



360 Cyber Policy Wording

Date of preparation: 1 June 2024

Effective date: 1 September 2024

360CYPWW1024



360 Financial Lines Pty Ltd **ABN 72 629 145 357** is an authorised representative (AR 1268172) of
360 Underwriting Solutions Pty Ltd **ABN 18 120 261 270 AFSL 319181**
Suite 1, Level 18, 201 Kent Street, Sydney, NSW 2000

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Introduction



This is the 360 Cyber Policy Wording, setting out the **policy** terms, conditions and exclusions.

If the **insurer** agrees to provide insurance, the **policyholder** will be issued with a **policy schedule**, setting out the specific terms applicable to the cover, including the insurance being provided and any applicable limits. The **policy schedule**, **policy** terms and conditions, and any endorsements are each part of the **policy** and together make up the legal insurance contract. Please keep these documents in a safe place for future reference.

Please read every document provided carefully. It is important to:

- + check that all the cover requested is shown as included in the **policy schedule**;
- + check that the information provided in applying for this insurance is accurate; and
- + comply with all the duties shown in the **policy** documentation.

If any **insured** wants to vary the cover or has any questions, please contact the insurance broker who arranged this **policy**.

Who is 360 Financial Lines Pty Ltd?

360 Financial Lines Pty Ltd **ABN 72 629 145 357** ("360 Financial Lines") is an authorised representative (**AR 1268172**) of 360 Underwriting Solutions Pty Ltd **ABN 18 120 261 270 AFSL 319181** and has developed this cyber insurance contract underwritten by certain underwriters at Lloyd's.

The **insurer** authorises 360 Financial Lines to arrange, enter into, bind and administer this insurance contract. When issuing this **policy**, 360 Financial Lines acts as agent for the **insurer**, not for you.

360 Financial Lines contact details are:

Suite 1, Level 18, 201 Kent Street,
Sydney, NSW 2000
Telephone. 1800 411 580

About the Insurer

This insurance is underwritten by certain underwriters at Lloyd's.

Lloyd's underwriters have been insuring Australian risks for over 150 years and are licensed to write non-life insurance business under the *Insurance Act 1973* (Cth). Details of syndicate numbers and the percentage share for which each of the underwriters at Lloyd's is liable under this insurance contract are available from 360 Financial Lines on request. In the event of any claim under this insurance contract, each underwriter (and their executors and administrators) is only liable for its own percentage share.

Lloyd's contact details are:

Lloyd's Australia Limited
Level 9, 1 O'Connell Street,
Sydney, NSW 2000
Telephone. (02) 8298 0700
Facsimile. (02) 8298 0788

Lloyd's underwriters have strong financial security characteristics. However, please note that ratings can vary from time to time. The **insurer's** current ratings appear at www.lloyds.com/investor-relations/ratings.

Any questions or concerns about this insurance contract should be addressed to 360 Financial Lines in the first instance. Note that contact details for claims notifications are different (see the section titled *Claims under the Policy*, below).

Important Information

Claims Under the Policy

The **insured** must notify any **claim, loss, or business interruption event** to Clyde & Co. Incident Response Service, Telephone: 1800 572 102 as soon as reasonably practicable, but in no case later than seven (7) days after the **insured** has become aware of such incident.

Claims Made

This **policy** operates on a 'claims made and notified' basis. This means the **policy** covers **claims** made against the **insured** and notified to the **insurer** during the **period of insurance**.

The **policy** does not provide cover for any **claim, loss, damage, liability, cost or expense** of any kind arising from, attributable to, or based upon any fact or circumstance known to the **insured** prior to the start of the **period of insurance**.

Where the **insured** gives notice in writing to the **insurer** of any facts that might give rise to a **claim** against the **insured** as soon as reasonably practical after the **insured** becomes aware of those facts but before the expiry of the **period of insurance**, the **insured** may have rights under section 40(3) of the *Insurance Contracts Act 1984* (Cth) to be indemnified in respect of any **claim** subsequently made against the **insured** arising from those facts notwithstanding that the **claim** is made after the expiry of the **period of insurance**.

Code of Practice

360 Financial Lines and the **insurer** proudly support the General Insurance Code of Practice (the "Code"). The purpose of the Code is to raise the standards of practice and service in the general insurance industry.

The objectives of the Code are:

- + to commit insurance professionals to high standards of services;
- + to promote better, more informed relations between insurers and policyholders;
- + to maintain and promote trust and confidence in the general insurance industry;
- + to provide fair and effective mechanisms for the resolution of complaints and disputes between insurers and policyholders; and
- + to promote continuous improvement of the general insurance industry through education and training.

360 Financial Lines and the **insurer** have adopted and support the Code and are committed to complying with it.

For further information relating to the Code, please visit www.codeofpractice.com.au or alternatively please request a brochure on the Code from 360 Financial Lines.

Complaints

If the **insured** has any concerns or wants to make a complaint about the services provided by 360 Financial Lines, please contact 360 Financial Lines at first instance:

360 Financial Lines Pty Ltd
Suite 1, Level 18, 201 Kent Street,
Sydney, NSW 2000
Telephone. 1800 411 580
Email. cyber@360uw.com.au

If the complaint is resolved to the **insured's** satisfaction within 5 business days, 360 Financial Lines will provide the **insured** with written confirmation to confirm this.

In all cases, 360 Financial Lines will endeavour to resolve a complaint with 30 calendar days from the date the complaint is received. If 360 Financial Lines cannot make a decision within this timeframe, it will inform the **insured** of this fact in writing and provide reasons for the delay. If this occurs, 360 Financial Lines will also inform the **insured** of their right to complain to the Australian Financial Complaints Authority ("AFCA").

If the **insured** has any concerns or wants to make a complaint in relation to this **policy**, the services provided by the **insurer** or any claim for indemnity under this **policy**, please contact Talbot Underwriting Limited ("Talbot"):

Talbot Underwriting Limited
58 Fenchurch Street,
London, United Kingdom, EC3M 4AB
Telephone. +44(0)2075503500
Email. complaints@talbotuw.com

Talbot will attempt to resolve your concerns in accordance with its internal dispute resolution procedure and will acknowledge receipt of any complaint – and try to resolve the complaint to the **insured's** satisfaction – within 10 business days.

If this is not possible, Talbot will escalate the matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team.

Lloyd's contact details are:

Lloyd's Australia Limited
Email. ldraustralia@lloyds.com
Telephone. (02) 8298 0783
Post. Suite 1603, Level 16, 1 Macquarie Place,
Sydney, NSW 2000

A final decision about any complaint will be provided to the **insured** within 30 calendar days of the date on which the complaint was raised, unless certain exceptions apply.

The **insured** can refer the complaint to AFCA at any time and if a complaint is not resolved to the **insured's** satisfaction within 30 calendar days of the date on which the complaint was first made. However, if the **insured** refers the matter to AFCA before this time, AFCA may refer the matter to Talbot or Lloyd's at first instance.

