability or negotiate any settlement; and
- b) the **Insured** obtains the retrospective consent of the **Insurer** as soon as practicable but not later than the end of the **Policy Period**.

1.10 Extended Reporting Period

If, at the **Expiry Date**, the **Policy** is renewed or replaced by another **Policy** with the **Insurer**, the **Insured** will be entitled to an **Extended Reporting Period** of ninety (90) days, commencing at the expiration of the **Policy Period**.

If, at the **Expiry Date**, the **Policy** is neither renewed nor replaced, the **Insured** will be entitled to an **Extended Reporting Period** of ninety (90) days, commencing at the expiration of the **Policy Period**, provided that:

- a) the **Extended Reporting Period** is requested in writing within thirty (30) days of the **Expiry Date**; and
- b) an additional premium of one hundred (100) per cent of the previous annual premium is remitted within thirty (30) days of the **Expiry Date**.

During the **Extended Reporting Period**, the **Insured** may notify a **Claim** or **Inquiry** provided that such **Claim** or **Inquiry** was first made against, or notified to, the **Insured** before the **Expiry Date**, or the **Insured** first became aware of such fact or circumstance that may give rise to a **Claim** or **Inquiry** before the **Expiry Date**.

The exercise of any applicable **Extended Reported Period** will not in any way increase the **Limit of Liability** of the **Policy**.

1.11 Innocent Insured

The **Insurer** shall pay for, or on behalf of the **Insured**, **Costs and Expenses** resulting from **Fraud or Dishonesty** which would, in the absence of Exclusion 4.4 (Fraud or Dishonesty), be covered under the **Policy**.

This Extension shall not provide cover to an **Insured** that has committed or condoned any **Fraud or Dishonesty**.

No coverage is provided under this Extension if the **Fraud or Dishonesty** is actually or allegedly committed or condoned by shareholders who own more than five per cent (5%), or the principals or directors of the **Policyholder** or any **Subsidiary**.

1.12 Inquiry Costs

The **Insurer** shall pay for, or on behalf of the **Insured**, **Inquiry Costs** incurred in preparing for and being represented at an **Inquiry** first served upon the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period**.

1.13 Intellectual Property

The **Insurer** shall pay for, or on behalf of the **Insured**, the **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period** alleging that the **Insured** has unintentionally infringed intellectual property rights in the **Provision of Technology Services**.

No coverage is provided under this Extension for any **Claim** resulting from any actual or alleged infringement of patent or the misappropriation of trade secrets.

1.14 Loss Mitigation

The **Insurer** shall pay for, or on behalf of the **Insured**, costs and expenses incurred by the **Insured** in taking action to rectify, or to mitigate the effects of, any act, error or omission of the **Insured** in the performance of the **Provision of Technology Services** that would otherwise result in a covered claim under the **Policy**, provided that the **Insured**:

- a) first discovers and notifies the **Insurer** of such act, error or omission during the **Policy Period**;
- b) notifies the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period** of its intention to take such action;
- c) establishes to the satisfaction of the **Insurer** that:
 - i) the act, error or omission would otherwise result in a covered **Claim**;
 - ii) the proposed mitigation costs are less than the likely costs of such **Claim**; and
 - iii) such costs are proportionate to the likely costs of such **Claim** in all of the circumstances. No coverage is provided under this Optional Extension for any:
- d) indirect costs and expenses such as loss, diminution or additional profit, bonus, incentive payment or opportunity cost;
- e) salary, wages, overheads, administrative or office costs of the **Insured**;
- f) costs and expenses which would result in any betterment;
- g) liability that arises from taking such action; or
- h) **Retention**.

Notwithstanding anything to the contrary in this Extension in the event of an emergency which poses an immediate threat to life or property the **Insured** shall take all reasonable steps to mitigate potential **Loss** and shall thereafter comply with the provisions of this Extension as soon as reasonably practicable.

1.15 Principal's Liability

The **Insurer** shall pay for, or on behalf of the **Principal**, **Loss** which the **Principal** is legally liable to pay for any **Claim** arising from any act, error or omission of the **Insured** and for which the **Insured** is liable; provided that, and only to the extent that, the **Claim** against the **Principal** would have been covered under this **Policy** had such a **Claim** been brought directly against the **Insured**.

For the purpose of this Extension only;

- a) **Loss** does not include consequential loss; and
- b) whilst the **Principal** is not an **Insured**, the **Principal** shall comply with the terms and obligations of the **Policy** and at law generally as if they were an **Insured**.

1.16 Professional Liability for Cyber Events

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting**

Period alleging civil liability as the direct result of a **Cyber Event** provided that such alleged civil liability arises from the **Provision of Technology Services**.

1.17 Vicarious Liability

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period** alleging civil liability arising from the **Provision of Technology Services** by consultants, contractors, sub-consultants or sub-contractors of an **Insured**.

Section 1: Professional Liability Optional Extensions

The Extensions in this "Optional Extensions" Section of the **Policy** apply in respect of Section 1 (Professional Liability) but only if they are specified as "Included" in the Schedule.

1.18 Reinstatement

Notwithstanding General Condition 6.1 (Limit of Liability), in the event of the exhaustion of the **Limit of Liability** for this Section and exhaustion of any applicable excess layer, the **Limit of Liability** shall be reinstated once for this Section in respect of any future **Claims** or **Inquiries** which are not causally connected to any act, error or omission alleged in any **Claim** or **Inquiry** paid under the **Policy**.

The maximum amount payable under the reinstated **Limit of Liability** shall not exceed the **Limit of Liability**.

Exclusions

No cover shall be provided under Section 1 for, arising out of, or in any way connected with:

1.19 Adjustment, Repair, Replacement and Withdrawal Expenses Related to Provision of Professional Services or Technology Product

any **Claim** arising from any adjustment, disposal, inspection, recall, removal, repair, replacement or withdrawal of:

- a) the **Provision of Technology Services** or any **Technology Product**;
- b) any property on which any **Provision of Technology Services** is or was performed; or
- c) any property containing or incorporating the **Provision of Technology Services** or any **Technology Product**.

1.20 Commercial and Financial Risks

- a) insolvency, bankruptcy, liquidation or official administration of the **Insured** or any trading debt incurred or guaranteed by the **Insured**;
- b) breach of intellectual property;
- c) the refund of professional fees; or
- d) any liability which the **Insured** has assumed under contract or agreement except to the extent such liability would have attached to the **Insured** in the absence of such contract or agreement.

1.21 Contract

any express, implied, actual, or constructive contract, warranty, guarantee, or promise, or for any actual or alleged liability assumed by an **Insured** under contract; unless such liability would have attached to the **Insured** in the absence of such contract, warranty, guarantee, or promise.

However, this Exclusion shall not apply to that part of a **Claim** alleging the unintentional failure by the **Insured** to provide **Provision of Technology Services** to a reasonable standard of care and consistent with industry standards.

1.22 Delay and Overrun

- a) delay in or lack of performance by the **Insured** including not meeting the milestones, timeframes, phases or any other time dependent obligation, irrespective of the cause; or
- b) cost overrun or any error in estimation of the cost by the **Insured**, irrespective of the cause.

1.23 Inaccurate Prices, Costs or Estimates

any **Insured's** cost guarantees, cost representations, contract price, pricing guarantees, or estimates of probable costs or cost estimates being exceeded, or any guarantee or promise of cost savings, return on investment, or profitability.

1.24 Injunction Compliance Costs

any costs incurred by the **Insured** to comply with any injunction, specific performance, or any other equitable relief.

1.25 Insured's Own Loss

the **Insured's** own loss, damage, first party claim, fine, penalty, cost or expense (other than legal and public relations costs incurred in the defence of any claim for actual or potential liability covered by this **Policy**) including, but not limited to, any business interruption loss, notification costs, crisis consultancy costs, credit monitoring expenses, cost or expense for replacement of actual credit or payment cards, cost or expense of replacing any **Computer System** or any component of any **Computer System** owned or operated by the **Insured**, forensic expenses, and services or any extortion or ransom payments.

