



BERKSHIRE HATHAWAY SPECIALTY INSURANCE

Professional First Technology Liability Insurance Policy

Notices

This policy is issued by Berkshire Hathaway Specialty Insurance Company (ABN 84 600 643 034, AFS Licence 466713), which is authorised by the Australian Prudential Regulation Authority to carry on general insurance business in Australia, and which holds a financial strength rating of A++ from AM Best and AA+ from Standard & Poor's.

Duty of disclosure

Under the *Insurance Contracts Act 1984* (Cth), before you enter into an insurance contract you have a duty to tell us anything that you know, or could reasonably be expected to know 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 an insurance contract.

The duty of disclosure applies to every person to be covered under the insurance.

If you do not tell us something

You do not need to tell us anything that reduces the risk we insure you for, that is of common knowledge, that we know (or should know), or in respect of which we have waived the duty of disclosure.

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will 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.

Privacy

We, along with all companies in the Berkshire Hathaway group of insurance companies, are committed to safeguarding your privacy and the confidentiality of your personal information. We, and entities acting on our behalf, only collect personal information from or about you for the purpose of assessing your application for insurance and administering your insurance policy, including managing and administering any claim made by you. Without your personal information, we may not be able to issue insurance cover, administer your insurance or process your claim.

We will only use your personal information in accordance with the *Privacy Act 1988* (Cth) and for the purposes outlined above.

We may disclose your personal information to other companies in the Berkshire Hathaway group and other third party service providers for the purposes outlined above or where disclosure is permitted by law. These entities may be located in Australia or overseas, including in India, Singapore, Malaysia, Hong Kong, New Zealand, Germany, the United Kingdom and the United States of America. Where such disclosure is made, we make all reasonable efforts to ensure that the arrangements we have in place with overseas parties impose appropriate privacy and confidentiality obligations on those parties to

ensure that imparted personal information is kept secure and that such information is only used for the purposes noted above.

If you wish to obtain details of the personal information we hold about you (including contacting us to correct or update the personal information we hold about you), or if you have a complaint about a breach of your privacy, please refer to our privacy policy available at <http://www.bhspecialty.com/privacy-policy.html>, or contact our Privacy Officer by email to australasia.privacy.compliance@bhspecialty.com.

We reserve the right to refuse access under the grounds permitted by the *Privacy Act 1988* (Cth) and if you are seeking information on another person's behalf, we will require written authorisation from that individual.

Complaints

If you have a complaint or concern about our insurance products or services we provide, please contact your intermediary or your usual BHSI contact.

If you are not satisfied with our response, you may escalate your complaint by contacting complaints.australia@bhspecialty.com. Our internal dispute resolution process is free of charge and we will aim to respond to your escalated complaint within fifteen (15) business days.

General Insurance Code of Practice

We are a signatory to the General Insurance Code of Practice.

You can find further information about and download a copy of the Code from <http://codeofpractice.com.au>

Electronic delivery of policy documents

We will send your policy documents by email. If however you wish to receive your policy documents in hard copy, please tell us.

Claims made insurance

Some elements of this policy provide third party liability cover. Some of those elements (but not all) provide third party liability cover on a claims made basis. In those sections, third party liability cover is only available for claims made against you during the period of insurance.

However, under the *Insurance Contracts Act 1984* (Cth), we may not be entitled to deny indemnity merely because you notify us of a third party liability claim, made against you after the expiry of the Policy Period provided you gave us notice of the facts or circumstances of which you were aware that gave rise to the claim, during the Policy Period.

Professional First Technology Liability Insurance Policy

In consideration of payment of the premium and in reliance on the proposal, declaration and any other underwriting information provided, and subject to the provisions of this **Policy**, the **Insurer** will indemnify the **Insured** as follows.

COVER AND EXTENSIONS

SECTION 1: TECHNOLOGY PROFESSIONAL INDEMNITY

All cover under Section 1 Technology Professional Indemnity is afforded solely with respect to a **Claim** first made against an **Insured** during the **Policy Period** and reported to the **Insurer** as required by this **Policy**.

The **Insurer** will pay on behalf of the **Insured** all **Damages** and **Defence Costs** resulting from any **Claim** for any civil liability of the **Insured** arising from:

- a) the performance of or failure to perform **Technology Services**; or
- b) a **Breach**

TECHNOLOGY PROFESSIONAL INDEMNITY - EXTENSIONS

1.1 Contractual Liability

The **Insurer** will pay on behalf of the **Insured** all **Damages** and **Defence Costs** resulting from any **Claim** alleging breach of contract, providing that:

- a) the contract does not account for more than 25% of the **Policyholders** and **Subsidiary's** annual fee income; and
- b) the contract is written on the **Policyholders** standard terms and conditions which have been submitted to the **Insurer** for review and which the **Insurer** has confirmed in writing, before the actual or alleged breach, is a contract to which this Extension will apply; and
- c) the contract is not in respect of services provided to or products supplied to customers in the United States of America, Canada or any of their territories or possessions.

1.2 Misleading or Deceptive Conduct

The **Insurer** will pay on behalf of the **Insured** all **Damages** and **Defence Costs** resulting from any **Claim** for misleading and deceptive conduct at law.

1.3 Fraud and Dishonesty

The **Insurer** will pay on behalf of any **Insured** all **Damages** and **Defence Costs** resulting from any **Claim** brought about or contributed to by any fraudulent or dishonest conduct of an **Employee**, provided that such indemnity shall not be provided to any person committing or condoning, expressly or implicitly, such fraudulent or dishonest conduct.

1.4 Defamation

The **Insurer** will pay on behalf of the **Insured** all **Damages** and **Defence Costs** resulting from any **Claim** for defamation committed by the **Insured**.

1.5 Joint Venture Liability

The **Insurer** will pay on behalf of the **Insured** all **Damages** and **Defence Costs** resulting from any **Claim** arising from the **Policyholder** or **Subsidiary's** involvement in any joint venture or partnership. No cover is provided to any other joint venture party or partner of the **Policyholder** or **Subsidiary**.

1.6 Intellectual Property

The **Insurer** will pay on behalf of the **Insured** all **Damages** and **Defence Costs** resulting from any **Claim** for any infringement of any intellectual property rights, other than patents and **Trade Secrets**.

1.7 Vicarious Liability

The **Insurer** will pay on behalf of the **Insured** all **Damages** and **Defence Costs** resulting from **Claims** against both the **Insured** and contractors or consultants providing **Technology Services** on behalf of the **Policyholder** or **Subsidiary**. Cover will not extend to the contractor and/or consultant who committed the **Wrongful Act**.

1.8 Continuous Cover

Notwithstanding Exclusion 5.10 "Prior Claims" in the event of a **Claim**, or a circumstance that may reasonably have been expected by any **Insured** to give rise to a **Claim**, which should have been notified to the **Insurer** under any earlier policy, the **Insurer** will treat such **Claim** or circumstance as though it had been properly notified to the **Insurer** during the **Policy Period** provided always that:

- a) the **Insured** first became aware of the **Claim** or circumstances that might give rise to the **Claim** after the **Continuity Date**; and
- b) the cover provided by this Extension will be subject to the terms of the policy in force when the **Insured** first became aware of such circumstances or this **Policy**, at the **Insurers** sole discretion.