AFCA's contact details are:

Telephone. 1800 931 678
Email. info@afca.org.au
Post. GPO Box 3, Melbourne, VIC 3001
Website. www.afca.org.au

Any referral to AFCA must be within 2 years of the **insurer's** final decision, unless AFCA considers special circumstances apply. If the complaint is not eligible for consideration by AFCA, the **insured** may be referred to the Financial Ombudsman Service (UK) or the **insured** can seek independent legal advice. The **insured** can also access any other external dispute resolution or other options that may be available.

Disputes

In the unlikely event that any differences cannot be resolved amicably, the **insurer** agrees that:

- I. this **policy** is subject to Australian law and practice;
- II. the **insurer** submits to the jurisdiction of any competent Court in the Commonwealth of Australia;
- III. any summons notice or process may be served upon the **insurer** at the following address:

Lloyd's Underwriters' General Representative in Australia

Suite 1603, Level 16, 1 Macquarie Place
Sydney, NSW 2000

Lloyd's Underwriters' General Representative in Australia has authority to accept service on the **insurer's** behalf; and

- IV. if a suit is instituted against any of the Lloyd's underwriters, all underwriters participating in this **policy** will abide by the final decision of such Court (or any competent Appellate Court).

All disputes arising out of or in connection with this **policy**, or in respect of any legal relationship associated with or derived from this **policy**, shall be submitted to a single Senior Counsel to be agreed by the parties or, if agreement cannot be reached, a Senior Counsel nominated by the President of the Law Society of New South Wales, for a binding written determination.

Duty of Disclosure

Before the **policyholder** enters into this **policy** with the **insurer**, the **policyholder** has a duty of disclosure under the *Insurance Contracts Act 1984* (Cth). This means the **policyholder** has a duty to tell the **insurer** every matter the **insured** knows, or could reasonably be expected to know, that may affect the **insurer's** decision to offer the **policyholder/insured** insurance and on what terms. If the **policyholder** is not sure whether something is relevant, it should inform the **insurer** anyway.

By agreeing to this **policy**, the **policyholder** agrees that the statements contained in any application for insurance and any supplemental materials submitted with any such application(s) constitute its representations and are matters to which it agrees.

The **policyholder** has a different duty the first time it enters into an insurance contract with the **insurer** to that which applies when the **policyholder** varies, renews, extends or reinstates the contract, as outlined below. This duty of disclosure applies until the insurance contract is entered into (or renewed, varied, extended or reinstated as applicable).

The Policyholder's Duty of Disclosure when entering an insurance contract with the Insurer for the first time

If the **insurer** asks the **policyholder** questions that are relevant to the **insurer's** decision to insure the **policyholder/insured** and on what terms, the **policyholder** must be honest and tell the **insurer** anything that the **policyholder** knows and that a reasonable person in the circumstances would include in answer to the questions. It is important that the **policyholder** understands it is answering the **insurer's** questions in this way for itself and anyone else that it wants to be covered by the insurance contract.

The Policyholder's Duty of Disclosure when renewing the contract

Where applicable, the **insurer** will tell the **policyholder** what its renewal duty of disclosure is prior to each renewal.

The Policyholder's Duty of Disclosure when varying, extending or reinstating the contract

When the **policyholder** varies, extends or reinstates the insurance contract with the **insurer**, the **policyholder's** duty is to tell the **insurer** every matter that the **policyholder** knows, or could reasonably be expected to know, is relevant to the **insurer's** decision whether to accept the risk of the insurance and, if so, on what terms.

What the Policyholder does not need to tell the Insurer

- The **policyholder** does not need to tell the **insurer** anything that:
- + reduces the risk the **insurer** insures the **insured** for; or
 - + is common knowledge; or

- + the **insurer** knows or should know as an **insurer**; or
- + the **insurer** waives the **insured's** duty to tell the **insurer** about.

If the Policyholder does not tell the Insurer something

If the **policyholder** does not tell the **insurer** anything the **policyholder** is required to tell the **insurer**, the **insurer** may cancel the **policy** or reduce the amount the **insurer** pays if the **insured** makes a claim under the **policy**, or both. If the **policyholder's** failure to tell the **insurer** is fraudulent, the **insurer** may refuse to pay a claim under the **policy** and treat the **policy** as if it never existed.

How Goods and Services Tax (“GST”) Affects any Payments

The amount of premium payable by the **policyholder** for this **policy** includes an amount for the GST applicable on the premium.

When the **insurer** pays a claim under this **policy**, the **insured's** GST status will determine the amount the **insurer** pays. The amount that the **insurer** is liable to pay under this **policy** will be reduced by the amount of any Input Tax Credit (“ITC”) that the **insured** is or may be entitled to claim for the supply of goods or services covered by that payment.

The **insured** must advise the **insurer** of its correct Australian Business Number (“ABN”) and Taxable Percentage. The Taxable Percentage is the **insured's** entitlement to an ITC on its premium as a percentage of the total GST on that premium. Any GST liability arising from the **insured's** incorrect advice is payable by the **insured**.

Where the settlement of a claim under this **policy** is less than the applicable limit of liability or other limit applicable to this **policy**, the **insurer** will only pay the GST (less the **insured's** ITC) applicable to the settlement.

This means that if these amounts are not sufficient to cover the whole claim under this **policy**, the **insurer** will only pay the GST relating to its share of the settlement for the whole claim. The **insurer** will pay the claim by reference to the GST exclusive amount of any supply made by any business of the **insured** which is relevant to the claim.

GST and ITC have the same meaning as given to those words or expressions in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related legislation as amended from time to time.

Intermediary Remuneration

The **insurer** pays remuneration to insurance brokers when it issues, renews or varies an insurance contract the broker has arranged or referred to 360 Financial Lines. The type and amount of remuneration varies and may include commission and other payments. If the **insured** requires more information about remuneration the **insurer** may pay its broker, the **insured** should ask its broker.

Paying the Premium

The **policyholder** must pay the premium on time. The premium is the amount shown on the **policy** invoice.

If the **policyholder** does not, the **insurer** may cancel the **policy**. If the **insurer** cancels the **policy** for non-payment of the premium it will give the **policyholder** at least 21 calendar days' notice. Cancellation will be effective at the expiry of this period of notice.

Privacy Statement

In this Privacy Statement, the use of “we”, “our” or “us” means 360 Financial Lines and the **insurer**, and “you” or “your” means the **insured**, unless specified otherwise.

In this Privacy Statement, the use of personal information includes sensitive information.

We are committed to protecting the personal information that you provide to us in accordance with the *Privacy Act 1988* (Cth).

The *Privacy Act 1988* (Cth) contains the Australian Privacy Principles, which require us to tell you that we collect, handle, use, store and disclose your personal and sensitive information for the specific purpose of:

- + deciding whether to issue the **policy**;
- + determining the terms and conditions of the **policy**;
- + compiling data to help develop and identify other products and services that may interest you; and
- + handling your claims.

Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- whether the information or opinion is true or not;
- whether the information or opinion is recorded in a material form or not.

Sensitive information includes, amongst other things, information about an individual's racial or ethnic origin, political opinions, membership of a political organisation, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal record, health information about an individual, genetic information, biometric information or templates.