1.26 Natural Catastrophe

fire, smoke, explosion, lightening, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God, or any other such physical event, however caused.

1.27 Personal Injury, Property Damage and Advertising Liability

Personal Injury, Property Damage, or Advertising Liability.

1.28 Pollution

discharge, dispersal, release or escape of **Pollutants**; or any governmental, judicial or regulatory directive or request that the **Insured** or anyone acting under the direction or control of the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**.

1.29 Prior or Pending Matters

- a) any **Claim** made, threatened or intimated against the **Insured** prior to the **Inception Date**;
- b) any fact or circumstance of which notice has been given, or could have been given, under any earlier insurance policy;
- c) any fact or circumstance of which the **Insured** first became aware prior to the **Inception Date** and which the **Insured** knew or should reasonably have known had the potential to give rise to a **Claim** or **Inquiry**; or
- d) any act, error or omission or series of acts, errors or omissions committed, or alleged to have been committed, prior to the **Retroactive Date**.

1.30 Regulatory Action for a Cyber Event

any claim, proceeding, investigation, procedure or regulatory action brought for any breach of any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

1.31 Related Entity

any **Claim** brought by or on behalf of a **Related Entity**, other than a claim for contribution or indemnity which results from another **Claim** which would be covered under the **Policy** if made against the **Insured**.

1.32 Warranty

the failure of the **Technology Product** to attain or perform at a standard, capacity, durability, purpose or any other quality or characteristic represented or warranted expressly or impliedly by the **Insured**.

Section 2: Public and Technology Products Liability

Insuring Clauses

2.1 Public and Technology Products Liability

The **Insurer** shall pay to or on behalf of the **Insured** all sums which the **Insured** shall become legally liable to pay for compensation in respect of any:

- a) **Personal Injury**;
- b) **Property Damage**; or
- c) **Advertising Liability**

happening during the **Policy Period** within the **Territorial Limits** caused by an **Occurrence** in connection with the **Business** or arising out of the **Technology Products** of the **Insured**.

2.2 Supplementary Payments

Where coverage is provided under Insuring Clause 2.1 (Public and Technology Products Liability), the **Insurer** shall pay **Supplementary Payments** to or on behalf of the **Insured**, in addition to the **Limits of Liability**.

In respect to any claim brought in any court or before any other legally constituted body in **North America**, all amounts claimed for **Supplementary Payments** shall be part of and not in addition to the **Limit of Liability**.

Provided always that the **Insurer** shall not be obligated to pay any **Supplementary Payments** after the **Limit of Liability** has been exhausted.

Exclusions

No cover shall be provided under Section 2 (Public and Technology Products Liability) for, arising out of, or in any way connected with:

2.3 Advertising Liability

Advertising Liability:

- a) for statements made at the direction of the **Insured** with the knowledge of the illegality or falsity thereof;
- b) for breach of contract, other than liability for unauthorized misappropriation of advertising ideas based upon breach or alleged breach of an implied contract; or
- c) for infringement or passing off of registered trademarks, patents, registered designs, service marks or trade name on any products, goods or services sold, offered for sale or advertised;
- d) for any **Insured** whose **Business** is advertising, broadcasting, publishing or telecasting;
- e) for incorrect description or any mistake in the advertised price of products, goods or services sold, offered for sale or advertised; or
- f) for failure of products, goods or services to conform with advertised performance, quality, fitness or durability. This Exclusion does not apply to any warranty as to product safety implied by Statute.

2.4 Aircraft, Hovercraft and Watercraft

- a) Ownership, use, maintenance or operation by or on behalf of the **Insured** of:

- i) any **Watercraft** exceeding ten (10) metres in length except where such watercraft are:
 - 1) operated by independent contractors; and
 - 2) not owned by the **Insured** but used by the **Insured** for business entertainment; or
- ii) any **Hovercraft**; or
- iii) any **Aircraft** exceeding a Maximum Take-Off Mass of twenty-five (25) kilograms or more except where such **Aircraft** is operated in conflict with CASA or relevant aviation authority's regulations; or
- iv) any property used for the purpose of an airport or any commercial aircraft landing strip or helipad.

- b) **Technology Products** or any part thereof which the **Insured** knew or had reasonable cause to believe would be or are installed in any **Aircraft**.
- c) repair, maintenance, servicing of or installation in or on any **Aircraft**.

2.5 Construction Liability

liability of whatsoever nature caused by or arising directly or indirectly out of or in connection with any project involving the construction, demolition, alteration of and/or addition to any building, structure or infrastructure by or on behalf of the **Insured** where the total cost of the project is AUD 1,000,000 or greater.

2.6 Contractual Liability

any liability assumed by the **Insured** under any contract, warranty or agreement requiring:

- a) insurance to be effected on any property not owned by the **Insured**; or
- b) the waiving or limitation of the **Insured's** rights of recovery against another party; or
- c) the assumption of liability for **Personal Injury** or **Property Damage** or **Advertising Liability** regardless of fault, except:
 - i) to the extent that such liability would have been implied by law; or
 - ii) to contracts or agreements specified via endorsement; or
 - iii) liability assumed under any **Incidental Contracts**; or
 - iv) liability assumed with respect to the products under a warranty of safety implied by Statute.

2.7 Electronic Data

- a) communication, display, distribution or publication of **Electronic Data**. This exclusion shall not apply to **Advertising Liability** set out in subparagraphs 7.1a) (libel, slander, defamation) and 7.1b) (invasion of right of privacy) of this **Policy** but only for material which is published or posted electronically by the **Insured** where, prior to publishing and posting, the **Insured** has agreed in writing to the publication and posting and has full knowledge of the content and source of the material; or
 - i) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of **Electronic Data**;
 - ii) error in creating, amending, entering, deleting or using **Electronic Data**; or
 - iii) total or partial inability or failure to receive, send, access or use **Electronic Data** for any time or at all,

from any cause whatsoever, regardless of any other contributing clause or event whenever it may occur.

2.8 Employer's Liability

- a) any **Personal Injury** for which insurance against such liability (whether the insurance is limited in amount or not) is or would have been provided under a policy in a form prescribed or approved or issued in pursuance of any legislation applicable to the **Insured** in respect of any Workers Compensation legislation or under any extension of such policy granted on request as a matter of usual practice by insurers authorized to issue such policies; or
- b) any liability imposed by the provisions of any legislation applicable to the **Insured** in respect of any compensation benefit to persons for **Personal Injury**, or any industrial award, agreement or determination in the course of their employment.

However, if the **Insured**:

- i) is required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or any common law liability (whether limited or not) for **Personal Injury**; or
- ii) is not required to so insure or otherwise fund such liability by reason only that the **Personal Injury** is to a person who is not a 'worker' or 'employee' within the meaning of the relevant workers' compensation law or the **Personal Injury** is not an injury which is subject to such law, then this **Policy** will cover liability for **Personal Injury** to the extent that the **Insured's** liability would not have been covered under any such fund, scheme, policy of insurance or self-insurance arrangement had the insured complied with its obligations pursuant to such law.

2.9 Faulty Workmanship

any liability for any cost of performing, completing, correcting or improving any work undertaken by the **Insured**.

2.10 Fines, Penalties, Punitive, Exemplary, Aggravated and Liquidated Damages

any liability for:

- a) fines or penalties; or
- b) punitive, exemplary, aggravated or liquidated damages or any multiplication of compensatory damages.

2.11 Information Technology Hazards, Computer Data, Program and Storage Media

- a) **Personal Injury** or **Property Damage** or **Advertising Liability** arising, directly or indirectly, out of, or in any way involving the **Insured's Internet Operations**;
- b) **Personal Injury** or **Property Damage** or **Advertising Liability** arising, directly or indirectly, out of a breach of the *Privacy Act 1988* (Cth), or any amendment to or replacement thereof, or other privacy legislation; or
- c) **Property Damage** to computer data or programs and their storage media arising directly or indirectly out of caused by, through or in connection with:
 - i) the use of any computer hardware or software; or
 - ii) the provision of computer or telecommunications services by the **Insured** or on the **Insured's** behalf; or
 - iii) the use of computer hardware or software belonging to any third party, whether authorized or unauthorized including damage caused by any computer virus.