1.9 Round the Clock Reinstatement

If a **Claim** or **Claims** erode the **Limit of Liability** under Section 1a) Technology Professional Indemnity of this **Policy**, the **Insurer** agrees to reinstate the **Limit of Liability** under Section 1a) Technology Professional Indemnity of this **Policy** to the extent of the eroded amount, provided always that the **Insurer's** total amount payable under this **Policy** shall not exceed:

- a) the **Limit of Liability** in respect of any one **Claim**, or related **Claims**, under Section 1a) Technology Professional Indemnity of this **Policy**; or
- b) twice the **Limit of Liability** in respect of all **Claims** under Section 1a) Technology Professional Indemnity of this **Policy** during the **Policy Period**.

If the **Policyholder** has in effect any policy providing coverage in excess of this **Policy**, the reinstatement provided will become effective only after the total exhaustion of the limits of all such excess coverage by reason of the payment of indemnity thereunder but prior to any similar reinstatement provision contained in such policy or policies becoming effective.

It is the intention of this cover that the sums reinstated will only provide cover in respect of subsequent **Claims** which are totally unrelated to the **Claims** that eroded the **Limit of Liability**.

No **Round the Clock Reinstatement** will apply to Section 1b) Technology Professional Indemnity of this **Policy**.

1.10 Public Relations Costs

The **Insurer** will pay on behalf of the **Insured** reasonable fees, costs and expenses incurred by the **Insured** to engage a public relations consultant or crisis management consultant to protect the **Policyholder** or **Subsidiary's** professional reputation in connection with an actual or potential **Claim**, provided always that:

- a) such reasonable fees, costs and expenses arise as a result of a **Claim** first made against the **Insured** during the **Policy Period**; and
- b) the **Insurer** has given its prior written consent to the incurring of such fees, costs and expenses, which shall not be unreasonably withheld or delayed; and
- c) no admission of liability is made by the **Insured**.

This Extension is subject to an aggregate **Sub-limit of Liability** and **Retention** as specified in the schedule.

1.11 Mitigation Costs

The **Insurer** will pay on behalf of the **Insured** reasonable fees, costs and expenses incurred by the **Insured** as a result of action taken by the **Insured** to mitigate an actual or potential **Claim**, provided always that:

- a) in the **Insurer's** determination there would have been a legal liability of the **Insured** resulting from a covered **Claim** for **Damages** under this **Policy** had such **Mitigation Costs** not been incurred; and
- b) the liability of the **Insurer** is not in excess of any liability that would have existed under this **Policy** had the **Claim** been made against the **Insured**; and
- c) the **Insurer** has given its prior written consent to the incurring of such fees, costs and expenses, which shall not be unreasonably withheld or delayed; and
- d) Where the **Insured** has waived outstanding fees that relate to the performance of **Technology Services** to avoid or settle a **Claim** that would be payable under this **Policy**, the **Insurer** will pay 50% of the outstanding fees waived that exceed the applicable **Retention**.

Mitigation Costs will not include any internal or overhead expenses of any **Insured** or the cost of any **Insured's** time other than as provided by 1.11 d) above.

This Extension is subject to an aggregate **Sub-limit of Liability** and **Retention** as specified in the schedule.

1.12 Investigation Costs

In relation to any complaint about or investigation into the **Insured** in relation to the **Insured's Business** by, or to an **Official Body**, the **Insurer** will pay on behalf of the **Insured** any reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with the **Insurer's** prior consent to respond to the complaint or investigation.

Investigation Costs will not include any internal or overhead expenses of any **Insured** or the cost of any **Insured's** time

This Extension is subject to an aggregate **Sub-limit of Liability** and **Retention** as specified in the schedule.

1.13 Court Attendance Costs

The **Insurer** will pay the **Insured** for the cost of attendance for any person described in (a) and (b) below who attends court as a witness in connection with a **Claim** notified to the **Insurer** and which the **Insurer** has confirmed is covered under this **Policy**:

- a) for any principal, partner or director of the **Policyholder** or a **Subsidiary**: \$500 per day
- b) for any **Employee**: \$250 per day

Any payment made under this Extension shall be deemed to be a payment of **Defence Costs**. No **Retention** shall apply to this clause.

TECHNOLOGY PROFESSIONAL INDEMNITY – OPTIONAL EXTENSION

1.14 Patents and Trade Secrets

The **Insurer** will pay on behalf of the **Insured** all **Damages** and **Defence Costs** resulting from any **Claim** for any infringement of any registered patents or **Trade Secrets**.

This Extension is subject to an aggregate **Sub-Limit of Liability** and **Retention** as specified in the schedule.

This Extension is only covered if specified as “Included” on the schedule.

SECTION 2: CYBER

All cover under Section 2 Cyber is afforded solely with respect to an actual or suspected **Breach** or **Extortion Threat** on or after the **Retroactive Date** and first discovered by **Executive Management** and reported to the **Insurer** during the **Policy Period** and as required by this **Policy**.

The **Insurer** will:

- a) pay on behalf of the **Insured**, **Emergency Response Costs** and/or **First Party Response Costs**;
- b) reimburse the **Insured** for:
 - i) **Business Interruption Loss**;
 - ii) costs resulting directly from an **Extortion Threat**; and
 - iii) **Fines and Penalties**.

SECTION 3: GENERAL & PRODUCTS LIABILITY

The **Insurer** will pay on behalf of the **Insured** all **Damages** and **Defence Costs** which the **Insured** is legally liable to pay in respect of:

- a) **Personal Injury**; or
- b) **Property Damage**,

first happening during the **Policy Period** as a result of an **Occurrence** within the Territorial Limits in connection with the **Insured's Business** as required by this **Policy**.

GENERAL AND PRODUCTS LIABILITY – EXTENSIONS

3.1 Care, Custody or Control

The **Insurer** will indemnify the **Insured** for legal liability in respect of **Property Damage** to the following property when it is in the **Insured's** care, custody or control:

- a) **Vehicles**, other than **Vehicles** owned or used by or on behalf of the **Insured**, only whilst the **Vehicles** are in a car park owned or operated by the **Insured** other than for income or reward as a car park operator; and
- b) goods, equipment, merchandise and property (including **Employees'** property), other than real property.

This Extension is subject to an aggregate **Sub-limit of Liability** and **Retention** as specified in the schedule.

3.2 First Aid

The **Insurer** will indemnify the **Insured** for legal liability in respect of **Personal Injury** and/or **Property Damage** arising out of the giving of first aid or medical services or failure to give first aid or medical services on the **Insured's** premises by medical persons employed by the **Insured**.

3.3 Product Recall Expenses

The **Insurer** will indemnify the **Insured** for **Product Recall Expenses** incurred by the **Insured**.

This Extension is subject to an aggregate **Sub-limit of Liability** and **Retention** as specified in the schedule.

3.4 Premises / Lease Liability

The **Insurer** will indemnify the **Insured** for legal liability in respect of **Property Damage** to the following:

- a) premises (or to contents thereof) temporarily occupied by the **Insured** for the purpose of carrying out works thereto or thereon, but no indemnity is granted for liability in respect of physical damage to or destruction of that part of any premises or contents on which the **Insured** is or has been working if the **Property Damage** or destruction arises from such work;
- b) premises tenanted, rented or leased by the **Insured** for the purpose of the **Insured's Business**.