You have given us your consent to collect, use, store and disclose your personal and sensitive information in order to provide you with the relevant services and/or products.

When you give us personal information about other individuals, we rely on you to have made or make the individual aware that you will or may provide their personal information to us and the types of other parties and service providers we may provide it to, the relevant purposes we and the other parties and service providers will use it for, and how they can access it. If you have not done or will not do either of these things, you must tell us before you provide the relevant personal information to us.

We will protect your information using physical, technical, and administrative security measures to reduce the risks of **loss**, misuse, **unauthorised access**, disclosure and alteration. Some of the safeguards that we use are firewalls and data encryption, physical access controls to our data centres, and information access authorisation controls.

We disclose personal information to other parties and service providers whom we believe are necessary to assist us and them in providing the relevant services and/or products. For example, in handling claims, we may have to disclose your personal information to other parties and service providers such as our claim management partner, other insurers, reinsurers, loss adjusters, external claims data collectors, investigators and agents, facilitators, assessors or other parties as required by law. We will limit the use and disclosure of any personal information provided by us to them to the specific purpose for which we supplied it.

We may disclose your personal information to our insurers, reinsurers, related entities and service providers overseas where it is reasonably necessary for, or directly related to, the functions, services or activities we provide to you. When we transfer your information to other countries, including countries which may not have data protection laws that provide the same level of protection that exists in Australia, we will protect the information as described in this Privacy Statement.

We may disclose your personal information to our insurers, reinsurers, related entities and service providers overseas, including but not limited to New Zealand, Singapore, United Kingdom, the European Union and the United States of America.

We will generally take reasonable steps to ensure that we have arrangements in place with such overseas third parties that prevent them from using or disclosing personal information for any purposes other than our own. However, by providing your personal information to us, you acknowledge that, while we will take reasonable steps, we may not always be able to guarantee that overseas parties are subject to the requirements similar to those contained in the *Privacy Act 1988* (Cth) and consent to the disclosure on this basis. If you would like further information about whether your information will be disclosed to overseas recipients, please contact us.

If you do not provide the personal information requested and/or do not provide us with your consent to the use and disclosure of your personal information as set out in this Privacy Statement, your insurance application may not be accepted, or we may not be able to administer your **policy**, or you may be in breach of your duty of disclosure, the consequences of which are set out under the heading Duty of Disclosure in this document.

We will notify you as soon as possible if your personal information is involved in a data breach that is likely to result in serious harm to you.

If you would like a copy of our privacy policies, would like to seek access to or correct your personal information, opt-out of receiving materials we send, complain about a breach of your privacy or

you have any query on how your personal information is collected, stored or used, or any other query relating to our handling of your personal information, please contact us.

Sanctions

The **insurer** will not be deemed to provide cover and will not be liable to pay any **claim** or provide any benefit under this **policy** to the extent that the provision of such cover, payment of such **claim** 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 the European Union, the Commonwealth of Australia, the United Kingdom or the United States of America. This provision overrides all other terms of this **policy**.

Notices

Any notice the **insurer** gives the **insured** will be in writing and will be effective:

- I. when it is delivered to the **insured** or the **insured's** insurance broker personally; or
- II. when is delivered or posted to the **insured's** address last known to the **insurer**.

By providing the **insurer** with its nominated email address, the **insured** consents to the **insurer** delivering documents electronically to that email address, unless they tell the **insurer** otherwise. Any documents sent by email will be considered to have been received by the **insured** when it is delivered to the **insured's** nominated email address.

The **insured** must notify in writing the **insurer** or the **insured's** broker of any change of postal address or nominated email address as soon as possible.

Policy Alterations

If the **insured** requests an alteration to this **policy**, the alteration only becomes effective when:

- I. the **insurer** agrees to it; and
- II. the **insurer** gives the **insured** a new **policy schedule** detailing the change.

Fraudulent Claims

If any claim under this **policy** is in any respect fraudulent or if any fraudulent means or devices are used by the **insured** or anyone acting on the **insured's** behalf to obtain any benefit under this **policy**, or if any **loss** hereunder is occasioned by the wilful act or with the connivance of the **insured**, the **insurer**, without prejudice to any other right(s) it might have under this **policy**, is entitled to refuse to pay such claim.

Section 1 – Insurance Cover

In consideration of the payment of or agreement to pay the premium by the **policyholder** on behalf of the **insured**, the **insurer** will pay, or where specified will reimburse, the **insured** in excess of the applicable **deductible(s)** shown in the **policy schedule** under Cover Details, subject to the limit of liability and sub-limits shown in the **policy schedule** under Cover Details, in respect of the following:

- 1.1 **Third party loss** in respect of any **claim** first made against the **insured** during the **period of insurance** and notified to the **insurer** during the **period of insurance**.
- 1.2 **Business interruption loss** resulting from a **business interruption event** commencing on or after the **retroactive date** and first discovered by the **insured** during the **period of insurance** and notified to the **insurer** during the **period of insurance**.
- 1.3 **Remediation costs** incurred by the **insured** resulting from an actual or threatened **business interruption event**, **data liability event** or **network security event** first discovered by the **insured** during the **period of insurance** and notified to the **insurer** during the **period of insurance**.
- 1.4 **PCI fines and assessment costs** caused by a **data liability event** first discovered by the **insured** during the **period of insurance** and notified to the **insurer** during the **period of insurance**.
- 1.5 **Telephone hacking event:**
 - a. **third party loss** which is the sole and direct result of a **telephone hacking event** and arises from a **claim** against the **insured** by a **telecom provider** first made against the **insured** during the **period of insurance** and notified to the **insurer** during the **period of insurance**; and/or
 - b. **increased telephony costs** payable by the **insured** to a **telecom provider** as a direct result of (and only to the extent caused by) a **telephone hacking event**, provided that such **telephone hacking event** occurs during the **period of insurance** and is notified to the **insurer** during the **period of insurance**.
- 1.6 **Hardware replacement costs** incurred by the **insured** resulting from a **computer hardware incident** occurring during the **period of insurance** and notified to the **insurer** during the **period of insurance**.
- 1.7 **Business interruption claim preparation costs** resulting from a **business interruption loss** commencing on or after the **retroactive date** and first discovered during the **period of insurance** and notified to the **insurer** during the **period of insurance**.
- 1.8 **Court attendance costs** arising from any **claim** first made against the **insured** during the **period of insurance** and notified to the **insurer** during the **period of insurance**.

- 1.9 **Criminal reward funds** in connection with a **cyber event** commencing on or after the **retroactive date** and first discovered during the **period of insurance** and notified to the **insurer** during the **period of insurance**.
- 1.10 **Post cyber event security & upgrade costs** resulting from a **cyber event** commencing on or after the **retroactive date** and first discovered during the **period of insurance** and notified to the **insurer** during the **period of insurance**.