This Exclusion does not apply to **Personal Injury** or **Property Damage** arising out of any material which is already in print by manufacturers in support of **Technology Products**, including but not limited to such **Technology Product's** use and safety instructions or warnings, and which is also reproduced on site.

2.12 Libel and Slander

any publication of any defamatory material, libel or slander prior to the inception date of this **Policy** or made at the direction of the **Insured** with knowledge of the falsity thereof.

2.13 Loss of Use

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

- a) delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement; or
- b) the failure of the **Insured's** products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the **Insured**.

However, this Exclusion shall not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the **Technology Products** after such **Technology Products** have been put to use by any person or organization other than the **Insured**.

2.14 Pollution

liability of whatsoever nature caused by or arising directly or indirectly out of or in connection with:

- a) **Personal Injury** or **Property Damage** directly or indirectly arising out of the discharge dispersal release or escape of;;
- b) the cost of removing, nullifying or cleaning up; or
- c) the cost of preventing the escape of,

any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals or waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.

Provided that 2.14 a) and b) above shall not apply when any liability arises from a sudden identifiable, unintended and unexpected event from the standpoint of the **Insured** which takes place in its entirety at a specific time and place during the **Policy Period** and occurs outside of **North America**.

2.15 Product Guarantee

any liability of whatsoever nature for any product guarantee or warranty or given by or on behalf of the **Insured**.

However, this Exclusion does not apply to the requirements of any Federal or State legislation as to product safety and information.

2.16 Professional Liability

the rendering or failure to render professional advice, including without limitation, the **Provision of Professional Services**, or any error or omission in connection therewith. However, this Exclusion shall not apply to the rendering of or failure to render medical advice or service by **Medical Persons** employed by the **Insured** to provide first aid and other medical services on the **Insured's** premises.

2.17 Property Damage to Technology Products

Property Damage to Technology Products if such damage is attributed to any defect therein or the harmful nature or unsuitability thereof.

However, this Exclusion does not apply to **Property Damage to Technology Products** repaired, serviced or treated by the **Insured** after such **Technology Products** were originally sold, supplied or distributed and such **Property Damage** directly arises from such repair, service or treatment.

2.18 Property in Physical or Legal Control

Property Damage to property owned by or leased or rented to the **Insured** or property in the **Insured's** physical or legal control other than:

- a) premises which are not owned by the **Insured** but leased or rented to the **Insured** in the course of **Business**, but always excluding liability which attaches by way of any contract or agreement that would not have attached in the absence of such contract or agreement;
- b) premises not owned by or leased or rented to the **Insured** which the **Insured** temporarily occupies in order for the **Insured** to carry out work in connection with the **Business** provided no indemnity is granted for liability in respect of **Property Damage** to that part of the property upon which the **Insured** is or has been working;
- c) **Vehicles** (not belonging to the **Insured** or used by the **Insured**) in the **Insured's** physical or legal control whilst in a car park owned or operated by the **Insured** unless part of the **Insured's** business is the operation of a car park for reward;
- d) an **Employee's** personal property; or
- e) any other property temporarily in the **Insured's** physical or legal control (except **Property Damage** to that part of the property upon which the **Insured** is or has been working) subject to a **Sub-limit of Liability** of AUD 500,000 any one **Occurrence** and in the aggregate for any one **Policy Period**.

2.19 Repair, Replacement or Recall of Products

any liability to pay compensation, damages or costs or expenses claimed for the inspection, adjustment, repair, alteration, removal, disposal, replacement or loss of use of the **Technology Products**, or for the recall or withdrawal of the **Technology Products** or work completed by or for the **Insured** or of any property of which the **Technology Products** or work form a part.

2.20 Vehicles

any **Personal Injury** or **Property Damage** caused by or arising out of the use of or ownership or operation by the **Insured** of any

Vehicle which is legally required to be registered or legally required to be insured. This Exclusion shall not apply to **Personal Injury** or **Property Damage**:

- a) caused by or arising from the loading or unloading of any **Vehicle** when carried out beyond the limits of any carriage-way or thoroughfare by a person other than the driver or attendant of any such **Vehicle** and where such **Personal Injury** or **Property Damage** occurs beyond the limits of any carriage-way or thoroughfare;
- b) arising during the use of any **Vehicle** as a tool of trade at any site where the **Insured** is working or at the **Insured's** premises, provided that the **Insured** is not indemnified under this **Policy** where the **Vehicle** is used only for the transportation or haulage of goods; or
- c) caused by or arising out of the use of an unregistered **Vehicle** whilst being driven under its own power between its point of unloading and a worksite and whilst returning from a worksite to the point of reloading for its conveyance from the area,

provided that no other indemnity is provided for such **Personal Injury** or **Property Damage** under a contract of insurance entered into for the purpose of a law that relates to compensation for **Personal Injury** or **Property Damage** arising out of the use of a **Vehicle**.

Section 3: Extensions applicable to all sections

The Extensions in this “Extensions applicable to all sections” Section apply in respect of Section 1 (Professional Liability) and Section 2 (Public and Technology Product Liability) of the **Policy** but only if they are specified as “Included” in the Schedule.

3.1 Automatic Cover for New Subsidiaries

If, during the **Policy Period**, the **Policyholder** acquires voting rights in another entity or creates another entity which as a result of such acquisition or creation becomes a **Subsidiary**, then, subject to the provisions of the **Policy** including the provisions of this Extension, such entity and its **Insured** shall be covered under the **Policy** but only with respect to the **Provision of Technology Services** or **Occurrences** first occurring after such acquisition or creation that are otherwise covered under the **Policy**.

If the total gross annual revenue of the entity at the date of acquisition or creation does not exceed twenty per cent (20%) of the total gross annual revenue of the **Policyholder** declared at the **Inception Date** and the activity of the acquisition or creation is the **Provision of Technology Services**, cover shall be provided until the **Expiry Date**.

Coverage otherwise afforded under this Extension for such acquisition or creation shall terminate ninety (90) days after the effective date of such acquisition or creation, or at the **Expiry Date**, whichever is earlier, unless the **Policyholder** agrees to and pays any additional premium and agrees to any additional terms and conditions of the **Policy** as determined by the **Insurer**.

3.2 Complimentary Legal Advice

The **Insurer** has arranged for any **Insured** to receive up to one (1) hour of **Complimentary Legal Advice** during the **Policy Period** or any applicable **Extended Reporting Period** from a member of its **Legal Panel** with respect to matters arising under the **Policy**.

Contact details for members of the **Legal Panel** are located on page 5 of the **Policy** and are accurate as at the date of placement but may be updated from time to time. Please contact the **Insurer** if further information is required.

3.3 Financial Interest in Covered Entities

The **Insurer** shall make best efforts to reimburse the **Policyholder** for its **Financial Interest** if the **Policyholder** has suffered loss due to the **Insurer** being prevented from making a payment under the **Policy** to an **Insured** solely because the **Insureds** claim under the **Policy** has been brought in a **Non-Admitted Jurisdiction**. This is provided that:

- a) matters known to the **Insured** are deemed to be known to the **Policyholder**;
- b) the **Policyholder** and the **Insured** comply with all the provisions and requirements of the **Policy**;
- c) the total amount to be reimbursed under this Extension shall be calculated as the equivalent of the payment the **Insurer** had been prevented from paying to the **Insured** and the **Insured** shall fully release the **Insurer** from any further payments of such amounts; and
- d) no person or entity shall be insured under this Extension 3.3 (Financial Interest in Covered Entities) if and to the extent that in the circumstances of the placement or issue of the **Policy** it would be impermissible, under any applicable law, for such person or entity to be thus insured.

