

# Technology Liability

## Policy wording





## STATUTORY NOTICE SECTION 40 INSURANCE CONTRACTS ACT 1984 (CTH)

This notice is provided in connection with but does not form part of the policy.

This policy is a 'Claims Made' liability insurance policy. It only provides cover if a **claim** is made against an insured, by some other person, during the period when the policy is in force.

This policy does not provide cover if a **claim** arises out of circumstances committed, attempted or alleged to have been committed or attempted before the retroactive date stipulated in the schedule.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. That sub-section provides that if an **insured** becomes aware, during the period when the policy is in force, of any facts which might give rise to a **claim** against them by some other person, then provided that the **insured** notifies the **insurer** in writing of the matter as soon as was reasonably practicable after the insured became aware of those facts but before the insurance cover provided by this policy expires, the **insurer** may not refuse to indemnify merely because a **claim** resulting from the matter is not made against the **insured** while the policy is in force.

If an **insured**, inadvertently or otherwise, does not notify the relevant occurrence or facts to the **insurer** before the expiry of the policy, the **insured** will not have the benefit of section 40(3) and the **insurer** may refuse to pay any subsequent **claim**, notwithstanding that the facts or events giving rise to it or the circumstances alleged in it may have taken place during the **policy period**.

If a **claim** is made against the **insured** by some other person during the **policy period** but is not notified to the **insurer** until after the policy has expired, the **insurer** may refuse to pay or may reduce its payment under the policy if it has suffered any financial prejudice as a result of the late notification.

### YOUR DUTY OF DISCLOSURE

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.

You do not need to tell us anything that:

- Reduces the risk we insure you for; or
- Is common knowledge; or
- We know or should know as an **insurer**; or
- We waive your duty to tell us about

### IF YOU DO NOT TELL US SOMETHING

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

Delta Insurance Australia Pty Ltd is committed to protecting your privacy. We have adopted the Australian Privacy Principles (**APPs**) contained in the Privacy Act 1988 (Cth) (**Privacy Act**). The APPs govern the way in which we collect, use, disclose, store, secure and dispose of your Personal Information.

Any personal information collected about you will only be used for the purposes indicated in Delta Insurance Australia's Privacy Policy and only in the instance where you have provided consent to Delta Insurance Australia, or as otherwise required by law.

Delta Insurance Australia will need to collect personal information from you or your insurance agent to assist with assessing your risk in order to provide the insurance that you are applying for.

### USE OF YOUR INFORMATION

The information collected will be used for the purpose in assisting with underwriting and administering your insurance cover on behalf of the Insurers, Delta Insurance Australia represents. Where reasonable and practicable to do so, Delta Insurance Australia, will collect your personal information only from you. In some cases, to verify your identity, Delta Insurance Australia may need to obtain or verify your personal information from a third party.

Information collected can also be used towards improving Delta Insurance Australia's customer service, product data research analysis and to advise you of any other products and services that may be of interest to you.

## SECURITY OF YOUR INFORMATION

Your personal information is stored in a manner that reasonably protects it from misuse and loss and from unauthorised access, modification or disclosure.

When your personal information is no longer needed for the purpose for which it was obtained, Delta Insurance Australia, will take reasonable steps to destroy or permanently de-identify your personal information. However, most of the personal information is or will be stored in client files which will be kept, by Delta Insurance Australia for a minimum of 7 years.

Whilst underwriting and reviewing your policy, Delta Insurance Australia may share your information with your insurance agent, claims assessors, and to third party administrators providing related services to your insurance policy. Your information will be provided to the Insurer's we represent, based in the UK and whose details we will provide to you when issuing an insurance quotation.

By providing Delta Insurance Australia with your personal information, you are consenting to the collection, use, disclosing and or processing of your personal data for the purposes as described above.

## FURTHER INFORMATION

Delta Insurance Australia understands that you may not want to share with us the information which is requested to review your insurance policy, and this may affect our ability in providing and assessing an insurance policy.

For more information regarding how Delta Insurance Australia collects, stores, uses and discloses your information, please read our privacy policy located at [www.deltainsurance.com.au](http://www.deltainsurance.com.au) or alternatively you can contact us at 07 3017 4720.