Optional Extensions of Cover

The following extensions of cover only apply if the **policy schedule** shows them as covered. If they apply, they are subject to the following *Insurance Cover clauses* and all other **policy** terms and conditions:

- 1.11 **Loss** solely and directly resulting from a **funds transfer fraud event** which occurs and is first discovered by the **insured** during the **period of insurance** and is notified to the **insurer** during the **period of insurance**.
- 1.12 **Loss** which is the sole and direct result of a **third party funds theft event** and which arises from a **claim** against the **insured** by a **third party** first made against the **insured** during the **period of insurance** and notified to the **insurer** during the **period of insurance**.

The **policy schedule** under Cover Details, shows the sub-limits applicable to each of the *Insurance Cover clauses 1.1 – 1.12* above. Where the **policy schedule** shows a sub-limit, this is the total maximum amount payable under the relevant *Insurance Cover clause*. All sub-limits form part of, and are not in addition to, the limit of liability.

Deductibles for each optional extension covered are shown in the **policy schedule** under Cover Details.

Section 2 – Definitions



Some words used in this **policy** that appear in bold have a special meaning. Whenever the following words are used in the **policy** they mean what is set out below. Unless the context requires another meaning, a reference to the singular includes the plural and vice versa.

Business interruption claim preparation costs means: Reasonable and necessary costs incurred by the **insured**, with the prior written consent of the **insurer**, and paid to appropriately qualified external professionals in order to determine the amount of the **insured's business interruption loss** sustained following a **business interruption event**.

Business interruption event means:

- I. a **cyber event** that causes any unplanned system outage, network interruption, or degradation of the **insured's computer system** or **IT service provider's computer system**; or
- II. a **reputational harm event**.

Business interruption loss means:

The **insured's loss of gross profit** directly resulting from a **business interruption event**, being the difference between the actual **gross profit** during the period of interruption and the amount of **gross profit** which would have been earned had the **business interruption event** not occurred less any amount saved from the costs, charges and expenses of the business otherwise payable out of **gross profit** which have ceased or reduced in consequence of the **business interruption event**.

The duration of the period of interruption caused by the **business interruption event** must exceed the **waiting period** in order to be covered.

The period of interruption begins at the time of the **business interruption event** and finishes at the earlier of:

- a. the time when the **insured's** business returns to the same or equivalent functionality and service that existed prior to the **business interruption event**; or
- b. after 365 days from when the outage, interruption or degradation commenced, such 365 day period not to be limited by the expiration of the **period of insurance**.

Cover under **Insurance Cover clause 1.2 Business Interruption Loss** shall also include costs and expenses incurred, over and above normal operating expenses, to:

- I. avoid or mitigate the effects of a **business interruption event** and reduce any business interruption loss;
- II. discover and minimise such interruption or degradation of the **insured's computer system**; and
- III. preserve evidence of the **insured's** business interruption loss,

provided that these costs and expenses are less than the reasonably expected **loss of gross profit** which would have been sustained if these mitigation measures had not been taken.

Business interruption loss does not include **business interruption claim preparation costs**.

Chargeback means:

A debit or credit card company or bank wholly or partially reversing or preventing a payment transaction.

Claim means:

Any written demand, civil, criminal, judicial, administrative, regulatory or arbitral proceeding against the **insured** seeking compensation or other legal remedy or penalty as a result of a **data liability event**, **media liability event**, **network security event** or **telephone hacking event**.

Computer device means:

The desktop and laptop computers associated with input and output devices, mobile devices, **data** storage devices, networking and back up hardware, which are owned by the **insured**.

Computer hardware incident means:

A **cyber event** that renders an **insured's computer system** permanently non-functional for its intended purpose.

Computer system means:

Any computer, hardware, software, communications system, electronic device (including but not limited to, smart phone, laptop, tablet, wearable device), server, cloud infrastructure 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.

Court attendance costs means:

Reasonable fees, costs and expenses incurred by the **insured**, its directors, officers, partners, **employees** or any third parties the **insured** may call as witnesses, with the prior written consent of the **insurer**, to attend court or any tribunal, arbitration, adjudication, mediation, or other hearing in connection with any **claim** for which the **insured** is entitled to indemnity under this **policy**.

Credit monitoring costs means:

Reasonable fees, costs and expenses incurred with the prior written consent of the **insurer** for the monitoring services of identity or credit theft including the purchase of identity theft insurance for a period of 12 months from the date of any **data liability event**.

Criminal reward funds means:

Any amount offered and paid by the **insured** to the extent permitted under all applicable laws and regulations, and with the **insurer's** prior written consent, for information that leads directly to the arrest and criminal conviction of any individual(s) found to have committed or attempted to commit any illegal act which has triggered or may trigger an indemnity under this **policy**.

Cyber event means:

- I. **unauthorised access**;
- II. **operator error**;
- III. a denial of service attack; or
- IV. the introduction of any **malware** into the **insured's computer system** or an **IT service provider's computer system**.

Cyber extortion costs means:

The reimbursement of reasonable fees, costs and expenses incurred by the **insured**, or paid on the **insured's** behalf, with the prior written consent of the **insurer**, such consent not to be unreasonably withheld, to terminate or mitigate any credible threat of a **business interruption event**, **data liability event** or **network security event** resulting from an actual or attempted extortion by a **third party**. Cyber extortion costs do not include any **criminal reward funds**.

Cyber incident response provider means:

The **insurer's** appointed agent whom the **insured** contacts when they call the telephone number in the **policy schedule**.

Cyber operation means:

The use of a **computer system** by or on behalf of a **state** to disrupt, deny, degrade, manipulate or destroy information in a **computer system** of or in another **state**.

Data means:

Any electronically stored, digital or digitised information including software. For the purpose of this **policy**, data is not tangible property.

Data liability event means:

- I. the **loss** or suspected **loss** of any **third party** non-public **data** or information for which the **insured** is legally responsible;
- II. the breach of any privacy legislation worldwide by the **insured** or someone for whom the **insured** is legally responsible,

provided always that such data liability event occurs on or after the **retroactive date** and notified by the **insured** during the **period of insurance**.

Data restoration costs means:

Reasonable fees, costs and expenses for the restoration and/or replacement of **data** and/or programs that have been lost, erased corrupted or encrypted by a **cyber event** or **data liability event** and costs to prevent or minimise any further damage and preserve material evidence of civil, criminal or malicious wrongdoings. These costs include the cost of purchasing replacement licenses for programs where necessary.

Deductible means:

The amount(s) shown in the **policy schedule** under Cover Details which the **insured** must pay as the first part of every claim for indemnity under this **policy** after application of all other **policy** terms and conditions. If a combined deductible applies in respect of more than one of the *Insurance Cover clauses 1.1 – 1.12*, then the deductible will be eroded by the **insured** making deductible payments under any of the *Insurance Cover clauses* to which the combined deductible applies.

Defence costs means:

Reasonable fees, costs and expenses (including but not limited to lawyers' fees and experts' fees) incurred by the **insured** relating to the defence, settlement or appeal of a **claim**. Defence costs do not include **court attendance costs**.