DEFINITIONS

4.1 "Breach" means:

- a) the unintentional corruption, destruction, deletion or disclosure of **Confidential Information** by an **Insured** or a third party for whom the **Insured** is legally responsible;
- b) the intentional, reckless or deliberate theft or disclosure of **Confidential Information** by an **Employee** of the **Insured** acting independently of the **Executive Management**;

- c) the intentional, reckless or deliberate transmission of malicious code by an **Employee** of the **Insured** acting independently of the **Executive Management**;
- d) unauthorised use or access to the **Computer Network** which results in:
 - i) the disclosure of **Confidential Information**;
 - ii) the corruption, destruction or deletion of **Electronic Data**;
 - iii) a denial of service attack suffered by the **Insured**; or
 - iv) defamation, product disparagement or infliction of emotional distress;
- e) participation of the **Computer Network** in a denial of service attack directed against a third party;
- f) unintentional transmission of malicious code from the **Computer Network** causing harm to a third party; or
- g) physical theft or loss of hardware on which **Electronic Data** is stored.

4.2 “Business Interruption” means:

the actual and measurable interruption, deterioration or suspension of the **Policyholder** or any **Subsidiary’s** business directly caused by:

- a) the corruption, destruction or deletion of the **Insured’s Electronic Data** by a third party or an **Employee** acting independently of the **Executive Management**;
- b) a denial of service attack directed at the **Policyholder** or **Subsidiary**; or
- c) a restriction of access to the **Computer Network** or the **Insured's Electronic Data** due to a **Breach** or **Extortion Threat**.

4.3 “Business Interruption Loss” means:

- a) the additional costs incurred by the **Insured** to continue normal business operations as a direct consequence of the **Business Interruption**; and
- b) the sum of the following calculated on an hourly basis:
 - i) the **Policyholder** and/or **Subsidiary’s** net income (before income taxes) that would have been earned but for the **Business Interruption**; and
 - ii) the fixed operating expenses of the **Policyholder** and/or **Subsidiary’s**, which are made redundant as a direct result of the **Breach** to the extent that such expenses continue, during the **Period of Recovery**.

4.4 “Claim” means:

- a) a written demand; or
- b) a civil or administrative proceeding;

that seeks **Damages** or non-monetary relief as a result of a **Wrongful Act**.

4.5 “Computer Network” means:

a network of computer hardware, software, and any associated components:

- a) leased, owned or operated by the **Policyholder** or any **Subsidiary**; or

- b) operated for the benefit of the **Policyholder** or any **Subsidiary** by a third-party service provider under written contract with the **Policyholder** or any **Subsidiary**.

4.6 “Confidential Information” means:

- a) **Personal Information**; or
- b) the **Insured’s** or a third party’s commercial information, which is not available to the general public, and:
 - i) which is in the **Insured’s** care, custody and control; or
 - ii) for which the **Insured** is legally responsible; or
 - iii) which is in the care, custody and control of a third party which is legally responsible pursuant to contract with the **Insured** and to whom the **Insured** has provided such information.

4.7 “Continuity Date” means:

the date specified as such in the schedule.

4.8 “Cyber Terrorism” means:

actual or threatened attacks against a **Computer Network** or **Electronic Data** with the intention to cause harm in order to further political, religious or ideological objectives. **Cyber Terrorism** shall not include activities that are in support of any war or military action by any sovereign state.

4.9 “Damages” means:

any amount that an **Insured** is legally liable to pay in respect of judgments against an **Insured**, or settlements which conform with the consent requirements set out in this **Policy**.

Damages shall not include any of the following:

- a) fines or penalties;
- b) taxes;
- c) costs incurred by an **Insured** to comply with any order for non-monetary relief or with any agreement to provide such relief;
- d) any amount which constitutes disgorgement, restitution, the return of fees (other than as provided by Extension 1.11 “Mitigation Costs”), accounting of profits, commissions, charges or other compensation;
- e) liquidated damages; or
- f) any amount not insurable under the law pursuant to which this **Policy** shall be construed.

4.10 “Defence Costs” means:

- a) reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with the **Insurer’s** prior consent, in the investigation, defence, adjustment, settlement or appeal of any **Claim**;

- b) all charges, expenses and legal costs recoverable from the **Insured** by claimants in connection with any **Claim**; and
- c) all expenses incurred by the **Insured** for first aid rendered for **Personal Injury** to others at the time of an **Occurrence**, except any medical expenses which the **Insurer** is prohibited by law from paying.

Provided that the **Defence Costs** incurred in connection with **Claims** made and/or actions instituted within the United States of America or Canada and their respective territories and possessions or any other territory coming within the jurisdiction of the courts of these countries, shall form part of the **Limit of Liability** and will not be payable by the **Insurer** in addition to the **Limit of Liability**.

Defence Costs shall not include any internal or overhead expenses of any **Insured** or the cost of any **Insured's** time, except as provided for under Extension 1.13 "Court Attendance Costs"

4.11 "Electronic Data" means:

any data stored electronically on a **Computer Network** including **Confidential Information**.

4.12 "Emergency Response Costs" means:

all **First Party Response Costs** incurred within the first 72 hours following discovery of an actual or suspected **Breach** or **Extortion Threat** provided those costs are incurred by engagement of the **Incident Response Team**. This cover does not require the **Insurer's** prior written consent.

4.13 "Employee" means:

any natural person who is or has been expressly engaged as an employee under a contract of employment with the **Insured**.

Employee shall not mean any:

- a) principal, partner or director; or
- b) temporary contract labour, self-employed person or labour only sub-contractor.

4.14 "Executive Management" means:

a Director of the Board, the Chief Executive Officer, Chief Financial Officer, Chief Information Security Officer, General Counsel, Risk Manager or any office holder with functionally equivalent roles and responsibilities.

4.15 "Extortion Threat" means:

any threat or series of related threats directed at the **Insured** to harm or restrict access to the **Computer Network** or **Electronic Data** in conjunction with a demand for money or other valuable consideration to avert, eliminate or mitigate the harm or restriction of access. An **Extortion Threat** shall be deemed made when **Executive Management** is first made aware of any such threat.

4.16 "Family Member" means:

- a) any spouse, domestic partner or companion; or
- b) any parent or parent of the spouse; or
- c) any sibling or child;

of the **Insured**.

4.17 “Fines and Penalties” means:

any monetary fine or penalty imposed by any **Official Body** pursuant to a **Regulatory Proceeding** arising from an actual or suspected **Breach** including:

- a) reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with the **Insurer’s** prior consent in the defence of the **Regulatory Proceeding**; or
- b) all charges, expenses and legal costs recoverable from the **Insured** by the **Official Body**.

Fines and Penalties shall not include any amount not insurable under the law pursuant to which this **Policy** shall be construed.