## UNUSUAL TERMS

Please note the sanctions limitation clause, which prevents the **insurer** from providing cover, benefits or paying claims where that would expose the **insurer** to sanctions, prohibitions or restrictions.

## TECHNOLOGY LIABILITY

This policy's liability insuring agreements provide coverage on a **claims** made and reported basis and apply only to **claims** first made against the insured during the **policy period** or the optional extension period (if applicable) and reported to the **insurer** in accordance with the terms of this policy. Amounts incurred as **claims expenses** under this policy will

reduce and may exhaust the limit of liability and are subject to retentions.

Please refer to the schedule, which show the insuring agreements that the **named insured** shows. If an insuring agreement has not been purchased, coverage under that insuring agreement of this policy will not apply.

The insurer agree with the **named insured**, in consideration of the payment of the premium and reliance upon the statements contained in the information and materials provided to the insurer in connection with the underwriting and issuance of this insurance policy (hereinafter referred to as the "policy") and subject to all the provisions, terms and conditions of this policy:

## INSURING AGREEMENTS

### MEDIA, TECH, DATA & NETWORK LIABILITY

To pay **damages** and **claims expenses**, which the **insured** is legally obligated to pay because of any **claim** first made against any **insured** during the **policy period** for a:

- 1 **Tech & Professional Services Wrongful Act;**
- 2 **Tech Product Wrongful Act;**
- 3 **Media Wrongful Act; or**
- 4 **Data & Network Wrongful Act.**

## COVERAGE EXTENSIONS

### CONTINUOUS COVER (APPLICABLE TO THE MEDIA, TECH AND DATA NETWORK LIABILITY ONLY)

This policy extends cover for the **damages** and **claims expenses** resulting from any **claim** arising out of, based upon or attributable to a circumstance which could reasonably be the basis for a **claim** which could have been, but was not, notified by the **insured organisation** under any **prior policy** provided by the **insurer** and which is first notified to the **insurer** during the **policy period** provided that:

- 1 The failure by the **insured organisation** to notify such circumstance under such **policy period** was not fraudulent; and
- 2 the **insurer** has the discretion to apply either the conditions or the terms and conditions of such **policy period** in effect when the circumstance first arose; and

3 the **insured's** entitlement to indemnity will be reduced by the extent of any prejudice to the **insurer** as a result of the **insured's organisation** failure to notify such circumstance under such **policy period**.

### E CRIME

To indemnify the **insured organisation** for any direct financial loss sustained resulting from:

- 1 **Fraudulent Instruction;**
- 2 **Funds Transfer Fraud;** or
- 3 **Telephone Fraud;**
- 4 **Identity Fraud**

that the insured first discovers during the **policy period**.

### BREACH RESPONSE

To indemnify the **insured organisation** for **breach response costs** incurred by the **insured organisation** because of an actual or reasonably suspected **data breach** or **security breach** that the **insured** first discovers during the **policy period**.

### REGULATORY DEFENCE & PENALTIES

To pay **penalties** and **claims expenses**, which the **insured** is legally obligated to pay because of a **regulatory proceeding** first made against any **insured** during the **policy period** for a **data breach** or a **security breach**.

### PAYMENT CARD LIABILITIES & COSTS

To indemnify the **insured organisation** for **PCI fines, expenses and costs** which it is legally obligated to pay because of a **claim** first made against any **insured** during the **policy period**.

### FIRST PARTY DATA & NETWORK LOSS

To indemnify the **insured organisation** for:

#### Business interruption loss

**Business interruption loss** that the **insured organisation** sustains as a result of a **security breach** or **system failure** that the **insured** first discovers during the **policy period**.

#### Dependent business interruption loss

**Dependent business loss** that the **insured organisation** sustains as a result of a **dependent security breach** or a **dependent system failure** that the **insured** first

discovers during the **policy period**.

#### Cyber extortion loss

**Cyber extortion loss** that the **insured organisation** incurs as a result of an **extortion threat** first made against the **insured organisation** during the **policy period**.

#### Data recovery costs

**Data recovery costs** that the **insured organisation** incurs as a direct result of a **security breach** or **system failure** that the **insured** first discovers during the **policy period**.