Employee means:

A natural person under a contract of employment with the **insured**. Employee does not include any: (i) principal, partner, director or officer of the **insured**; or (ii) temporary contract labourer, self-employed person or labour-only sub-contractor.

Forensic costs means:

Reasonable fees, costs and expenses of the **insured** to investigate the cause, scope and extent of any **data liability event**, **business interruption event** or **network security event**. Forensic costs do not include **business interruption claim preparation costs**.

Funds transfer fraud event (if covered) means:

Any **third party** committing:

- I. **unauthorised access** that results in any unauthorised electronic transfer of the **insured's** funds from the **insured's computer system** or network due to the fraudulent manipulation of electronic documentation which is stored on the **insured's computer system**;
- II. theft of money or other financial assets from the **insured's** corporate credit cards by electronic means; and/or
- III. any phishing, vishing or other social engineering attack against the **insured** that results in the unauthorised transfer of the **insured's** funds to a **third party**.

Gross Profit means:

Calculated as **revenue** less the variable costs and any other costs which do not necessarily continue during the period of interruption caused by a **business interruption event**.

Hardware replacement costs means:

Those costs incurred to replace any **computer device** affected by a **computer hardware incident** with identical or the nearest available functionally equivalent equipment to the extent those costs:

- I. are reasonable; and
- II. do not exceed the costs that would have been incurred had the **insured** taken all reasonable steps to minimise those costs and restore such **computer device(s)** to the level of functionality that existed immediately prior to the relevant **cyber event**.

Increased telephony costs means:

The difference between the amount payable to the **telecom provider** in the period during and immediately following a **telephone hacking event** and the amount payable over the same number of days immediately preceding the **telephone hacking event**, but only to the extent this difference is directly caused by the **telephone hacking event**.

Infrastructure means:

Infrastructure which is not under the **insured's** direct operational control, and includes without limitation: electrical power; utilities (including gas and water); satellites; stock exchange, securities derivatives or other financial markets; telephone lines and other external telecommunications services; GPS systems and services; core DNS root servers; IP addressing systems; and/or any other core element necessary for the provision of internet or telecommunications services.

Insured means:

The **policyholder** and any subsidiary based in the same territory and owned by the **policyholder**, that is intended and agreed to be insured by the **insurer** at the start of the **period of insurance** and/or acquired during **period of insurance**, provided notice is given to the **insurer** of such acquisition and the **insurer** has not objected within 30 days of such notice.

Insured's computer system means:

A **computer system** owned or operated by the **insured**.

Insurer means:

Lloyd's Underwriting Syndicate No 1183 TAL.

IT service provider means:

Any **third party** with whom the **insured** has a written contract for the provision of computing services, IT systems platforms or IT business applications. IT service provider does not include any **social media platform**.

IT service provider's computer system means:

A **computer system** operated by an **IT service provider**.

Legal representation expenses means:

Reasonable and necessary fees, costs and expenses incurred to obtain legal advice or representation to protect the **insured's** interests in connection with a **data liability event** or **network security event**. Legal representation expenses shall include the costs associated with the investigation, adjustment and defence of regulatory proceedings but not **court attendance costs**.

Loss means:

- I. **third party loss** (including **third party loss** solely and directly resulting from a **telephone hacking event**);
- II. **business interruption loss** and **business interruption claim preparation costs**;
- III. **remediation costs**;
- IV. **PCI fines and assessment costs**;
- V. **increased telephony costs**;
- VI. **hardware replacement costs**;
- VII. **court attendance costs**;
- VIII. **criminal rewards funds**;
- IX. **post cyber event security & upgrade costs**;
- X. (where **Insurance Cover clause 1.11** applies) loss of funds or financial assets of the **insured** solely and directly caused by a **funds transfer fraud event**; and
- XI. (where **Insurance Cover clause 1.12** applies) **third party loss** arising from a **claim** against the **insured** by any **third party** which solely and directly results from a **third party funds theft event**.

Malware means:

Any code designed to:

- I. erase, deny access to or corrupt **data**, including but not limited to ransomware;
- II. damage or disrupt any **computer system**; or
- III. circumvent any network security product or service.

Media liability event means:

Any digital content or printed media created and displayed by the **insured** which directly results in:

- I. an infringement of any copyright, title, slogan, trademark, trade name, or domain name;
 - II. plagiarism, piracy, or the misappropriation or theft of ideas;
 - III. defamation, including the disparagement of any product or service; or
 - IV. any breach of confidentiality or invasion or interference with any right of privacy,
- provided always that such media liability event:
- a. occurs in the course of the **insured's** usual business practices; and
 - b. occurs on or after the **retroactive date**; and
 - c. is notified to the **insurer** by the **insured** during the **period of insurance**.

For the avoidance of doubt the manufacture, supply, retail or distribution of any tangible goods or products shall not be considered a media liability event.

Merchant services agreement means:

A contractual agreement between the **insured** and any other organisation, which allows the **insured** to accept payment by credit or debit card.

Network security event means:

- I. the transmission of any **malware** from the **insured's computer system** or an **IT service provider's computer system**;
- II. failure to secure the **insured's computer system** that results in **unauthorised access**;
- III. failure to prevent a denial of service attack launched from the **insured's computer system** or an **IT service provider's computer system**,

provided always that such network security event occurs on or after the **retroactive date** and is notified to the **insurer** by the **insured** during the **period of insurance**.

Notification costs means:

Reasonable fees, costs and expenses incurred in notifying:

- a. any natural person or legal entity whose **data** or information (for which the **insured** is responsible) has been or may have been lost; or
- b. any data protection authority or equivalent, as a result of a **data liability event**.

Operator error means:

The accidental and unintentional erasure, destruction or modification of the **insured's data** or programs by an **employee**.

PCI fines and assessment costs means:

All amounts the **insured** is legally required to pay under a **merchant services agreement** following a **data liability event** that results in a breach of the Payment Card Industry Data Security Standard, including but not limited to fines, case management fees,

non-compliance fees, re-imbusement of fraudulent transactions, costs incurred in card re-issuance and the appointment of a PCI Forensic Investigator.

Period of insurance means:

The period specified in the **policy schedule** under Cover Details.

Policy means:

The legal contract of insurance between the **insurer** and the **insured**, the terms of which are contained in this document, the **policy schedule** and any endorsements.

Policyholder means:

The entity named as the **insured** in the **policy schedule**.

Policy schedule means:

The schedule setting out the specific terms applicable to the **policy**.

Post cyber event security & upgrade costs means:

Reasonable costs incurred and paid by the **insured**, with the prior written consent of the **insurer**, immediately following a **cyber event** to:

- I. upgrade and improve the hardware, software and/or security of the **insured's computer system**, up to a maximum amount of 25% more than the costs that would have been incurred to replace the original;
- II. obtain security risk management advice; or
- III. deliver an information security awareness training session,

which are necessary to prevent or minimise reoccurrence of a **cyber event**.

Post cyber event security & upgrade costs do not include wages, benefits or overheads of any **insured** or **IT service provider** or any element of a **computer system** which did not form part of the **insured's computer system** immediately prior to any **cyber event**.