4.18 “First Party Response Costs” means:

- a) costs arising from the engagement and advice provided by the **Incident Response Team** as a result of an actual or suspected **Breach** or **Extortion Threat**;
- b) costs arising from the engagement and advice provided by third party forensics services solely in respect of determining the scope and cause of the **Breach** and/or to end the **Breach** or **Extortion Threat**;
- c) notification expenses whether or not required by any applicable **Privacy Breach Notice Laws**;
- d) costs incurred from the provision of up to 12 months credit monitoring and call centre services to support impacted individuals as a result of a **Breach**;
- e) costs arising from the engagement of a public relations firm, crisis management firm, or law firm solely in respect of communications designed for the purpose of restoring or protecting the **Insured’s** reputation which has or may be injured as a result of the **Breach** or **Extortion Threat**;
- f) costs incurred to:
 - i) restore or recreate **Confidential Information** from existing physical or electronic backups; or
 - ii) repair or replace damaged computer hardware or software upon which the **Insured’s Electronic Data** was stored;

including the costs incurred in determining whether it is possible to do so. In the event that **Electronic Data** cannot be restored or recreated, costs shall be limited to the expenses incurred to reach that determination; and

- g) reimbursement of reasonable fees, costs and expenses incurred by the **Insured** that result directly from an **Extortion Threat**, including but not limited to monies paid in response to the **Extortion Threat** for the purpose of terminating the **Extortion Threat** and the costs to conduct an investigation to determine the cause of the **Extortion Threat**.

First Party Response Costs shall not include:

- 1) any salaries, wages, overhead or internal charges associated with any **Insured** (other than fixed operating expenses made redundant as a direct result of a **Breach** covered under **Business Interruption Loss**);

- 2) contractual penalties or liquidated damages;
- 3) any legal liability to a third party;
- 4) costs or expenses incurred to update, upgrade, restore, or replace any **Computer Network** to a level beyond that which existed immediately prior to sustaining the **Business Interruption Loss, Breach or Extortion Threat**; and
- 5) loss resulting from unfavorable business conditions or a trend or variation affecting any **Policyholder** or **Subsidiary** in any event.

4.19 “Incident Response Team” means:

the entities and individuals specified as such in the schedule.

4.20 “Insured” means:

- a) the **Policyholder** and any **Subsidiary**;
- b) any natural person, who is or has been a principal, partner or director of the **Policyholder** or any **Subsidiary**;
- c) any **Employee**; and
- d) any temporary contract labour, self-employed person or labour-only sub-contractors, solely under contract with, and under the direction and direct supervision of the **Policyholder** or any **Subsidiary**,

but only when providing **Technology Services** or **Technology Products** in the foregoing capacities, or for the purposes of Section 2 Cyber and Section 3 General Liability only, whilst performing duties related to the conduct of the **Insured’s Business**.

For the purposes of Section 3 General Liability only the **Insured** includes any social and/or sporting clubs formed with the consent of the **Insured**, including any office bearers or members whilst acting in that capacity.

This **Policy** also extends to cover any

1. estates, heirs, legal representatives or assigns of a natural person **Insured** who is deceased; or
2. the legal representatives or assigns of a natural person **Insured** who is incompetent, insolvent or bankrupt,

to the extent that the **Insured** would have been covered by this **Policy** in the absence of such **Insured’s** death, incompetency, insolvency or bankruptcy.

4.21 “Insured’s Business” means:

the business as specified as such in schedule.

4.22 “Insurer” means:

Berkshire Hathaway Specialty Insurance Company (Incorporated in Nebraska, USA. Liability is limited) ABN 84 600 643 034, AFS Licence 466713.

4.23 “Limit of Liability” means:

the amount specified as such in the schedule.

4.24 “Occurrence” means:

an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** neither expected nor intended from the standpoint of the **Insured**. All events of a series consequent on or attributable to one source or original cause will be deemed one **Occurrence**.

4.25 “Official Body” means:

any entity with the legal authority to conduct an investigation into or adjudicate on matters relating to the **Insured**.

4.26 “Period of Recovery” means:

the period from the date and time **Business Interruption** is first discovered until such time as the **Computer Network** and/or the **Insured’s Electronic Data** is restored from physical or electronic backups, or could have been restored to substantially the level of operation that had existed prior to such **Business Interruption**; provided, however, that in no event shall such period exceed one hundred and twenty (120) days.

4.27 “Personal Information” means:

any non-public personal information owned, licensed or maintained by the **Insured** or by any third party to whom the **Insured** has entrusted such information that is defined as such in any **Privacy Laws**.

4.28 “Personal Injury” means:

- a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- b) false arrest, wrongful detention or imprisonment, malicious prosecution;
- c) wrongful entry or eviction;
- d) assault and battery not committed by or at the direction of the **Insured** unless committed for the purpose of preventing **Personal Injury** and/or **Property Damage** or eliminating danger; or
- e) libel, slander, defamation of character or invasion of right of privacy.

For the purposes of cover under Section 3 General Liability **Personal Injury** does not include invasion of right of privacy.

4.29 “Policy” means:

this policy wording, the schedule, the proposal and any endorsement attaching to and forming part of the policy either at commencement or at any time during the **Policy Period**.

4.30 “Policy Period” means:

the period of time specified in Item 3 of the schedule unless the **Policy** is cancelled in which event the **Policy Period** will end on the effective date of cancellation.

4.31 “Policyholder” means:

the entity specified as such in the schedule.

4.32 “Pollutants” means but is not limited to:

any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, asbestos fibres or derivatives of

asbestos, smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids, alkalis, nuclear or radioactive material of any sort, chemicals or waste. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed.

4.33 “Privacy Breach Notice Laws” means:

any statute or regulation that requires notice to persons whose **Personal Information** has been or is suspected to have been disclosed to or accessed by an unauthorised person or group.

4.34 “Privacy Laws” means:

any statute or regulation that requires the protection of non-public information pertaining to an individual or natural person.

4.35 “Product” means:

any commodity, article or thing (after it has ceased to be in the possession or under the control of the **Insured**) including **Technology Products** which is or is deemed to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the **Policyholder** or **Subsidiary** or by others trading under the name of the **Insured** (including any container thereof other than a motor vehicle).

4.36 “Product Recall Expense” means:

the reasonable and necessary costs incurred by the **Insured** with the **Insurer’s** prior approval during a period not exceeding twelve (12) consecutive months, exclusively for the recall, recovery, or destruction of **Technology Products** as a result of a specific defect in the design or manufacture of the **Technology Products**, which has caused **Personal Injury** and / or **Property Damage** for which indemnity would be provided by this **Policy**. Those costs covered are limited only to costs for:

- a) communications to notify others of the recall, including but not limited to, radio and television announcements and printed advertisements;
- b) the cost of shipping the **Technology Product** from any distributor, purchaser or user to the place or places the **Insured** designates;
- c) the actual cost of destruction and / or disposal of the **Technology Product**;
- d) the extra expense to rent additional warehouse or storage space to receive the **Technology Product**;
- e) the cost to hire additional persons other than the **Insured’s** regular **Employees**;
- f) remuneration paid to the **Insured’s** regular **Employees**, other than salaried **Employees**, at the **Insured’s** usual rates of salary or wages for necessary straight time or overtime; and
- g) expenses incurred by the **Insured’s Employees**, including transportation and accommodations.