### DEFINITIONS

**Additional insured** means any person or entity that the **insured organisation** has agreed in writing to add as an **additional insured** under this policy prior to the commission of any act for which such person or entity would be provided coverage under this policy, but only to the extent the **insured organisation** would have been liable and coverage would have been afforded under the terms and conditions of this policy had such **claim** been made against the **insured organisation**.

**Breach notice law** means any statute or regulation that requires notice to persons whose personal information was accessed or reasonably may have been accessed by an unauthorised person. **Breach notice law** also includes any statute or regulation requiring notice of a **data breach** to be provided to governmental or regulatory authorities.

**Breach response costs** means the following fees and costs incurred by the **insured organisation** with the **insurer's** prior written consent in response to an actual or reasonably suspected **data breach** or **security breach**:

- 1 for a lawyer to provide necessary legal advice to the **insured organisation** to evaluate its obligations pursuant to **breach notice laws** or a **merchant services agreement**;
- 2 for a computer security expert to determine the existence, cause and scope of an actual or reasonably suspected **data breach**, and if such **data breach** is actively in progress on the **insured organisation's computer systems**, to assist in containing it;
- 3 for a pci forensic investigator to investigate the existence and extent of an actual or reasonably suspected **data breach** involving payment card data and for a qualified security assessor to certify

and assist in attesting to the **insured organisation's** PCI compliance, as required by a **merchant services agreement**;

- 4 to notify those individuals whose **personally identifiable information** was potentially impacted by a **data breach**;
- 5 to provide a call centre to respond to inquiries about a **data breach**;
- 6 to provide a credit monitoring, identity monitoring or other personal fraud or loss prevention solution, to be approved by the **insurer**, to individuals whose **personally identifiable information** was potentially impacted by a **data breach**; and
- 7 public relations and crisis management costs directly related to mitigating harm to the **insured organisation** which are approved in advance by the **insurer** in their discretion.

**Breach response costs** will not include any internal salary or overhead expenses of the **insured organisation**.

**Business interruption loss** means:

- 1 **Income loss**;
- 2 **Forensic expenses**; and
- 3 **Extra expense**;

actually sustained during the **period of restoration** as a result of the actual interruption of the **insured organisation's** business operations caused by a **security breach** or **system failure**. Coverage for **business interruption loss** will apply only after the **waiting period** has elapsed.

**Business interruption loss** will not include (i) loss arising out of any liability to any third party; (ii) legal costs or legal expenses; (iii) loss incurred as a result of unfavourable business conditions; (iv) loss of market or any other consequential loss; (v) **dependent business loss**; or (vi) **data recovery costs**.

**Claim** means:

- 1 a written demand received by any **insured** for money, services;
- 2 with respect to coverage provided under the regulatory defence & penalties insuring agreement only, institution of a **regulatory proceeding** against any **insured**; and
- 3 with respect to coverage provided under part 1

of the **data & network wrongful act**, a demand received by any **insured** to fulfil the **insured organisation's** contractual obligation to provide notice of a **data breach** pursuant to a **breach notice law**

Multiple **claims** arising from the same or a series of related, repeated or continuing acts, errors, omissions or events will be considered a single **claim** for the purposes of this policy. All such **claims** will be deemed to have been made at the time of the first such **claim**.

**Claims expenses** means:

all reasonable and necessary legal costs and expenses incurred solely and exclusively by the insured in the investigation, defence and appeal of a **claim**, if incurred by the **insurer**, or by the **insured** with the prior written consent of the **insurer**; and

the premium cost for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation; provided the **insurer** will have no obligation to appeal or to obtain bonds.

**Claims expenses** will not include any salary, overhead, or other charges by the **insured** for any time spent in cooperating in the defence and investigation of any **claim**, or costs to comply with any regulatory orders, settlements or judgments.

**Computer systems** means computers, any software residing on such computers and any associated devices or equipment:

- 1 operated by and either owned by or leased to the **insured organisation**; or
- 2 with respect to coverage under part 4. of the media, tech, data & network liability insuring agreement, as well as the breach response, regulatory defence & penalties, cyber extortion loss, data recovery costs and payment card liabilities & costs insuring agreements, operated by a third party pursuant to written contract with the **insured organisation** and used for the purpose of providing hosted computer application services to the **insured organisation** or for processing, maintaining, hosting or storing the **insured organisation's** electronic data.