3.4 Proportionate Liability

Notwithstanding Exclusion 1.21 (Contract) or 2.6 (Contractual Liability), coverage under the **Policy** will not be prejudiced by the **Insured** entering into a contract with a third party which assumes a liability under a contract by reason of having contracted out of the operation of the **Proportionate Liability Legislation**.

3.5 Public Relations Expenses

The **Insurer** shall pay for, or on behalf of the **Insured**, **Public Relations Expenses** incurred in respect of a covered **Claim, Inquiry**, or **Occurrence**.

3.6 Recoveries

Any amounts recovered by the **Insurer** or the **Insured** in connection with a payment under the **Policy** will be distributed in order of priority as follows:

- a) firstly, in satisfaction of administrative and legal costs incurred in effecting a recovery, regardless of whether the **Insurer** or **Insured** incurred such recovery costs;
- b) secondly, to the **Insured** for sums exceeding the **Limit of Liability**, to the extent that such sums would have otherwise been covered under the **Policy**;

- c) thirdly, to the **Insurer** for all amounts paid by the **Insurer** under the **Policy**;
- d) fourthly, to the **Insured** in satisfaction of the applicable **Retention**; and
- e) lastly, to the **Insured** for any amounts in excess of the total amount paid by the **Insurer** under the **Policy**.

3.7 Reputation Protection Expenses

The **Insurer** shall pay for, or on behalf of the **Insured**, **Reputation Protection Expenses** incurred in respect of a covered **Claim**, **Inquiry** or **Occurrence**.

3.8 Runoff Cover for Past Subsidiaries

If, during the **Policy Period**, a **Subsidiary** ceases to be a **Subsidiary** of the **Policyholder**, coverage under the **Policy** will continue to apply in full force and effect until the end of the **Policy Period**, or any applicable **Extended Reporting Period**, with respect to **Claims**, **Inquiries** or **Occurrences** that would have been covered under the **Policy**, provided that:

- a) in the case of a **Claim** or **Inquiry** the **Provision of Technology Services** first occurs or allegedly first occurs, or in the case of an **Occurrence** it first happens, whilst the entity was a **Subsidiary**; and
- b) no other insurance is available to respond to the **Claim**, **Inquiry** or **Occurrence**.

Section 4: Exclusions applicable to all sections

No cover shall be provided under the **Policy** for, arising out of, or in any way connected with:

4.1 Anti-Competitive Practices

any actual or alleged anti-competitive trade practices and market conduct including but not limited to monopolisation, price fixing and restraint of trade.

4.2 Asbestos

any liability whatsoever in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of asbestos, asbestos fibres or any derivatives of asbestos in any form or quantity.

4.3 Disclosure of Information

any actual or alleged loss or disclosure of information, including but not limited to client or **Employee** records and personal information, whether such information is stored electronically or otherwise, and irrespective of whether retained by the **Insured** or any other party.

4.4 Fraud or Dishonesty

any **Fraud or Dishonesty**.

4.5 Infrastructure Failure

any:

- a) satellite failure;
- b) electrical or mechanical failure not under the control of the **Insured**, including any electrical power interruption, surge, brownout, or blackout;
- c) failure of telephone lines, data transmission lines, or other telecommunications or network infrastructure not under the control of the **Insured**; or
- d) failure or interruption of service provided by any internet service provider or cloud computing provider.

4.6 Management Liability

- a) *Corporations Act 2001* (Cth); or
- b) act, error or omission or series of acts, errors or omissions of the **Insured** made or allegedly made in connection with the **Insured's** duties as a director, officer or trustee of any entity, company or trust.

4.7 Nuclear

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

4.8 Obligations to Employees

Any **Loss**, injury or damage sustained by any person, whether or not in the course of employment by the **Insured**, arising out of any actual or alleged employment-related act, omission, policy, practice or representation, including but not limited to any:

- a) wrongful or unfair dismissal;
- b) refusal to employ;
- c) denial of natural justice;
- d) defamation;
- e) misleading representation or advertising;
- f) discrimination or harassment, whether sexual or otherwise; or
- g) retaliation on account of whistleblowing or the exercise by any person of their legal rights.

4.9 Tobacco

Personal Injury directly or indirectly due to the inhalation or ingestion of or exposure to tobacco or tobacco smoke or any tobacco products (or ingredients thereof) or any tobacco substitute products, including e-cigarettes.

4.10 War and Terrorism

- a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to popular rising, military rising, martial law, riot, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition of or damage to property by or under the power of any government or public local authority; or
- b) any actual or threatened act of terrorism including but not limited to the use of force or violence or the threat thereof, of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation 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 any action taken to control, prevent or suppress any act of terrorism.

Section 5: Claims conditions applicable to all sections

5.1 Multiple Claims or Occurrences

All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under the **Policy**. All such acts, errors or omissions shall be treated as having occurred at the time of the first of such acts, errors or omissions occurred.

For any **Related Claims and Related Inquiries**, or any **Occurrence**, only one **Retention** and one **Limit of Liability** shall be applicable.

5.2 Reporting and Notice

As soon as reasonably practicable the **Insured** shall give written notice to the **Insurer** of any **Claim, Inquiry, Occurrence** or claim for any other matter covered under the **Policy**. Such notice shall be provided irrespective of whether or not any potential or actual amount payable under the **Policy** may fall within the **Retention**.

All such notices shall include, but not be limited to, the following:

- a) a detailed description of the subject matter of the **Claim, Inquiry, Occurrence** or claim for any other matter covered under the **Policy**;
- b) details of all the parties involved;
- c) the nature of the alleged or potential loss;
- d) the manner and date upon which the **Insured** first became aware of the matters giving rise to the notification;
- e) a copy of the **Claim** or **Inquiry**; and
- f) a copy of any other insurance policy that may be applicable.

Notice and all information shall be sent in writing to:

The Claims Manager

Swiss Re International SE Australia Branch
Tower Two International Towers Level 36, 200 Barangaroo Avenue, Sydney, NSW 2000, Australia
Email: ClaimsANZ_CorporateSolutions@swissre.com

The **Insured** shall keep the **Insurer** fully informed as regards all developments relating to such **Claim, Inquiry, Occurrence** or claim for any other matter covered under the **Policy** as soon as reasonably practicable.

5.3 Defence and Settlement

Section 1 (Professional Liability)

The **Insured** agrees not to settle any **Claim**, incur any **Costs and Expenses**, make any admission, offer or pay or otherwise assume any contractual obligation with respect to any **Claim** or **Inquiry** without the **Insurer's** prior written consent, such consent not to be unreasonably withheld or delayed. The **Insurer** will not be liable for any **Claim**, settlement, **Costs and Expenses**, admission, offer or payment, assumed obligation, **Inquiry Cost** or claim for any other matter covered under the **Policy** to which it has not so consented. The **Insurer** shall be entitled to associate with any **Insured** in the defence and negotiation of any settlement of any **Claim** or **Inquiry**.

The **Insured** shall have the obligation to defend and contest any **Claim** made against them and to respond or otherwise participate in any **Inquiry**.

The **Insurer** agrees to the appointment of any solicitor or firm of solicitors that is a member of the **Insurer's Legal Panel** to act on behalf of the **Insured**.

Each **Insured** shall fully co-operate with the **Insurer** in the investigation, defence, settlement, or appeal of any **Claim** or **Inquiry** by:

- a) providing the **Insurer** with all information and assistance as it may require to investigate or defend any **Claim** or **Inquiry** or to enable it to determine its liability under the **Policy** including by:
 - i) attending meetings with the **Insurer** and any solicitors or legal counsel appointed by the **Insurer** to act on behalf of the **Insured** in defence of any **Claim** or participation in any **Inquiry**; and
 - ii) fully cooperating with any experts which may be appointed by the **Insurer** for the purpose of obtaining an independent expert opinion;
- b) taking steps to minimise or reduce any **Loss**, provided such steps are proportionate to that **Loss**.

Section 2 (Public and Technology Products Liability)

In the event of an **Occurrence** or if an **Occurrence** appears reasonably likely to take place the **Insured** must as soon as practicable take at its own expense all responsible steps to prevent or minimise **Personal Injury, Property Damage** or **Advertising Liability** arising out of the **Occurrence**.