Product Recall Expenses shall not include:

- 1) the costs of examination, repair, alteration, treatment, replacement of any **Product** or any part thereof;

- 2) any expenses arising from a decision to withdraw or recall any **Product**:
 - (i) arising out of an order, request, or demand by any government or public authority causing the **Insured** to undertake such withdrawal or recall and which the **Insured** would not have made but for the intervention of said government or public authority;
 - (ii) solely as a result of the **Product** having been mis-delivered or mis-directed by or on behalf of the **Insured**;
 - (iii) where withdrawal or recall is caused, in whole or in part, due to exposure to weather conditions, other external loss or damage or gradual deterioration; or
 - (iv) which has not yet left the physical possession, control or custody of the **Insured**; or
 - (v) which has not yet entered the stream of commerce;
- 3) any **Claim** or **Claims** directly or indirectly caused by, contributed to, by or arising out of the insolvency or bankruptcy of the **Insured**;
- 4) any liability incurred as a result of the disclosure by the **Insured** of the existence of this insurance cover in any advertising material, information or data sheets or similar documentation supplied by the **Insured**;
- 5) any withdrawal or recall arising out of facts or circumstances of which the **Insured** was aware or ought reasonably to have been aware at the commencement of the **Policy Period** whether notified under any other insurance or not;
- 6) any import duties or Customs or Excise charges or Goods & Services Tax (howsoever described) incurred or payable before the delivery of the **Product** to the **Insured**;
- 7) **Claims** arising out of deliberate product contamination or alleged deliberate product contamination;
- 8) expenses incurred for the withdrawal or recall of any **Product** which were supplied by the **Insured** prior to the applicable **Retroactive Date**;

For the purpose of this clause, the date of supply is deemed to be the date that the **Product** first leaves the **Insured's** physical possession, control or custody;

- 9) **Claims** arising from the use of the **Product**, which is manufactured or distributed with the knowledge of the **Insured** with a substance(s) which has been prohibited or deemed unsafe or for which warnings regarding usage of such substance have been issued by domestic or foreign governmental bodies unless the concentration of such substances is within the levels of tolerance stipulated in the territory where the **Occurrence** arising from the **Products** takes place;

This clause does not apply when the **Insured** did not know and could not reasonably have known of such restrictions at the time of manufacture and sale;

- 10) where the **Insured** has deliberately caused the loss or, having knowledge of the defective or noxious nature of the **Product**, has not taken reasonable steps to avoid or to minimise the loss;
- 11) **Claims** arising out of loss(es) of a **Product**, which **Product's** specific purpose was not sufficiently tested in accordance with the accepted standards of technology, science or any other applicable standard(s); or

- 12) the withdrawal or recall of the **Technology Products** bearing the same trade or brand names but from batches other than those which have been determined as possibly or likely to become a cause of loss under this **Policy**.

4.37 “Property Damage” means:

- a) physical damage to or destruction of tangible property including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical damage that caused it; or
- b) loss of use of tangible property that is not physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property which first happened during the **Policy Period**. All such loss of use shall be deemed to happen at the time of the physical damage or destruction that caused it.

For the purposes of this insurance tangible property does not include any information, facts, programs, instructions, commands, **Electronic Data**, and anything else stored as or on, created or used on, or transmitted to or from computers or their software, including, but not limited to, systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices, networks, clouds, or other media used with electronically controlled equipment.

4.38 “Regulatory Proceeding” means:

a request for information, demand, suit, civil investigation or civil proceeding by or on behalf of an **Official Body** that alleges a violation of **Privacy Laws** or a Payment Card Industry Data Security Standard.

4.39 “Retention” means:

the amount specified as such in the schedule.

4.40 “Retroactive Date” means:

the date specified as such in the schedule.

4.41 “Sub-limit of Liability” means:

the amount specified in the schedule.

4.42 “Subsidiary” means:

any entity in which the **Policyholder**:

- a) controls the composition of the Board of Directors;
- b) controls more than half of the voting power; or
- c) holds more than half of their issued share capital.

For any **Subsidiary**, cover under this **Policy** shall only apply while such entity is or was a **Subsidiary** of the **Policyholder**.

4.43 “Technology Products” means:

any electronic equipment, communication equipment or computer hardware or software developed, manufactured, sold, licensed or distributed by the **Policyholder** and/or **Subsidiary**.

4.44 “Technology Services” means:

the advice and services of the **Policyholder** and any **Subsidiary** in relation to

- a) the design, development, integration, maintenance or sale of software;
- b) the design, development, integration, maintenance or sale of **Technology Products**;
- c) network integration, management or maintenance;
- d) the design, development, integration or maintenance of websites;
- e) information security services;
- f) computer facilities management;
- g) electronic data processing; or
- h) training or consultancy services in respect of the above.

4.45 “Trade Secrets” means:

any information that derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use.

4.46 “Waiting Hours Period” means:

the number of hours specified as such in the schedule that must elapse from when the **Business Interruption** is first discovered by **Executive Management** in order for coverage to apply for **Business Interruption Loss**.

4.47 “Workers’ Compensation Law” means:

any law relating to compensation for **Personal Injury to Employees**.

4.48 “Wrongful Act” means:

any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty by the **Insured** in the provision of **Technology Services** and/or **Technology Products**.

GENERAL EXCLUSIONS

These Exclusions apply to all sections under the **Policy**.

The **Insurer** shall not be liable for or make any payment under this **Policy** arising out of, based upon or attributable to:

5.1 Anti-competitive conduct

any actual or alleged restrictive trade practices, restraint of trade or unfair competition.

5.2 Assumed liability

- a) any liability or other obligation assumed or accepted by an **Insured** under any contract or agreement, except to the extent that such liability would have attached to the **Insured** in the absence of such contract or agreement; or
- b) any guarantee or warranty.

This Exclusion shall not apply to Extension 1.1 “Contractual Liability” or **Fines and Penalties** cover provided under Section 2 Cyber.

5.3 Conduct

any act which a court, tribunal or arbitrator finds, or which an **Insured** admits, to be a criminal, dishonest or fraudulent act; and in such event, the **Insured** shall reimburse the **Insurer** for all sums paid in connection with such **Claim** or liability in connection with an **Occurrence** covered under this **Policy**.

This Exclusion shall not apply to cover 1.3 “Fraud and Dishonesty”.

In respect to Section 2 Cyber only, the **Insurer** shall not be liable for or make any payment under this **Policy** arising out of, based upon or attributable to:

- a) any criminal, intentional, dishonest or fraudulent conduct by an **Insured** other than the criminal, intentional, dishonest or fraudulent conduct of an **Employee** of the **Insured** acting independently of the **Executive Management**; or
- b) any **Insured** gaining any profit, financial advantage or remuneration that such **Insured** is not legally entitled to receive.

This Exclusion shall apply only if a final and non-appealable judgment or adjudication adverse to an **Insured** establishes, or the **Insured** admits, that such conduct described in a) or b) above occurred.

5.4 Fines & Penalties

any:

- (a) taxes;
- (b) fines or penalties;
- (c) liquidated, aggravated, multiple, punitive or exemplary damages;
- (d) trading debt incurred by an **Insured**; or
- (e) restitutionary relief.

This Exclusion shall not apply to the **Fines and Penalties** cover provided under Section 2 Cyber.

5.5 Insolvency

the actual or alleged insolvency, administration or receivership of the **Insured**.

5.6 Patents / Trade Secrets

any actual or alleged infringement of, or misappropriation of patents or **Trade Secrets**

5.7 Pollution

- a) the actual, alleged or threatened presence, discharge, disbursal, release, migration or escape of **Pollutants**; or
- b) any direction, request or effort to:
 - (i) test for, monitor, clean up, remove, contain, treat detoxify or neutralise **Pollutants**; or
 - (ii) respond to or assess the effects of **Pollutants**.