**Continuity date** means:

- 1 the continuity date listed in the schedule; and
- 2 with respect to any **subsidiaries** acquired after the continuity date listed in the schedule, the date the **named insured** acquired such **subsidiary**.

**Control group** means any principal, partner, corporate officer, director, general counsel (or most senior legal counsel) or risk manager of the **insured organisation** and any individual in a substantially similar position.

**Cyber extortion loss** means

- 1 any **extortion payment** that has been made by or on behalf of the **insured organisation** with the **insurer's** prior written consent to prevent or terminate an **extortion threat**; and
- 2 reasonable and necessary expenses incurred by the **insured organisation** with the **insurer's** prior written consent to prevent or respond to an **extortion threat**.

**Damages** means a monetary judgment, award or settlement, including any award of prejudgment or post-judgment interest. With the prior written consent of the **insurer**, **damages** also include the direct net cost of providing any future service credits offered by the **insured organisation** in lieu of a monetary payment.

**Damages** will not include:

- 1 future profits, restitution, disgorgement of unjust enrichment or profits by an **insured**, or the costs of complying with orders granting injunctive or equitable relief;
- 2 return or offset of fees, charges or commissions charged by or owed to an **insured** for goods or services already provided or contracted to be provided;
- 3 taxes or loss of tax benefits;
- 4 fines, sanctions or penalties against any **insured**;
- 5 punitive or exemplary damages or any damages which are a multiple of compensatory damages, unless insurable by law in any applicable venue that most favours coverage for such punitive, exemplary or multiple damages;
- 6 discounts, coupons, prizes, awards or other incentives offered to the **insured's** customers or clients;
- 7 liquidated damages, but only to the extent that such damages exceed the amount for which the **insured** would have been liable in the absence of such liquidated damages agreement;
- 8 fines, costs or other amounts an **insured** is responsible to pay under a **merchant services agreement**; or

- 9 any amounts for which the **insured** is not liable, or for which there is no legal recourse against the **insured**.

**Data** means any software or electronic data which is:

- 1 owned by or in the care, custody or control of the **insured organisation** or for which the **insured organisation** is legally responsible; and
- 2 that exists in **computer systems** and is subject to regular back-up procedures.

**Data breach** means the theft, loss, or **unauthorised disclosure** of **personally identifiable information** or **third party information** that is in the care, custody or control of the **insured organisation** or a third party for whose theft, loss or **unauthorised disclosure** of **personally identifiable information** or **third party information** the **insured organisation** is liable.

**Data & network wrongful act** means:

- 1 a **data breach**;
- 2 a **security breach**;
- 3 failure to timely disclose a **data breach** or **security breach**; or
- 4 a **privacy policy violation**.

**Data recovery costs** means the reasonable and necessary costs incurred by the **insured organisation** to regain access to, replace, or restore **data**, or if **data** cannot reasonably be accessed, replaced, or restored, then the reasonable and necessary costs incurred by the **insured organisation** to reach this determination.

**Data recovery costs** will not include: (i) the monetary value of profits, royalties, or lost market share related to **data**, including but not limited to trade secrets or other proprietary information or any other amount pertaining to the value of **data**; (ii) legal costs or legal expenses; (iii) loss arising out of any liability to any third party; or (iv) **cyber extortion loss**.

**Dependent business** means any entity that is not a part of the **insured organisation** but which provides necessary products or services to the **insured organisation** pursuant to a written contract.

**Dependent business loss** means:

- 1 **income loss**; and
- 2 **extra expense**;

actually sustained during the **period of restoration** as a result of an actual interruption of the **insured**

**organisation's** business operations caused by a **dependent security breach** or **dependent system failure**. Coverage for **dependent business loss** will apply only after the **waiting period** has elapsed.

**Dependent business loss** will not include (i) loss arising out of any liability to any third party; (ii) legal costs or legal expenses; (iii) loss incurred as a result of unfavourable business conditions; (iv) loss of market or any other consequential loss; (v) **business interruption loss**; or (vi) **data recovery costs**.

**Dependent security breach** means a failure of computer security to prevent a breach of **computer systems** operated by a **dependent business**.

**Dependent system failure** means an unintentional and unplanned interruption of **computer systems** operated by a **dependent business**.