The **Insured** must give notice in writing to the **Insurer** as soon as reasonably practicable but not later than thirty (30) days of every **Occurrence** which may give rise to a claim under Section 2 (Public and Technology Products Liability) together with all documents and information relevant to each such **Occurrence** including but not limited to every demand, writ, summons, proceedings, noticed of prosecution, inquest or inquiry and all associated information.

The **Insurer** agrees to the appointment of any solicitor or firm of solicitors that is a member of the **Insurer's Legal Panel** to act on behalf of the **Insured**.

The **Insured** must use its best endeavours to preserve all property, any **Technology Products**, appliance and plant and all other things which may assist in the investigation or defence of a claim against the **Insured** covered under Section 2 (Public and Technology Products Liability) or in the exercise of rights of subrogation and so far as may be reasonably practicable no alteration or repair is to be effected without the consent of the **Insurer** until the **Insurer** has had an opportunity of inspection.

The **Insured** or any other person indemnified under Section 2 (Public and Technology Products Liability) shall not admit liability for or offer to or agree to settle any claim incur any **Supplementary Payments**, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any claim without the prior written consent of the **Insurer**. The **Insurer** shall not be liable under Section 2 (Public and Technology Products Liability) for any claim, settlement, **Supplementary Payments**, admission, offer or payment, or assumed obligation to which it has not consented where the **Insured's** failure to obtain consent caused or contributed to the loss. However, the **Insurer** may reduce the amount it pays for a claim to the extent that it is prejudiced by the **Insured's** failure to obtain consent.

5.4 Insurer's Right to Assume Conduct

The **Insurer** shall, in its discretion, be entitled to conduct in the name of the **Insured**, the defence or settlement of any **Claim**, including but not limited to a claim against the **Insured** covered under Section 2 (Public and Technology Products Liability), and the management and conduct of any **Inquiry**.

5.5 Consent to Payments

The **Insured** shall obtain the written consent of the **Insurer**, which shall not be unreasonably withheld or delayed, before any amounts payable under the **Policy** are incurred.

The **Insurer** shall only be liable under the **Policy** for payment of any **Costs and Expenses, Supplementary Costs** or any other amounts which are reasonable and necessary.

5.6 Right to Contest

Where there is a dispute between the **Insurer** and the **Insured** as to whether a settlement is reasonable or whether a **Claim**, including but not limited to a claim against the **Insured** covered under Section 2 (Public and Technology Products Liability), should continue to be defended, the **Insurer** will refer the matter to a **Senior Counsel** to determine the issue, taking into consideration the prospects of a successful defence or settlement options.

Where the **Insured** does not agree with the **Senior Counsel** determination, the **Insured** may elect to continue the defence of the **Claim**, however the **Insurer's** liability will not exceed the amount for which the **Claim** could have been settled plus the **Costs and Expenses or Supplementary Payments** incurred up to the date of such election. The **Senior Counsel's** expenses in providing such determination will be paid by the **Insurer** and any such payments will erode the **Limit of Liability**.

5.7 Allocation

If a **Claim, Inquiry, Occurrence** or any other matter is partially covered under the **Policy**, the **Insured** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation between such covered matters and not-covered matters based upon the relative legal and financial exposures and the relative benefits obtained by the parties.

If the **Insurer** and the **Insured** cannot agree on allocation within thirty (30) days of any allocation issue first notified in writing to the **Insured** by the **Insurer**, they agree to refer the determination to a **Senior Counsel**. The **Senior Counsel** is to determine the fair and proper allocation as an expert not an arbitrator. The **Insured** and the **Insurer** shall be entitled to make written submissions to **Senior Counsel**. The **Senior Counsel** is to take account of the parties' submissions, but the **Senior Counsel** is not to be confined by such submissions and is to determine the fair and proper allocation in accordance with their own judgement and opinion. The **Senior Counsel's** expenses in providing such determination will be paid by the **Insurer** and any such payments will not erode the **Limit of Liability**.

Whilst a dispute as to allocation of any matter claimed under the **Policy** remains unresolved, the **Insurer** shall advance such amounts it considers to be a fair and proper allocation. The allocation finally agreed or determined shall be applied retrospectively to any amounts incurred or paid.

5.8 Advancement of Cost and Expenses and Inquiry Costs

Once the **Insurer** has received written notice of a **Claim** or **Inquiry** under the **Policy**, it shall advance **Costs and Expenses or Inquiry Costs** as and when incurred, but no later than thirty (30) days after the **Insurer** has received itemised bills for those **Costs and Expenses or Inquiry Costs**.

Such payments by the **Insurer** shall be repaid to the **Insurer** by the **Insured** in the event and to the extent that any such **Insured** is subsequently determined not to be entitled to cover under the **Policy**.

Section 6: General conditions applicable to all sections

6.1 Limit of Liability

Section 1 (Professional Liability)

The **Insurer's** maximum liability under the **Policy** for any one **Claim** and in the aggregate in respect of all **Claims** shall not exceed the **Limit of Liability** specified in the **Schedule** for Section 1 (Professional Liability) of the **Policy**. Further, the **Insurer's** maximum liability under the **Policy** in respect of any Extension or Optional Extension applicable to Section 1 (Professional Liability) for which a **Sub-Limit of Liability** is specified in the **Schedule**, or any endorsement to this **Policy**, shall be the amount of such specified **Sub-Limit of Liability, Costs and Expenses** and any cover granted under any Insuring Clause, Extension or Optional Extension or **Sub-Limit of Liability** applicable to Section 1 (Professional Liability) shall form part of and do not increase the **Limit of Liability** specified in the **Schedule** for Section 1 (Professional Liability) unless otherwise specifically stated in the **Policy**.

Section 2 (Public and Technology Products Liability)

The liability of the **Insurer** to pay compensation for any one claim or series of claims arising from each **Occurrence** shall not exceed the **Limits of Liability** as stated in the Schedule.

The total aggregate liability of the **Insurer** to pay compensation in respect of all **Personal Injury, Property Damage and Advertising Liability** arising out of **Technology Products** occurring during any one **Policy Period** shall not exceed the **Limits of Liability** stated in the Schedule in respect of that **Policy Period**.

The **Insurer's** maximum liability under the **Policy** in respect of any Extension applicable to Section 2 (Public & Technology Products Liability) for which a **Sub-Limit of Liability** is specified in the Schedule, or any endorsement to this **Policy**, shall be the amount of such specified **Sub-Limit of Liability**. Any cover granted under any Extension applicable to Section 2 (Public & Technology Products Liability) shall form part of and do not increase the **Limit of Liability** specified in the **Schedule** for Section 2 (Public & Technology Products Liability) unless otherwise specifically stated in the **Policy**.

The **Insurer** shall not be obligated to pay any claim or judgement or to defend any suit after the **Limit of Liability** has been exhausted by payment of judgements, settlements or compensation.

6.2 Retentions

The **Insurer** shall only be liable for any amount covered under the **Policy** in excess of the applicable **Retention**. The **Retention** shall remain uninsured.

If different parts of a single **Claim, Inquiry or Occurrence** are subject to different **Retentions**, the applicable **Retentions** will be applied separately to each part of such **Claim, Inquiry or Occurrence**, but the sum of such **Retentions** shall not exceed the highest applicable **Retention**.

In the case of any **Related Claim and Related Inquiry**, the highest **Retention** applicable to any **Claim, Inquiry** constituting a **Related Claim and Related Inquiry** shall be deemed the **Retention** applicable to all **Loss** arising from such **Related Claim and Related Inquiry** unless the **Policy** expressly provides otherwise.

If provided, cover under Section 3 – Extensions Applicable To All Sections shall be subject to the most applicable **Retention** of Section 1 (Professional Liability) or Section 2 (Public and Technology Products Liability) based on the subject matter of the **Claim, Occurrence or Inquiry**.