5.8 Prior Claims

- a) **Claims** made prior to or pending at the inception of this **Policy**;
- b) **Claims** arising out of, based upon or attributable to any circumstance which may reasonably be expected by any **Insured** to give rise to a **Claim**, that is known to the **Insured** prior to inception of the **Policy**; or
- c) **Claims** derived from the same or essentially the same facts as alleged in any **Claim** made prior to or pending at the inception of the **Policy**.

5.9 Sanctions

any **Claim**, claim for **Damages**, **Occurrence**, **Breach** or **Extortion Threat** or any benefit hereunder to the extent that the provision of cover or provision of such benefit would expose the **Insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, New Zealand, the European Union, United Kingdom or United States of America.

5.10 War/Terrorism

any war (declared or otherwise), terrorism, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property and / or a **Computer Network** or **Electronic Data** by or under the order of, any governmental, public or local authority or any political or terrorist organisation.

This Exclusion shall not apply to **Cyber Terrorism**.

TECHNOLOGY PROFESSIONAL INDEMNITY – EXCLUSIONS

In respect to Section 1 Technology Professional Indemnity only, the **Insurer** shall not be liable for, or make any payment under this **Policy** arising out of, based upon or attributable to:

5.11 Intentional Acts

any deliberate or reckless **Wrongful Act**. This Exclusion shall not apply to cover 1.3 “Fraud and Dishonesty”.

5.12 Personal Injury/Property Damage

Personal Injury or **Property Damage** unless arising out of an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in the provision of **Technology Services**.

5.13 Recall of Products

the withdrawal, recall, inspection, repair, adjustment, removal, replacement or loss of use of any **Product** or work completed for the **Insured** and/or the withdrawal or recall of any property of which such **Product** forms a part.

5.14 Related Entities

brought or maintained by or on behalf of:

any **Insured**, or any associated entity (whether incorporated or not) of the **Insured**;

- a) any person who, at the time of the **Wrongful Act** giving rise to the **Claim**, is a **Family Member**; or
- b) any person, firm, company or entity:
 - i) operated or controlled by any **Insured**;
 - ii) operated or controlled by any **Employee**, partner, nominee or trustee of any **Insured**;
 - iii) in which any **Insured** has a direct or indirect financial interest (a shareholding of less than 5% in a publicly listed company shall not constitute a financial interest); or
 - iv) advised or induced by the **Insured** to invest in or lend money to any person, firm, company or entity referred to in any of a), b) or c) above or to the **Insured**.

For the purpose of this Exclusion, the term **Insured** shall include both the **Insured** and any **Family Member**.

5.15 Retroactive Date

any **Technology Services** provided prior to the applicable **Retroactive Date**.

5.16 USA/Canada

made or pending within; or to enforce a judgment obtained in, the United States of America, Canada, or any of their territories or possessions.

CYBER – EXCLUSIONS

In respect to Section 2 Cyber only, the **Insurer** shall not be liable for, or make any payment under this **Policy** arising out of, based upon or attributable to:

5.17 Funds Transfer

- a) any electronic funds transfer or transaction by an **Insured**;
- b) any theft of money or securities from an **Insured** or the transfer or loss of money, property or securities from or to an **Insured's** account or any account under the **Insured's** control, including without limitation, any customer account; or
- c) any financial trading loss or change in account value.

5.18 Infrastructure

any **Business Interruption Loss** caused by:

- a) electrical or mechanical failure of infrastructure not under the control of the **Insured**, including without limitation, any electrical power interruption, surge, brownout or blackout;
- b) failure of any satellite, telephone or data transmission or other telecommunication or network infrastructure not under the control of the **Insured**; or
- c) fire, smoke, explosion, lightning, wind, water, earthquake, volcanic eruption, tidal wave, landslide, act of God or any other physical event, however caused.

5.19 Personal Injury/Property Damage

any **Personal Injury** or **Property Damage**.

This Exclusion shall not apply to **First Party Response Costs** following the physical theft or loss of hardware on which **Electronic Data** is stored.

GENERAL AND PRODUCTS LIABILITY - EXCLUSIONS

In respect to Section 3 General and Products Liability only, the **Insurer** shall not be liable for, or make any payment under this **Policy** arising out of, based upon or attributable to:

5.20 Asbestos

- a) asbestos; including any group of natural fibrous silicate minerals that comprises actinolite, amosite, anthophyllite, chrysotile, crocidolite and tremolite; or
- b) the group of man-made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres, and includes asbestos products and products containing asbestos.

5.21 Building Defects

a building or structure being affected by:

- a) moisture or water build up, or the penetration of external moisture or water; or
- b) the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, caused directly or indirectly by:
 - i) non-compliance with the Building Code of Australia;
 - ii) faulty design or faulty specification, including but not limited to faulty sequence, procedure or programme;
 - iii) faulty materials;
 - iv) faulty workmanship;
 - v) faulty inspection; or
 - vi) faulty certification of compliance,

when the building or structure was constructed, manufactured, altered, repaired, renovated or maintained.

This Exclusion does not apply to liability for **Personal Injury** and/or **Property Damage** that is caused by, or directly arises from, the leakage of internal pipes, internal water systems or internal cisterns.

5.22 Care, Custody or Control

except as set out in Extension 3.1 "Care, Custody or Control", damage to property owned, or otherwise in the **Insured's** care, custody or control.

5.23 Electronic Data

Personal Injury, Property Damage or any other loss, cost or expense of whatsoever nature directly or indirectly caused by or resulting from or in connection with any actual or alleged:

- a) unauthorised or improper access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of **Electronic Data**, including, but not limited to, any patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of non-public information; or
- b) violation of any statute, regulation, common-law, or any other law regulating or protecting access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of **Electronic Data**.

This Exclusion applies to, among other things, damages or amounts associated with any notification costs, credit monitoring expenses, forensic expenses, public relations expenses, or any other loss, cost or expense, whether incurred by the **Insured** or others, arising out of any access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information that is subject to this Exclusion.

5.24 **Employee Liability**

- a) **Personal Injury** suffered by any **Employee** arising out of or in the course of employment of that person in the **Insured's** business whether or not any **Workers Compensation Law** applies; or
- b) any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, unfair contracts, harassment or discrimination (sexual or otherwise) in respect of employment by the **Insured**.

5.25 **Intentional Acts**

any deliberate or reckless act of any **Insured**.

5.26 **Professional Advice**

the giving of or failure to give professional advice, the rendering of or failure to render any professional services, including but not limited to, **Technology Services**, or any error or omission connected therewith by the **Insured** or by any other person acting on behalf of any **Insured**.

This Exclusion shall not apply to any coverage provided under Extension 2.2 "First Aid".

5.27 **Reinstatement, Repair or Replacement of Products**

- a) damage to any **Product** or any property of which such **Product** forms a part if such **Damage** is attributable to any defect therein or the harmful nature or unsuitability thereof, however this Exclusion shall not apply to **Damage** to other property resulting therefrom; or
- b) damage to any part of any property that must be repaired, reconditioned, reinstated, corrected or replaced by reason of incorrect work performed by the **Insured** or on the **Insured's** behalf, or by reason of materials or equipment which are or are proved to be defective or inadequate in connection with such work, however this Exclusion does not apply to damage resulting from such work.

5.28 **Tobacco**

Personal Injury sustained due to the inhalation or ingestion of, or exposure to:

- a) tobacco or tobacco smoke; or

- b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

5.29 Vehicles, Watercraft and Aircraft

the ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the **Insured** of any aircraft, aerial device or any **Watercraft** including any **Technology Product** which is incorporated into the structure, machinery or controls of any aircraft, aerial device or **Watercraft**.