**Dependent system failure** will not include any interruption of computer systems resulting from (i) a **dependent security breach**, or (ii) the interruption of **computer systems** that are not operated by a **dependent business**.

**Digital currency** means a type of digital currency that:

- 1 requires cryptographic techniques to regulate the generation of units of currency and verify the transfer thereof;
- 2 is both stored and transferred electronically; and
- 3 operates independently of a central bank or other central authority.

**Extortion payment** means **money, digital currency, marketable goods** or services demanded to prevent or terminate an **extortion threat**.

**Extortion threat** means a threat to:

- 1 alter, destroy, damage, delete or corrupt **data**;
- 2 perpetrate the **unauthorised access or use of computer systems**;
- 3 prevent access to **computer systems** or **data**;
- 4 steal, misuse or publicly disclose **data, personally identifiable information** or **third party information**;
- 5 introduce malicious code into **computer systems** or to third party **computer systems** from **computer systems**; or
- 6 interrupt or suspend **computer systems**;

unless an **extortion payment** is received from or on

behalf of the **insured organisation**.

**Extra expense** means reasonable and necessary expenses incurred by the **insured organisation** during the **period of restoration** to minimise, reduce or avoid **income loss**, over and above those expenses the **insured organisation** would have incurred had no **security breach, system failure, dependent security breach** or **dependent system failure** occurred.

**Forensic expenses** means reasonable and necessary expenses incurred by the **insured organisation** to investigate the source or cause of a **business interruption loss**.

**Fraudulent instruction** means the transfer, payment or delivery of **money** or **securities** by an **insured** as a result of fraudulent written, electronic, telegraphic, cable, teletype or telephone instructions provided by a third party, that is intended to mislead an **insured** through the misrepresentation of a material fact which is relied upon in good faith by such **insured**.

**Funds transfer fraud** means the loss of **money** or **securities** contained in a **transfer account** at a **financial institution** resulting from fraudulent written, electronic, telegraphic, cable, teletype or telephone instructions by a third party issued to a **financial institution** directing such institution to transfer, pay or deliver **money** or **securities** from any account maintained by the **insured organisation** at such institution, without the **insured organisation's** knowledge or consent.

**Income loss** means an amount equal to:

- 1 net profit or loss before interest and tax that the **insured organisation** would have earned or incurred; and
- 2 continuing normal operating expenses incurred by the **insured organisation** (including payroll), but only to the extent that such operating expenses must necessarily continue during the **period of restoration**.

**Identity fraud** means the loss of **money** or **securities** that the **insured organisation** sustains as a direct result of fraudulent use or misuse of the **insured organisation's** electronic identity, including the establishment of credit, the electronic signing of any contract, the creation of any website designed to impersonate or the reliance by any third party on a fraudulent version of the **insured organisation's** electronic identity.

**Independent contractor** means any natural person who performs labour or service for the **insured organisation**

pursuant to a written contract or agreement with the **insured organisation**. The status of an individual as an **independent contractor** will be determined as of the date of an alleged act, error or omission by any such **independent contractor**.

**Insured** means:

- 1 the **insured organisation**;
- 2 any director or officer of the **insured organisation**, but only with respect to the performance of his or her duties as such on behalf of the **insured organisation**;
- 3 an employee (including a part time, temporary, leased or seasonal employee or volunteer) or **independent contractor** of the **insured organisation**, but only for work done while acting within the scope of his or her employment and related to the conduct of the **insured organisation's** business;
- 4 a principal if the **named insured** is a sole proprietorship, or a partner if the **named insured** is a partnership, but only with respect to the performance of his or her duties as such on behalf of the **insured organisation**;
- 5 any person who previously qualified as an **insured** under parts 2. through 4., but only with respect to the performance of his or her duties as such on behalf of the **insured organisation**;
- 6 an **additional insured**, but only with respect to **claims** against such person or entity for acts, errors or omissions of the **insured organisation**;
- 7 the estate, heirs, executors, administrators, assigns and legal representatives of any **insured** in the event of such **insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **insured** would otherwise be provided coverage under this policy; and
- 8 the lawful spouse, including any natural person qualifying as a domestic partner of any **insured**, but solely by reason of any act, error or omission of an **insured** other than such spouse or domestic partner.