Public relations costs means:

Reasonable fees, costs and expenses incurred with the prior written consent of the **insurer** (not to be unreasonably withheld) for:

- I. obtaining advice and support to protect, or mitigate any damage to, the **insured's** reputation following a **reputational harm event**; and
- II. training for relevant spokespeople with respect to media communications or engagements directly relating to a **cyber event** or **data liability event**.

Remediation costs means:

Any:

- I. **credit monitoring costs**;
- II. **cyber extortion costs**;
- III. **data restoration costs**;
- IV. **forensic costs**;
- V. **legal representation expenses**;
- VI. **notification costs**; and/or
- VII. **public relations costs**.

Reputational harm event means:

Adverse media, including social media, caused solely by a **cyber event** or a **data liability event** that directly results in a **business interruption loss**.

Retroactive date means:

The date specified in the **policy schedule** under Cover Details.

Revenue means:

The money paid or payable to the **insured** for services rendered or goods sold in the course of business.

Social media event means:

The use of a **social media platform** by any person or persons not authorised to do so which results in a **social media platform** becoming locked, compromised or otherwise made inaccessible or wholly/partially non-functional.

Social media platform means:

Any internet based system, website or application for the creation, exchange or sharing of any user-generated content for information, advertising social networking or any other purpose. Social Media Platforms include but are not limited to: Facebook, Facebook Messenger, LinkedIn, Instagram, X (formerly known as Twitter), Pinterest, Snapchat, Reddit, WhatsApp, Tumblr, WeChat, Telegram, Twitch, Google+, Discord, Line, Weibo, Flickr, Nextdoor, Douyin, Friendster, Myspace, Qzone, TikTok and YouTube.

State means:

Sovereign state.

Telecom provider means:

Any telephone or communications service provider with whom the **insured** has a written contract for the provision of telephony or communication services.

Telephone hacking event means:

Any **unauthorised access** to the **insured's** internal digital telephony systems.

Third party means:

Any legal entity or natural person who is not an **insured**.

Third party funds theft event means:

The theft of money or other financial assets belonging to a **third party** for which the **insured** is legally liable as a result of **unauthorised access** into the **insured's computer system**.

Third party loss means:

Judgments, settlements, awards, and costs, including, without limitation, damages, consumer redress funds, fines, penalties and punitive and exemplary damages in respect of a **claim** covered under this **policy** to the extent permitted by law. Third party loss shall also include **defence costs** and **legal representation expenses**.

Unauthorised access means:

Use of the **insured's computer system** by any person or persons not authorised to do so, including **employees**.

Waiting period means:

The number of hours stated in the **policy schedule** under Cover Details which must elapse following a **business interruption event** before a **business interruption loss** is agreed to have occurred. The waiting period will apply to each **business interruption event**. For the avoidance of doubt, once the waiting period is satisfied only the monetary **deductible** will apply to **business interruption loss(es)**.

War means:

- I. the use of physical force by a **state** against another **state** or as part of a civil war, rebellion, revolution, insurrection; and/or
- II. military or usurped power or confiscation or nationalisation or requisition or destruction of damage to property by or under the order of any government or public or local authority,

whether war be declared or not.

Written Verification Procedure means:

A written procedure whereby all new and/or amended payment and/or contact details are confirmed by the **insured** with the relevant **third party**:

- a. prior to any payment being made; and
- b. using a different means of communication to the means by which the new or amended details were originally communicated to the **insured**.

Section 3 – General Exclusions



The **insurer** shall not be liable to make any payment or provide any benefit or service in respect of any **claim, loss, damage, liability, cost or expense** of any kind:

- 3.1 To the extent that such cover, payment, service, benefit and/or any business or activity of the **insured** from which the **claim or loss** arises would violate any applicable trade or economic sanctions or any law or any regulation of the European Union, the Commonwealth of Australia, the United Kingdom or the United States of America;
- 3.2 For death or bodily injury, however this exclusion shall not apply to mental anguish or mental injury as a result of a **data liability event** or **network security event**;
- 3.3 For **loss** of or damage to tangible property, however this exclusion shall not apply to any **hardware replacement costs** that would otherwise be covered, but only where **hardware replacement costs** is shown as included in the **policy schedule** under Cover Details;
- 3.4 Arising from, attributable to, or based upon any fact or circumstance known to the **insured** prior to the start of the **period of insurance**;
- 3.5 Arising from, attributable to or based upon any intentional, criminal or fraudulent acts committed or condoned by any principal, partner or director of the **insured**;
- 3.6 Arising out of, attributable to or based on any full or partial failure, outage, degradation, interruption, disruption or termination of **infrastructure** or services delivered by means of **infrastructure**;
- 3.7 Arising directly or indirectly occasioned by, happening through or in consequence of **war** or a **cyber operation**. The **insurer** shall have the burden of proving this exclusion applies.

Attribution of a **cyber operation** to a **state** shall be determined as follows:

- a. the primary but not exclusive factor in determining attribution of a **cyber operation** shall be whether the government of the **state** (including its intelligence and security services) in which the **computer system** affected by the **cyber operation** is physically located attributes the **cyber operation** to another **state** or those acting on its behalf.
- b. pending attribution by the government of the **state** (including its intelligence and security services) in which the **computer system** affected by the **cyber operation** is physically located, the **insurer** may rely upon an inference which is objectively reasonable as to attribution of the **cyber operation** to another **state** of those acting on its behalf. It is agreed that during this period no **loss** shall be paid.
- c. in the event that the government of the **state** (including its intelligence and security services) in which the **computer system** affected by the **cyber operation** is physically located either:

- I. takes an unreasonable length of time to; or
- II. does not; or
- III. declares it is unable to,

attribute the **cyber operation** to another **state** or those acting on its behalf, it shall be for the **insurer** to prove attribution by reference to such other evidence as is available;

- 3.8 Arising from any bankruptcy, liquidation or insolvency of the **insured** or any other person, including any **IT service provider**;
- 3.9 Arising from or representing the costs for the upgrading or betterment of any application or **insured's computer system**, except as provided for in *Insurance Cover clause 1.10 Post Cyber Event Security & Upgrade Costs*;
- 3.10 Brought against a director or officer of the **insured**, in their capacity as such;
- 3.11 Arising from any obligation owed by the **insured** as an employer or potential employer to any **employee**, including claims for wrongful dismissal or under any contract of employment or under any retainer with any consultant or under any training contract or work experience placement;
- 3.12 Arising from or in connection with allegations of sexual, racial or other harassment or molestation, or sexual, racial, ethnic, disability, sexual orientation, religious and/or age discrimination or victimisation, or discrimination or victimisation of any other kind whether by any **employee** or not;
- 3.13 Directly or indirectly, arising out of, or resulting from, asbestos or any actual or alleged asbestos related **loss, injury** or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos;
- 3.14 Arising from, based upon, attributable to or as a consequence of, whether direct or indirect, or in any way involving:
 - I. ionising radiation or contamination by radioactivity or from any nuclear fuel or from any nuclear waste; or
 - II. the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or component thereof;
- 3.15 Arising out of, based upon, attributable to, as a consequence of or in any way involving, pollution or directly or indirectly the actual, alleged or threatened discharge, dispersal, release or escape of pollutants;
- 3.16 Arising from, based upon, attributable to or as a consequence of any **electromagnetic field, electromagnetic radiation** or **electromagnetism**, which terms are defined as follows:
 - I. **electromagnetic field** means any field of force that is made up of associated electric and magnetic components;
 - II. **electromagnetic radiation** means any succession of electromagnetic waves; and
 - III. **electromagnetism** means magnetism that is developed by a current of electricity;