CLAIMS CONDITIONS

6.1 Co-operation

The **Insured** will at its own cost:

- a) render all reasonable assistance to the **Insurer** and co-operate in the defence of any **Claim**, claim for **Damages**, actual or suspected **Breach** or **Extortion Threat** and the assertion and exercise of any indemnification, subrogation and/or contribution rights;
- b) use due diligence and do all things reasonably practicable to avoid or diminish any loss which may be covered under this **Policy**; and
- c) give such information and assistance to the **Insurer** as the **Insurer** may reasonably require to enable it to investigate any loss or determine the **Insurer's** liability under this **Policy**.

6.2 Defence and Settlement

- a) The **Insured** (and any person, firm, or company acting for or on the **Insured's** behalf) shall not incur any **Defence Costs** (other than **Emergency Response Costs**), admit liability for, compromise, settle or make any offer or payment in respect of any **Claim**, claim for **Damages**, or other matter for which coverage is or may be provided under this **Policy** without the **Insurer's** prior written consent, such consent not to be unreasonably withheld or delayed.
- b) The **Insured** shall defend any **Claim** or claim for **Damages** brought against the **Insured**; however the **Insurer** shall have the right but not the duty to take over the investigation, defence and settlement of any **Claim**, or claim for **Damages** and the **Insurer** shall have full discretion in the handling and resolution thereof (notwithstanding that a dispute may have arisen between the **Insured** and the **Insurer**).
- c) The **Insured** shall not be required by the **Insurer** to contest any legal proceedings against the **Insured** unless a Senior Counsel (to be mutually agreed upon by the **Insurer** and the **Insured** and in the absence of such agreement to be determined by the President of the relevant State Law Society), acting as an expert and not an arbitrator, advises that such proceedings can be contested with a reasonable prospect of success. The costs of such advice shall be borne by the **Insurer**.
- d) If the **Insured** does not agree with the decision by the **Insurers** to settle a **Claim** or claim for **Damages** the **Insured** can elect to contest the **Claim** or claim for **Damages** at its own expense but the liability of the **Insurer** will not exceed the amount for which the **Claim** or claim for **Damages** could have been settled in the opinion of a Senior Counsel (to be mutually agreed upon by the **Insured** and the **Insurer** and in the absence of such

agreement to be determined by the President of the relevant State Law Society) acting as an expert and not an arbitrator. The costs of such advice shall be borne by the **Insurer**.

- e) The **Insurer** shall pay all **Defence Costs** incurred up to the date the **Insured** notifies the **Insurer** in writing of its election under this clause of the **Policy**, and shall pay the **Insured** (subject to the **Retention**) the amount for which the **Claim** or claim for **Damages** could have been so settled. The **Insured** expressly agrees that the **Insurer's** liability in respect of the **Claim** or claim for **Damages** shall then be at an end and the **Insurer** will not be obliged to pay for any other or further amounts in respect of the **Claim** or claim for **Damages** under the **Policy**.
- f) In the event of a **Claim** or claim for **Damages** which involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the **Insurer** agree to use their best efforts to determine a fair and proper allocation of **Damages** and **Defence Costs** covered under this **Policy**, taking into account the relative legal and financial exposures. If the parties cannot agree on a fair and proper allocation, the **Insured** can refer the question to a Senior Counsel (to be mutually agreed upon by the **Insured** and the **Insurer** and in the absence of such agreement to be determined by the President of the relevant State Law Society) for advice as an expert and not an arbitrator, and the parties agree to be bound by that. The costs of such advice shall be borne by the **Insurer**.

6.3 Notice of a Claim, Breach, Extortion Threat, Occurrence or Product Recall

The **Insured** shall give the **Incident Response Team** and/or **Insurer** notice of any **Claim**, actual or suspected **Breach, Extortion Threat, Occurrence** or **Product Recall** which is made during the **Policy Period**. Notice of a **Claim**, actual or suspected **Breach** or **Extortion Threat** to the **Incident Response Team** shall be deemed notification to the **Insurer**.

Any notice provided pursuant to this section shall be given as soon as practicable after the **Executive Management** first learns of such a **Claim**, actual or suspected **Breach, Extortion Threat, Occurrence** or **Product Recall**.

In the event of a **Claim**, actual or suspected **Breach, Extortion Threat, Occurrence** or **Product Recall** the **Insured** must also forward copies of all relevant documents and any requested information to the **Insurer** as soon as practicable.

6.4 Related Claim

All **Claims, Breaches** and/or **Extortion Threats** involving the same **Wrongful Act, Breach, Extortion Threat** or **Occurrence** or a series of continuous, repeated or related **Wrongful Acts, Breaches Extortion Threats** or **Occurrences** shall be considered a single **Claim, Breach Extortion Threat** and/or **Occurrence**. Only one **Retention** shall be applicable to such single **Claim, Breach, Extortion Threat** or **Occurrence**. All such **Claims, Breaches, Extortion Threats** or **Occurrences** constituting a single **Claim, Breach, Extortion Threat** or **Occurrence** shall be deemed to have been first made on the earliest date on which any such **Claim** was first made against the **Insured**, or such **Breach** first discovered or **Extortion Threat** first made or **Occurrence** first happened.

6.5 Valuation

Business Interruption Loss will be calculated on an hourly basis. In determining the amount of net income or loss and expenses covered under **Business Interruption Loss**, the **Insurer** will give due consideration to the net income or loss of the **Insured** before the **Business**

Interruption occurred and the probable net income or loss of the **Insured** if no **Business Interruption** had occurred. However, such net income or loss calculations shall not include net income that would likely have been earned as a result of an increase in the volume of the **Insured's** business due to favorable business conditions caused by the impact of any event similar to a **Breach** suffered by other businesses. The **Insured** must provide the **Insurer** with access to all relevant sources of information, to enable it to determine the amount of any **Business Interruption Loss** including, but not limited to:

- a) the **Insured's** financial records, tax returns, accounting procedures;
- b) bills, invoices and other vouchers; and
- c) deeds, liens and contracts.

GENERAL CONDITIONS

7.1 Assignment

This **Policy** and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**, which consent shall be in the sole and absolute discretion of the **Insurer**.

7.2 Authorisation

The **Policyholder** shall act as agent on behalf of all **Insureds** with respect to all matters under this **Policy** including:

- a) the giving and receiving of all correspondence regarding this **Policy**;
- b) the sending or receiving of notice of cancellation;
- c) the payment of the premium; and
- d) the receipt and acceptance of any endorsements attaching to and forming part of this **Policy**.

7.3 Bankruptcy

The bankruptcy or insolvency of any **Insureds** shall not relieve the **Insurer** of any of its obligations under this **Policy**. In such event the **Insureds** hereby waive and release any automatic stay or injunction in proceedings which may apply to this **Policy** or its proceeds and agree not to oppose or object to any efforts by the **Insurer** or any **Insureds** to obtain relief from any such stay or injunction.