6.3 Other Insurance

The insurance provided by the **Policy** is excess over any other valid and collectible insurance, including any Professional Indemnity or General Liability insurance, unless such other insurance is specifically written as excess insurance over the **Limit of Liability** provided by the **Policy**. The **Policy** shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a may be obligated to pay.

6.4 Subrogation

In the event of any payment under the **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery, and the **Insured** shall, to the extent possible and practical, do everything necessary to secure and preserve such rights, including but not limited to the execution of documents necessary to enable the **Insurer** to effectively commence any action in the name of the **Insured**.

The **Insured** must not do anything to prejudice the position of the **Insurer** in its actual or potential rights of recovery against another party.

6.5 Alteration to Risk

The **Insured** shall give to the **Insurer** written notice as soon as practicable of any material alteration to the risk during the **Policy Period**. This shall include, but not be limited to:

- a) any **Insured** engaging in activities that are materially different from those in the **Proposal**;
- b) the **Policyholder** or any **Subsidiary** being unable to pay its debts as and when they fall due; or
- c) the **Policyholder** being acquired by another company.

In the event of material alteration to the risk during the **Policy Period** the **Insurer** reserves the right to impose additional terms and conditions and to charge an additional premium.

6.6 Reasonable Care and Precautions

- a) To the extent possible and practicable, the **Insured** shall take all reasonable care and precautions:
- i) by identifying and addressing known risks and risks that should be known to prevent **Personal Injury, Property Damage or Advertising Liability** losses;
 - ii) by identifying and addressing known risks and risks that should be known to prevent the manufacture, sale or supply of defective **Technology Products**; and
 - iii) to comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property.
- b) The Insured shall at its own expense trace, recall or modify any of the Technology Products containing any defect or deficiency of which the Insured has knowledge or has reason to suspect to be present in such Technology Products.

6.7 Cancellation

The **Insurer** may cancel this **Policy** in accordance with the relevant provisions of the *Insurance Contracts Act 1984* (Cth).

The **Policy** may be cancelled at any time at the written request of the **Insured**. Where the **Policy** is cancelled by the **Insured**, the **Insured's** entitlement to a refund of the **Premium** is set out in Clause 6.10 (Premium).

6.8 Third Party Interests

No right or interest with respect to the **Policy** can be assigned without the **Insurer's** prior written consent. The **Policy** is not intended to confer rights to any person or entity not a party to the **Policy**.

6.9 Authorisation

By acceptance of the **Policy**, the **Policyholder** agrees to act on behalf of each and every **Insured** with respect to any matters pertaining to the **Policy**, including but not limited to the giving of notice under Claims Condition 5.2 (Notice and Reporting), the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under the **Policy**, and the negotiation, agreement to and acceptance of any endorsements issued to form part of the **Policy** and the exercising or declining of any rights to an or any applicable **Extended Reporting Period** and each of the other **Insured** agree that the **Policyholder** shall so act on their behalf.

This Condition shall not limit the ability of any other **Insured** to provide notice of a **Claim** or **Inquiry**.

6.10 Premium

The **Policyholder** agrees that the **Premium** shall be fully earned in the event of any notification that may give rise to any payment under the **Policy**. Otherwise, the **Policyholder** agrees that twenty (20%) per cent of the **Premium** and any adjusted **Premium** shall be fully earned at the **Inception Date** and that the balance of the **Premium** shall be prorated in the event that the **Policy** is cancelled by the **Policyholder**.

6.11 Inspection and Audit

The **Insurer** may inspect the property and operations of the **Insured** on reasonable notice. The right of the **Insurer** to make, and report on, inspections will not constitute a warranty that the property or operations are safe or compliant with any law. The **Insurer** may audit the records of the **Insured** during or after the **Policy Period** should any liability arising out of the **Policy** remain outstanding.

6.12 Joint Insureds

Where the **Insured** comprises more than one party, information supplied to the **Insurer** shall be deemed to have been furnished by and on behalf of all such parties and any information supplied to the **Insurer** or any omission or non-disclosure in relation to any renewal or extension hereof, shall likewise be deemed to have been furnished, omitted or withheld on behalf of all such parties.

6.13 Jurisdictional Cover and Territorial Limits

The coverage provided under Section 1 (Professional Liability) of the **Policy** shall extend to any **Claim** or **Inquiry** brought in a court of law in the countries stated under **Jurisdictional Cover** as per Item 9 of the Policy Schedule and **Claims** or **Inquiries** arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to the laws of the countries stated under **Jurisdictional Cover** as per Item 9 of the Policy Schedule.

The coverage provided under Section 2 (Public and Technology Products Liability) of the **Policy** shall extend to any claim for compensation brought in a court of law within the **Territorial Limits** and claims for compensation arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to the laws of the countries within the **Territorial Limits**.

Notwithstanding anything to the contrary in this **Policy**, no cover shall be provided where to do so would constitute a breach by the **Insurer** of any economic, trade or other sanction or law applicable to the **Insurer** including pursuant to the laws or regulations of Australia, the European Union, United Kingdom, Singapore or the United States of America or a resolution of the United Nations and the **Insurer** shall have no liability to the **Insured** to the extent that to do so would be in breach of the foregoing.

6.14 Governing Law

The construction, interpretation and meaning of the provisions of the **Policy** shall be determined in accordance with the law in force in the Australian State or Territory in which the **Policy** is issued. All matters relating to the construction or operation of the **Policy** shall be submitted to the exclusive jurisdiction of the courts exercising jurisdiction under the law of that State or Territory.

6.15 Policy Construction and Interpretation

The headings in the **Policy** are included for descriptive purposes only and do not form part of the **Policy** for the purpose of its construction or interpretation.

Under the **Policy**, where appropriate, the masculine includes the feminine, and the singular includes the plural and vice versa. For the meaning of any words in bold refer to the **Schedule** or Section 7 – Definitions.

6.16 Electronic Communications

The **Insurer** may issue notices to the **Insured** which are required to be given pursuant to the *Insurance Contracts Act 1984* (Cth) by electronic mail or post.

6.17 Confidentiality

The existence and terms of the **Policy** are confidential as between the **Insured** and the **Insurer** and shall not be disclosed by the **Insured** to any person except:

- a) to professional advisers including legal advisers and accountants;
- b) as required by law or in accordance with an order of a court; or with the written consent of the **Insurer**.

6.18 Currency

All **Premiums**, limits, **Retentions**, **Loss** or other matters under the **Policy** are expressed and payable in the **Currency** as per Item 10 of the Policy Schedule. If a payment under the **Policy** is to be made in a currency other than that **Currency** as per Item 10 of the Policy Schedule, such payment shall be made at a rate of exchange as published in the Australian Financial Review on the date the obligation to pay **Loss** is established or, if not published on that date, on the date of the next publication of the Australian Financial Review.

Section 7: Definitions applicable to all sections

7.1 Advertising Liability means liability in respect of:

- a) libel, slander or defamation;
- b) infringement of copyright or of titles or slogans;
- c) misrepresentation by the **Insured** of its **Technology Products**; or
- d) invasion of rights of privacy,

committed or alleged to have been committed during the **Policy Period** in any advertisement, publicity article, broadcast or telecast arising out of any advertising activities conducted by or on behalf of the **Insured**.

7.2 Aircraft means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space, and includes a **Hovercraft**.

7.3 Business means:

All activities and operations of the **Policyholder** specified in Item 12 of the Schedule, including: the ownership and tenancy of premises;

- a) private work carried out with the consent of the **Policyholder** or any **Subsidiary** by the **Policyholder's** or **Subsidiary's** employees for any director or senior executive officer of the **Policyholder** or **Subsidiary**;
- b) the provision or management of catering, social, sports, welfare or child care facilities for the **Policyholder's** or any **Subsidiary's** employees;
- c) the provision of sponsorships, internal first aid, fire and ambulance services.