- 3.17 Arising from any fire, lightning, explosion, aircraft, impact or any other natural peril;
- 3.18 Arising out of any violation of anti-spam or telemarketing legislation worldwide;
- 3.19 Arising out of the electronic transfer of any funds, monies or goods belonging to the **insured**, or for which the **insured** is legally responsible, (except where the **policy schedule** under Cover Details shows **funds transfer fraud event** and/or **third party funds theft event** as covered and only to the extent *Insurance Cover clauses 1.11* or *1.12* provide cover);
- 3.20 Arising from any contractual liability assumed by the **insured**, unless such liability would have attached in the absence of such contract. This exclusion shall not apply to *Insurance Cover clause 1.4 PCI Fines and Assessment Costs*;
- 3.21 Arising out of the misappropriation or infringement of any intellectual property right or trade secret, including patent. This exclusion shall not apply to **loss** resulting from a **claim** as a result of a **media liability event**;
- 3.22 Arising out of the actual or alleged failure to render any professional services;
- 3.23 Arising out of or in connection with any **chargeback**;
- 3.24 Arising out of or in connection with any **social media event**, including regaining access to a **social media platform**;
- 3.25 If the optional extensions at *Insurance Cover clauses 1.11* and/or *1.12* are covered:
- I. in any way directly or indirectly connected with cryptocurrencies in respect of any **funds transfer fraud event** or **third party funds theft event** as applicable;
 - II. caused by any **funds transfer fraud event** or **third party funds theft event** (as applicable) where such event is perpetrated by, or with the knowledge or collusion of, any principal, director, partner or **employee** of the **insured**;
or
 - III. caused by any **funds transfer fraud event** or **third party funds theft event** (as applicable) where the **insured** does not have a **written verification procedure** in place.

Section 4 – General Conditions

4.1 Applicable Law and Jurisdiction

This **policy** and any dispute or claim between the **insured** and the **insurer** arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Australian Law & Jurisdiction.

4.2 Assignment

This **policy** and any rights and benefits under it cannot be assigned or transferred to another party without the prior written consent of the **insurer**.

4.3 Cancellation

The **policyholder** may cancel this **policy** at any time by giving written notice to the **insurer** and cancellation will be effective the day such notice is received by the **insurer**. In the event of cancellation the **policyholder** will be entitled to a refund of the premium paid, but only for the time that remains between the date of cancellation and the expiry date of the **policy**. This will be calculated on a pro rata basis of the annual premium. However, in the event any **claims** or **losses** have been notified to the **insurer** prior to the date of cancellation, no refund of premium shall be due, unless agreed otherwise by the **insurer**.

This **policy** may be cancelled by the **insurer** in circumstances permitted in the *Insurance Contracts Act 1984* (Cth).

This **policy** may be cancelled by the **insurer** for non-payment of the premium. Where the **insurer** cancels the **policy** for non-payment of premium at least 21 calendar days' notice will be given to the **policyholder** and cancellation will be effective at the expiry of this period of notice.

4.4 Change of Control

If during the **period of insurance** any person, group or entity acquires control of:

- I. more than 50% of the issued share capital of the **policyholder**; or
- II. the composition of the board of the **policyholder**;

the cover provided by this **policy** shall be restricted so as to apply only to claims in respect of a **business interruption event(s)**, **data liability event(s)** or **network security event(s)** occurring prior to the effective date of such sale, consolidation, merger or acquisition of control, unless the **insurer** has agreed to extend coverage under the **policy** and the **policyholder** has agreed to the terms of any such extension of coverage.

4.5 Conditions Applicable to Specific Insurance Cover Clauses

4.5.1 If information is provided or obtained by a **cyber incident response provider**, any counsel, advisor, or other provider appointed by the **insurer** or **cyber incident response provider**, and/or if information is in the public domain, and that information leads to a criminal conviction in respect of the relevant illegal acts, then there is no cover under *Insurance Cover clause 1.9 Criminal Reward Funds*. Any offer by the **insured** of sums which might be payable as **criminal reward funds** under this **policy**, must be expressed by the **insured** to expire no later than 6 months after the end of the **period of insurance**.

4.5.2 The **insurer** will only pay **business interruption claim preparation costs** where these are incurred by a forensic accounting expert appointed by the **cyber incident response provider**. All **business interruption claim preparation costs** must be reported, and all proofs of such costs must be provided to the **insurer** no later than 6 months after the end of the **period of insurance**.

4.6 Invalidity, Illegality & Unenforceability

If any term of this **policy** is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability and all other terms of this **policy** shall remain in full force and effect.

4.7 (a) Extended Reporting Period

If this **policy** is not renewed or replaced, the **policyholder** is entitled to an extended reporting period of 60 days from the **policy** expiry date at no additional premium, during which the **insurer** may be notified of:

- I. any **claim** first made against the **insured** during the **period of insurance** and reported to the **insurer** during this extended reporting period; and
- II. any **loss** or **business interruption event** first discovered by the **insured** during the **period of insurance** and reported to the **insurer** during this extended reporting period.

The right to the extended reporting period will not be available to the **policyholder** if the **insurer** has cancelled the **policy**.

Cover in respect of any matter notified during any extended reporting period is subject to all terms, conditions and exclusions of this **policy**.

4.7 (b) Optional Extended Reporting Period

If this **policy** is not renewed or replaced, then the **policyholder** can request and the **insurer** may provide an extended reporting period of an additional 12 months from the **policy** expiry date.

During this optional extended reporting period the **insurer** may be notified of:

- I. any **claim** first made against the **insured** and reported to the **insurer** during this optional extended reporting period, provided that such **claim** arises as a result of a **data liability event, media liability event, network security event** or **telephone hacking event** that occurred during the **period of insurance**; and
- II. any **loss** first discovered by the **insured** and reported to the **insurer** during this optional extended reporting period, provided that such **loss** arises as a result of any **business interruption event, cyber event, data liability event, media liability event, network security event, telephone hacking event third party funds theft event** or **computer hardware incident** that occurred during the **period of insurance**.

This optional extended reporting period may only be purchased within 60 days of the expiration of the **policy** subject to the **insurer's** prior agreement and at a premium the **insurer** sets at its discretion and notifies to the **policyholder**.

The optional extended reporting period will not be available to the **policyholder** if the **insurer** has cancelled the **policy**.

Cover in respect of any matter notified during any extended reporting period is subject to all terms, conditions and exclusions of this **policy**.