7.4 Cancellation

- a) The **Policyholder** may cancel this **Policy** at any time by notifying the **Insurer** in writing. In such case, the **Insurer** shall be entitled to retain a pro-rata proportion of the premium. Any refund of premium by the **Insurer** shall be made as soon as practicable to the **Insured** but will not change the effective date of cancellation of the **Policy**. If the **Insured** has notified any **Claim**, actual or suspected **Breach** or **Extortion Threat** then the premium will be deemed to be fully earned by the **Insurer** and no refund of premium will be payable.
- b) The **Insurer** may cancel this **Policy** in accordance with the *Insurance Contracts Act 1984 (Cth)*. In such case, the **Insurer** shall be entitled to retain a pro-rata proportion of the

premium. Any refund of premium by the **Insurer** shall be made as soon as practicable to the **Policyholder** but will not change the effective date of cancellation of the **Policy**.

7.5 Dispute Resolution Process

The **Insurer** and the **Insureds** shall attempt in good faith to resolve any dispute arising out of or relating to this **Policy** promptly by negotiation between executives with authority to settle such dispute. If any dispute cannot be resolved through negotiation, the parties agree that they will submit the dispute to non-binding mediation. The parties will use best efforts to agree on the terms of any such mediation process, but if they do not agree within thirty (30) days of either party requesting mediation, the dispute will be submitted to the Resolution Institute (formerly the Institute of Arbitrators & Mediators Australia) for mediation. Each party will bear their own costs, regardless of the mediation process used. If the dispute is not settled at mediation, no party may commence an action against any other party until at least thirty (30) days after the final mediation session.

7.6 Entire Agreement

The terms, conditions and limitations of this **Policy** can only be waived or changed by written endorsement to this **Policy**.

7.7 Extended Reporting Period

If the **Insurer** cancels or does not renew this **Policy**, other than for non-payment of premium, the **Policyholder** shall have the right to a period of 60 days following the date of cancellation or expiry in which to give notice of any **Claim** first made against the **Insured** during the **Policy Period**. This extended reporting period shall not apply if this **Policy** has been replaced by substantially similar cover.

7.8 Limit of Liability

The total amount payable by the **Insurer** under this **Policy** shall not exceed the applicable **Limit of Liability**. **Sub Limits of Liability**, **Defence Costs** and any other amounts specified in the **Policy** are part of and not payable in addition to the **Limit of Liability**. The inclusion of more than one **Insured** under this **Policy** does not increase the total amount payable by the **Insurer** under this **Policy**.

7.9 Retention

The **Insurer** shall only pay for the amount in excess of the applicable **Retention** resulting from each **Claim**, claim for **Damages**, **Breach**, or **Extortion Threat**. The applicable **Retention** is to be borne by the **Insured** and shall remain uninsured.

The **Insurer** shall only pay for the **Business Interruption Loss** resulting from any one **Breach** in excess of the applicable **Waiting Hours Period**.

7.10 Jurisdiction

This **Policy** shall be governed by the laws of the State of Australia from which it is issued. The Courts of that State shall have non-exclusive jurisdiction in any dispute arising hereunder.

7.11 Territorial Limits

Where legally permissible this **Policy** shall apply to **Claims** made, **Wrongful Acts** committed, and actual or suspected **Breaches** and **Extortion Threats** against any **Insured** anywhere in the world.

In respect of Section 3 General and Products Liability only, where legally permissible this **Policy** shall apply to any **Occurrence** anywhere in the world, except for the United States of America, Canada and their respective protectorates and territories in respect of:

- a) **Insured's Products** exported with the knowledge of the **Insured** to the United States of America, Canada and their respective possessions and territories; and
- b) any operations or premises within the United States of America, Canada and their respective possessions and territories.

7.12 Plurals, Headings and Titles

The descriptions in the headings and titles of this **Policy** are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular shall include the plural and vice versa. In this **Policy** words and their grammatical variations in bold typeface have the special meaning as set out in this **Policy**.

7.13 Severability

In granting cover to the **Insured**, the **Insurer** has relied upon the material statements and particulars in the proposal together with its attachments and any other underwriting information supplied. For the purposes of determining the applicability of any term, condition, limitation or exclusion in this **Policy**, the **Wrongful Acts**, statements, conduct and knowledge of any **Insured** shall not be imputed to any other **Insured** other than that of the **Executive Management** which shall be imputed to the **Policyholder** and its **Subsidiaries**.

7.14 Subrogation

If any payment is to be made under this **Policy** the **Insurer** shall be subrogated to all rights of recovery of the **Insured** whether or not payment has in fact been made and whether or not the **Insured** has been fully compensated for the loss suffered. The **Insurer** shall be entitled to pursue and enforce such rights in the name of the **Insured**, who shall provide the **Insurer** with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. The **Insured** shall do nothing to prejudice these rights. Any amount recovered in excess of the **Insurer's** total payment under the **Policy** shall be restored to the **Insured** less the cost to the **Insurer** of such recovery. The **Insurer** agrees not to exercise any rights of recovery against any **Employee** of the **Insured** unless the **Claim**, or claim for **Damages, Breach** or **Extortion Threat**, is brought about or contributed to by serious or willful misconduct of the **Employee**. In its sole discretion, the **Insurer** may, in writing, waive any of its rights in this clause.

7.15 Transactions Involving the Policyholder

If during the **Policy Period** any of the following events occur:

- a) the **Policyholder**:
 - i) sells all or substantially all of its assets to any other person or entity or affiliated group of persons or entities; or
 - ii) merges or consolidates with another entity such that the **Policyholder** is not the surviving entity; or
- b) any person, entity or affiliated group of persons or entities acquires control of the **Policyholder**;

(each a “transaction”) then coverage under this **Policy** shall continue until expiration of the **Policy Period**, but only for **Wrongful Acts** committed or actual or suspected **Breaches** or **Extortion Threats** against an **Insured** taking place prior to the effective date of such transaction.

7.16 Newly Acquired Subsidiary

If during the **Policy Period** the **Insured** acquires an entity that qualifies as a **Subsidiary** and if at that time the total assets of such **Subsidiary** are equal to or less than twenty-five percent (25%) of the total consolidated assets of the **Policyholder**, then coverage under this **Policy** for such **Subsidiary** shall apply automatically from the date from which such entity first qualifies as a **Subsidiary** but only with respect to **Wrongful Acts** committed or actual or suspected **Breaches** or **Extortion Threats** taking place after that entity qualified as a **Subsidiary**.

If during the **Policy Period** the **Insured** acquires an entity that qualifies as a **Subsidiary** and if at that time the total assets of such **Subsidiary** exceeds twenty-five percent (25%) of the total consolidated assets of the **Policyholder**, then coverage under this **Policy** for such **Subsidiary** as set out in the preceding paragraph shall cease ninety (90) days after such entity first qualifies as a **Subsidiary** unless:

- a) the **Policyholder** within such ninety (90) days provides the **Insurer** with written notice of such creation or acquisition;
- b) the **Policyholder** and the **Insurer** agree on any revisions to the **Policy**; and
- c) the **Policyholder** pays any additional premium required by the **Insurer** as a result of the addition of the new **Subsidiary**.

7.17 Cessation of a Subsidiary

If during or prior to the end of the **Policy Period** any entity ceases to be a **Subsidiary**, then coverage for such former **Subsidiary** under this **Policy** shall only be available, subject to all other terms and conditions of this **Policy**, for any **Wrongful Act** committed or actual or suspected **Breach** or **Extortion Threat** occurring or allegedly occurring prior to the date it ceased to qualify as a **Subsidiary**.