7.4 Claim means the receipt by the **Insured** of any written demand or legal proceedings.

7.5 Complimentary Legal Advice means legal advice regarding Australian law provided by a member of the **Legal Panel** at no charge for up to a maximum of one (1) hour per enquiry to any **Insured** during the **Policy Period** with respect to any factual or legal matter arising from or in connection with the subject matter of the **Policy**.

7.6 Computer System means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.

7.7 Costs and Expenses means the costs and expenses incurred by or on behalf of the **Insured** in the investigation or defence of a **Claim** or preparation for, and representation at, an **Inquiry** and shall include legal costs and disbursements.

Costs and Expenses does not include salaries, wages, allowances, fees, commissions, awards, bonuses, and travel or accommodation expenses.

7.8 Court and Inquiry Attendance Costs means an allowance of \$500 per day for any **Insured** whose attendance is required as a witness, or is otherwise necessary, at any legal proceeding, including an **Inquiry** which is the subject of cover under the **Policy**.

7.9 Cyber Event means any:

- a) unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof, involving access to, processing of, use of or operation of any **Computer System**; or
- b) partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**; theft, loss, access to, acquisition of, or unauthorized or unlawful use or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit or payment card information, health information, biometric data or any other type of non-public information, involving access to, processing of, use of or operation of any **Computer System**.

7.10 Electronic Data means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

7.11 Employee means any past, present or future:

- a) employee, partner, director, contractor, seconded or agency staff under the direction and control of the **Insured**;
- b) student undergoing training, under the supervision of an **Insured**;
- c) volunteer workers under the supervision of an **Insured**; or
- d) member of a professional board of the **Policyholder** or any **Subsidiary** but only in their capacity as such.

7.12 Extended Reporting Period means the period provided by Extension 1.10 (Extended Reporting Period) during which the **Insured** may give notice of a **Claim**, circumstance or **Inquiry** after the **Expiry Date**, provided that such **Claim**, or **Inquiry** was first made against, or notified to, the **Insured** before the **Expiry Date**, or the **Insured** first became aware of such fact or circumstance that may give rise to a such **Claim** or **Inquiry** before the **Expiry Date**.

7.13 Financial Interest means the direct or indirect financial interest of the **Policyholder** in an **Insured**.

7.14 Fraud or Dishonesty means any actual or alleged:

- a) fraudulent, criminal or malicious act, error or omission; or
- b) intentional or wilful breach of any statute, law or regulation, contract or duty;

of any **Insured**.

7.15 Hovercraft means any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward force.

7.16 Incidental Contract means:

- a) any written contract or agreement for the lease of property but this does not include agreements where there is an obligation to insure such property;
- b) any written contract made or entered into with any public authority for the supply of water, gas, electricity, telephone or internet services except a contract made or entered into with such authority for work done or to be done for such authority;
- c) any written contract made or entered into with any railway authority for the loading, unloading or transport of the **Technology Products** or any a contract relating to the operation of railway sidings.

7.17 Inquiry means any administrative or regulatory proceeding, official investigation, inquiry or hearing in respect of the **Insured's Provision of Technology Services** or an **Occurrence** where the findings of such proceeding, official investigation, inquiry or hearing could lead to a **Claim** covered under the **Policy** and includes responding to any lawful request which requires a response including to produce documents.

Inquiry does not include a proceeding, inquiry, hearing, investigation, audit or similar review into licensing, registration or accreditation, by or of the **Insured**.

7.18 Inquiry Costs means the **Costs and Expenses** incurred by or on behalf of the **Insured** in preparing for and being represented at an **Inquiry** and shall include legal costs and disbursements. **Inquiry Costs** does not include salaries, wages, allowances, fees, commissions, awards, bonuses, and travel or accommodation expenses.

7.19 Insured means:

For the purposes of Section 1 (Professional Liability):

- a) the **Policyholder** and any **Subsidiary** that was a **Subsidiary** at the **Inception Date**;
- b) any **Employee**;
- c) any spouse or domestic partner whether or not the same sex, estate or legal representative of any **Employee** to the extent that such **Employee** would have been covered under the **Policy**; or
- d) the heirs, legal representatives or executor of a deceased or incompetent, insolvent or bankrupt **Employee's** estate to the extent that such **Employee** would have been covered under the **Policy**.

For the purposes of Section 2 (Public and Technology Products Liability):

- a) the **Policyholder** and its **Subsidiaries** whose place of incorporation are within the **Territorial Limits**;
- b) any director, executive officer, partner or employee of the **Insured** specified in (e) above but only whilst acting within the scope of their duties in such capacity;
- c) any principal in respect of liability arising out of the performance, by the **Insured** specified in (e) above, of any contract or agreement for the performance of work for such principal to the extent required by such contract or agreement, but limited to the coverage provided by this **Policy**;
- d) any office bearer or member of social, sports, welfare or child care organisations for the **Insured** specified in (e) above's employees and internal first aid, fire or ambulance service formed with the consent of the **Insured** (other than an **Insured** specified in (g) above), but only whilst acting within the scope of their duties in such capacity;

- e) any employee of the **Insured** whilst undertaking private work for any director or senior executive of the **Insured** with the prior consent of the **Insured** specified in (e) above;
- f) any principal, lessor, organization, trustee, estate or persons to which or to whom the **Insured** specified in (e) above is obligated by virtue of a written contract to provide insurance as is afforded by this **Policy**, but only to the extent required by such contract and only in respect of the **Business** of such **Insured**;
- g) any joint venture or partnership in which the **Insured** specified in (e) above is engaged in or is a party to but only to the extent of the **Insured's** liability in respect of such joint venture or partnership. Cover will not apply to claims brought by the joint venture against the **Insured** or claims by any partners in the joint venture against one another; and
- h) any voluntary worker and /or person on work experience but only whilst acting within the scope of their duties in such capacity for the **Insured** specified in (e) above.

7.20 Insurer means:

Swiss Re International SE
 Australia Branch Registered Office: Tower Two International Towers Level 36, 200 Barangaroo Avenue
 Sydney, NSW 2000, Australia

AFSL 355088 – ABN 38 138 873 211

7.21 Internet Operations means the operation and maintenance of e-mail, the internet (including the **Insured's** website) or any intranet.

7.22 Loss means monetary damages, claimant's costs, and settlements. **Loss** shall not include:

- a) non-compensatory damages, including punitive, multiple or exemplary damages;
- b) liquidated damages imposed by contract or agreement, except to the extent that the **Insured** would have been liable for that damage in the absence of any such contract or agreement;
- c) taxes, except GST for which the **Insured** is not entitled to an Input Tax Credit;
- d) fines and penalties; or
- e) any matter which may be deemed uninsurable by law.

7.23 Medical Persons means a legally qualified medical practitioner, legally qualified registered nurse, dentists and first aid attendants.

7.24 Non-Admitted Jurisdiction means any jurisdiction that does not permit the **Insured** to be covered by the **Policy** because the **Insurer** is not registered or authorised as an insurer to do so in that jurisdiction.

7.25 North America means:

- a) the United States of America and Canada;
- b) any state, territory or protectorate incorporated in, or administered by, the United States of America or Canada; and,
- c) any country or territory subject to the laws of the United States of America or Canada.

7.26 Occurrence means an event including continuous or repeated exposure to substantially the same general conditions which results in **Personal Injury**, **Property Damage** or **Advertising Liability** neither expected nor intended from the standpoint of the **Insured**, during the **Policy Period**.

With respect to **Personal Injury** or **Property Damage**, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one **Occurrence**.

With regards to **Advertising Liability**, all liability arising out of the same injurious material or act regardless of the number or kind of media used, the frequency or repetition thereof and number of claimant's shall be deemed to be one **Occurrence** and having occurred during that **Policy Period** in which the first such **Advertising Liability** occurred irrespective of the number of claimants or the period over which such **Advertising Injury** occurs.

7.27 Personal Injury means:

- a) bodily injury, death, sickness, disease, illness; or mental anguish or mental injury consequent upon bodily injury, death, sickness, disease or illness;
- b) false arrest, false detention, wrongful imprisonment or malicious prosecution;
- c) the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d) defamation, libel or slander; or
- e) assault and/or battery committed by any employee of the **Insured** whilst engaged in the Insured's Business activities but excluding acts committed at the direction of the **Insured** unless so directed for the purpose of preventing or eliminating danger to persons or property.