4.8 Limit of Liability

The limit of liability shown in the **policy schedule** under Cover Details is the total maximum amount the **insurer** will pay under this **policy**, irrespective of the number of:

- a. **claims, losses, cyber events** or other events, incidents or occurrences giving rise to claims under this **policy**;
- b. entities seeking indemnity under this **policy**; and/or
- c. *Insurance Cover clauses* engaged.

The sub-limits for each of the *Insurance Cover clauses 1.1 – 1.12* are the total maximum amount the **policy** will pay under each of those *Insurance Cover clauses* irrespective of the number of:

- a. **claims, losses, cyber events**, other events, incidents or occurrences giving rise to claims under these *Insurance Cover clauses*; or
- b. entities seeking indemnity under this **policy**.

Each sub-limit is part of and not in addition to the limit of liability. Where a combined sub-limit applies in respect of more than one of the *Insurance Cover clauses 1.1 – 1.12*, that sub-limit will be eroded by the **insurer** making payment(s) under any of the *Insurance Cover clauses* to which the combined sub-limit applies.

In respect of **third party loss**, any applicable limit or sub-limit is inclusive of **defence costs** and **legal representation expenses**.

Section 5 – Claims Procedures and Conditions

5.1 Claims Handling and Notification

It is a condition precedent to the **insurer's** liability that the **insured** complies with each of the provisions of this clause 5.1. If the **insured** fails to do so, the **insurer** may in accordance with its rights under the *Insurance Contracts Act 1984* (Cth):

- I. reject any claim for an indemnity under this **policy**; or
 - II. elect to indemnify the **insured** to the extent the **insurer** would have been liable to pay in the absence of any prejudice in the handling or settlement of any **claim** or notifiable circumstance under this **policy** which arises from the **insured's** breach of condition precedent.
- 5.1.1 The **insured** shall notify any **claim**, **loss**, or **business interruption event** to the **cyber incident response provider** as detailed in the **policy schedule** under Cover Details, as soon as reasonably practicable, but in no case later than 7 (seven) days after the **insured** has become aware of such incident. The **insured** shall provide such information and documentation relating to the **claim**, **loss**, or **business interruption event** as the **insurer** may require at its sole discretion.
 - 5.1.2 The **insured** may give notice to the **insurer** during the **period of insurance** of circumstances which may reasonably be expected to give rise to a **claim**, specifying the reasons for anticipating such a **claim**. If such notice is given, any **claim** subsequently made against the **insured** alleging, arising out of or in any way connected with such circumstances, shall be deemed to have been made at the time such notice of circumstances was given by the **insured** to the **insurer**. The **insured** shall provide such information and documentation relating to the notification as the **insurer** may require at its sole discretion.
 - 5.1.3 No **insured** shall (expressly or impliedly) admit or assume any liability, make a compromise, enter into any settlement agreement, waive any rights or consent to any judgment in respect of any **claim**, **third party loss** or notifiable circumstances without the prior written consent of the **insurer**, such consent not to be unreasonably withheld or delayed.
 - 5.1.4 The **insured** shall co-operate with the **insurer** and any counsel, advisor or **cyber incident response provider** that the **insurer** shall appoint to investigate any **claim** or **business interruption event**, and shall provide all relevant information and documents as the **insurer** reasonably requires to assess the **insured's** claim and potential payment.

5.2 Indemnity and Settlement

- 5.2.1 The **insurer** has the right but not the duty to assume control, defence and settlement of any **claim** or investigation. At any stage of a **claim** the **insurer** may choose to pay the limit of liability or any amount that remains following any earlier payment(s).
- 5.2.2 The **insurer** shall have the right to make any reasonably necessary investigation including, without limitation, any reasonable investigation with respect to the **insured's** application for insurance, any statements made by or on behalf of the **insured** in connection with the procurement of the **policy** and with respect to coverage.
- 5.2.3 With respect to any **claim**, if the **insured** refuses to consent to a settlement which the **insurer** recommends and the claimant will accept, the **insured** may continue the defence and investigation of that **claim**. However, any further costs and expenses incurred from the date of such recommendation will be paid by the **insured** and the **insurer** on a proportional basis, with 25% payable by the **insurer** and 75% payable by the **insured**.
- 5.2.4 The **insurer** may, at its sole discretion, elect to discharge its liability to the **insured** fully and finally in respect of any **claim(s)** covered under this **policy** by either:
 - I. paying the applicable limit of liability (less any sums previously paid) to the **insured**; or
 - II. paying a sum less than the limit of liability when the **claim(s)** can be settled for such a lesser sum.

5.3 Defence Costs and Legal Representation Expenses

Subject to the **insured's** compliance with the provisions of paragraph 5.1, and subject to the applicable limit of liability, sub-limit and **deductible** set out in the **policy schedule**, the **insurer** agrees to advance **defence costs** on an on-going basis and prior to the final settlement of a **claim**. The **insured** agrees to refund all such **defence costs** should it be found that the **claim** is not valid and/or covered under this **policy**.

If a **claim** is settled by a payment to a **third party** and such payment is not 100% insured under this **policy**, the **insurer** will be liable for no more than a proportionate share of the **defence costs** based on the proportion of such payment insured by this **policy**.

5.4 Cyber Incident Response

The **insurer** has the right to appoint a **cyber incident response provider** and any counsel, advisor, or other provider to investigate and/or assist the **insured** with any **claim, business interruption event, cyber event, network security event, telephone hacking event, third party funds theft event** or **computer hardware incident**. The **insured** shall co-operate with the **insurer** and any **cyber incident response provider**, counsel, advisor, or other provider to investigate and/or assist the **insured**.

The **cyber incident response provider** may appoint counsel, advisors, or other providers to investigate and/or assist the **insured** with any **claim, business interruption event, cyber event, data liability event, media liability event, network security event, telephone hacking event, third party funds theft event** or **computer hardware incident**.

The **insured** must not under any circumstances appoint its own counsel, advisor, specialist incident response provider or other provider to investigate or assist the **insured** with any covered event without prior written consent of the **insurer**, such consent not to be unreasonably withheld.

5.5 Related Claims

All **claims** or **losses** under all applicable sections of this **policy** directly or indirectly arising out of or in any way connected with the same originating cause or event, will be deemed to be a single **claim** or **loss**, reported at the date of the first such **claim** or **loss**. All **claims** or **losses** under all applicable sections of this **policy**, triggering more than one coverage section, will be deemed to be a single **claim** or **loss**.

5.6 Subrogation

If the **insurer** makes any payment under this **policy** and there is available to the **insurer** any of the **insured's** rights of recovery against any **third party**, then the **insurer** shall maintain all such rights of recovery. The **insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. This includes, but is not limited to, placing any **third party** on notice of any rights the **insured** or the **insurer** may have against it. The **insured** shall do nothing to prejudice such rights. Any recoveries shall be first applied to subrogation expenses, second to any amounts paid or reimbursed by the **insurer** under the **policy**, and third to the **deductible** set out in the **policy schedule** under Cover Details. Any additional amounts shall be paid to the **insured**.





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