7.28 Policy means the **Schedule**, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions, Endorsements and any other terms contained or incorporated herein.

Policy does not include any Section, Optional Extension or any other part of the **Policy** that has not been purchased by the **Insured**.

7.29 Policy Period means the period between the **Inception Date** and the earlier of the **Expiry Date** or the effective date of any cancellation or avoidance of cover.

7.30 Pollutant means any air emission, odour, waste, oil or oil product, infectious or medical waste, noise, fungus (including mould or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption), and electric or magnetic or electromagnetic field. Such matters shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminations or smoke, vapour, soot, fumes, acids, alkalis, chemicals, waste materials or materials to be recycled or reclaimed.

7.31 Premium means the amount of money that the **Policyholder** must pay the **Insurer** for the **Policy**. The **Premium** shall include any premium adjustments required to be paid to the **Insurer**.

7.32 Principal means a third party with whom the **Insured** has a written contract for the:

- a) **Provision of Technology Services** so long as the written contract was entered into prior to the **Provision of Technology Services**; or
- b) provision of **Technology Products**, so long as the written contract was entered into prior to the provision **Technology Products**.

7.33 Property Damage means:

- a) physical damage to or loss of or destruction of tangible property including loss of use resulting therefrom; or
- b) loss of use of tangible property which has not been physically damaged or destroyed, provided such loss of use is caused by physical damage to other tangible property.

All such loss of use shall be deemed to happen at the time of the physical damage that caused it.

7.34 Proportionate Liability Legislation means the Civil Liability Act 2002 (NSW) Pt 4, Wrongs Act 1958 (Vic) Pt IVAA, Civil Liability Act 2002 (WA) Pt 1F, Civil Liability Act 2003 (Qld) Pt 2, Civil Law (Wrongs) Act 2002 (ACT) Ch 7A, Proportionate Liability Act 2005 (NT), Civil Liability Act 2002 (Tas) Part 9A, Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA) Pt 3, Trade Practices Act (Cth) s87C, Development Act 1993 (SA) s72, Building Act 2004 (ACT) s141 and Building Act 2000 (Tas) s252, and similar legislation or any amendment or re-enactment thereof.

7.35 Proposal means any proposal form completed and signed for the **Policy** or for any other policy issued by the **Insurer** for which the **Policy** is a replacement or renewal (including any attachments thereto) and any information and statements or materials requested by the **Insurer** or supplied to the **Insurer** by or on behalf of the **Insured** included therewith or incorporated therein.

- 7.36 Provision of Technology Services** means information technology services performed for **Third Parties** by or on behalf of the **Insured** for a fee pursuant to a contract, including but not limited to:
- a) analysis, design, integration and conversion of information technology systems, networks and electronic systems;
 - b) designing, developing, programming, installing, servicing, supporting, maintaining and repairing software (including open-source software) and firmware including any code associated therewith and including if any of the proceedings under a licence from a third party;
 - c) designing, installing, integrating, servicing, supporting, maintaining and repairing hardware;
 - d) educating and training in the use of hardware or software;
 - e) information services;
 - f) data processing, management or warehousing;
 - g) hosting, managing or administering the information technology systems or facilities of another party;
 - h) project management related to (a) through (g) above or with respect to **Technology Products**; and
 - i) consulting on any of (a) through (h) above or with respect to **Technology Products**.
- 7.37 Public Relations Expenses** means the costs and expenses of a public relations firm or consultant, crisis management firm or law firm which an **Insured** may engage in order to prevent or limit adverse effects of any negative publicity which has arisen from any covered **Claim, Inquiry or Occurrence**.
- 7.38 Related Claim and Related Inquiry** means any **Claims** or **Inquiries** or other matters covered under the **Policy** which are causally connected or which arise from interrelated acts, errors or omissions.
- 7.39 Related Entity** means:
- a) another **Insured**;
 - b) a parent company or **Subsidiary** of the **Insured**; or
 - c) or any person or entity having a financial or executive interest in the operation of the **Insured**.
- 7.40 Reputation Protection Expenses** means the costs and expenses of a public relations firm or consultant, crisis management or law firm which an **Insured** may engage in order to disseminate the findings of a final adjudication in favour of the **Insured**, arising from a covered **Claim, Inquiry or Occurrence** in which there has been negative publicity.
- 7.41 Schedule** means the Schedule attached to the **Policy** and signed by a person authorised by the **Insurer**.
- 7.42 Senior Counsel** means a senior lawyer to be mutually agreed upon by the parties, or in the absence of agreement, to be appointed by the Chair/President of the Bar Association, Law Society, or equivalent organisation in the jurisdiction in which the **Policy** is issued.
- 7.43 Subsidiary** means any entity which the **Policyholder**, on or before the **Inception Date**, either directly or indirectly through one or more of its other **Subsidiaries**:
- a) has control of the composition of the board of directors;
 - b) has control of more than half of the shareholder or equity voting power;
 - c) holds more than half of the issued share capital or equity; or
 - d) exercises effective control of management, including of any joint venture.
- 7.44 Supplementary Payments** means:
- a) the reasonable charges, expenses and legal costs incurred by or on behalf of the **Insured** with the prior written consent of the **Insurer** in the investigation or defence of any claim for compensation covered under Section 2 (Public and Technology Products Liability);
 - b) expenses incurred by the **Insured** for first aid administered to others (by **Medical Persons** employed by the **Insured**) at the time of an **Occurrence** for any **Personal Injury** to which Section 2 (Public and Technology Products Liability) applies;

- c) legal costs incurred with the prior written consent of the **Insurer** (such consent not to be unreasonably withheld) for any solicitor, defence counsel or equivalent, for representation at any Coroner's Inquest, Fatal Accident Inquiry or criminal proceedings relating to any claim for compensation covered under Section 2 (Public and Technology Products Liability);
- d) reasonable expenses incurred by the **Insured**, as a result of **Property Damage** covered under Section 2 (Public and Technology Products Liability), for the temporary repair of, shoring up or preservation of property which has been damaged. Coverage for such expenses shall be limited to ten per cent (10%) of the **Limits of Liability** stated in the Schedule;
- e) pre-judgement interest awarded against the **Insured** in any claim or series of claims on that part of the judgement that the **Insurer** pays; post-judgement interest that accrues after the entry of judgement and before the **Insurer** has paid, offered to pay or deposited in court that part of the judgement that the **Insurer** pays that is within the **Limits of Liability**; and
- f) the loss of wages or salary but not the loss of other income, due to the **Insured's** attendance at court at the **Insurer's** request, at the following rates per day for each day on which attendance in court is required: any director, officer or partner of the **Insured** \$250.00 per day; and, any employee of the **Insured** \$150.00 per day.

7.45 Technology Products means:

- a) hardware products, components and peripherals;
- b) software, firmware and all related machine, object or source code; or
- c) wireless or wire line telecommunication equipment including satellite or broadcast network equipment,

no longer in the **Insured's** possession which were created, designed or manufactured by the **Insured** and then sold, distributed, licenced or leased by or on behalf of the **Insured** to others pursuant to a contract as a completed and operational, generic or bespoke, product.

7.46 Territorial Limits means anywhere in the world, except **North America**, where Section 2 (Public and Technology Products Liability) and any applicable Extension under Section 3 (Extensions applicable to all Sections) will only apply in respect of:

- a) **Technology Products** exported to **North America**; and
- b) business visits to **North America** by executives or sales persons who are normally resident outside of **North America**, other than where they engage in manual labour during such visits.

7.47 Vehicle means any type of machine and attachments thereto including a trailer designed for use on land only, and which travels on wheels or on self laid tracks and is propelled by other than manual or animal power.

7.48 Watercraft means any vessel, craft or thing made, or intended to float on or in, or travel on or through or under water.

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