**Insured organisation** means the **named insured** and any **subsidiaries**.

**Insurer** means Delta Insurance Australia Pty Ltd writing on behalf of the Lloyd's insurer underwriters named in the schedule.

**Loss** means **breach response costs, business interruption loss, claims expenses, cyber extortion loss, damages, data recovery costs, dependent business loss, PCI fines, expenses and costs, penalties, loss** covered under the E-Crime insuring agreement, and any other amounts covered under this policy.

Multiple **losses** arising from the same or a series of related, repeated or continuing acts, errors, omissions, incidents or events will be considered a single **loss** for the purposes of this policy.

With respect to the breach response and first party data & network loss insuring agreements, all acts, errors, omissions, incidents or events (or series of related, repeated or continuing acts, errors, omissions, incidents or events) giving rise to **loss** in connection with such insuring agreements will be deemed to have been discovered at the time the first such act, error, omission, incident or event is discovered.

**Media activities** means creating, displaying, broadcasting, disseminating or releasing **media material** by or on behalf of the **insured organisation** to the public, including any blog, webcasts, websites, broadcast or cable stations, or social media web pages, created and maintained by or on behalf of the **insured organisation**.

**Media material** means any information, including words, sounds, numbers, images or graphics, but will not include computer software or the actual goods, products or services described, illustrated or displayed in such **media material**.

**Media wrongful act** means one or more of the following acts committed on or after the **retroactive date** and before the end of the **policy period** in the course of the **insured organisation's** performance of **media activities, professional services** or **tech services**:

- 1 defamation, libel, slander, product disparagement, trade libel, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organisation;
- 2 a violation of the rights of privacy of an individual, including false light, intrusion upon seclusion and public disclosure of private facts;
- 3 invasion or interference with an individual's right of publicity, including misappropriation of any name, persona, voice or likeness for commercial advantage;



- 4 false arrest, detention or imprisonment;
- 5 invasion of or interference with any right to private occupancy, including trespass, wrongful entry or wrongful eviction;
- 6 plagiarism, piracy or misappropriation of ideas under implied contract;
- 7 infringement of copyright;
- 8 infringement of trade dress, domain name, title or slogan, or the dilution or infringement of trademark or service mark, or improper deep-linking or framing or infringement of domain name including cybersquatting violations;
- 9 negligence regarding the content of any **media activities**, including harm caused through any reliance or failure to rely upon such content;
- 10 misappropriation of a trade secret;
- 11 unfair competition, but only if alleged in conjunction with and arising out of any of the acts listed in paragraphs 7. or 8. above.

**Merchant services agreement** means any agreement between an **insured** and a financial institution, credit/debit card company, credit/debit card processor or independent service operator enabling an **insured** to accept credit card, debit card, prepaid card or other payment cards for payments or donations.

**Money** means a medium of exchange in current use authorised or adopted by a domestic or foreign government as a part of its currency.

**Named insured** means the named insured listed in the schedule.

**PCI fines, expenses and costs** means the monetary amount owed by the **insured organisation** under the terms of a **merchant services agreement** as a direct result of a suspected **data breach**. With the prior consent of the **insurer**, **PCI fines, expenses and costs** includes reasonable and necessary legal costs and expenses incurred by the **insured organisation** to appeal or negotiate an assessment of such monetary amount. **PCI fines, expenses and costs** will not include any charge backs, interchange fees, discount fees or other fees unrelated to a **data breach**.

**Penalties** means:

Any monetary civil fine or penalty payable to a governmental entity that was imposed in a **regulatory proceeding**;

but will not include: (i) costs to remediate or improve

**computer systems**; (ii) costs to establish, implement, maintain, improve or remediate security or privacy practices, procedures, programs or policies; (iii) audit, assessment, compliance or reporting costs; or (iv) costs to protect the confidentiality, integrity and/or security of **personally identifiable information** or other information.

The insurability of **penalties** will be in accordance with the law in the applicable venue that most favours coverage for such **penalties**.

**Period of restoration** means the 180-day period of time that begins upon the actual and necessary interruption of the **insured organisation's** business operations.

**Personally identifiable information** means:

- 1 any information concerning an individual that is defined as personal information under any **breach notice law**; and
- 2 an individual's drivers licence or identification number, government identification number, unpublished telephone number, and credit, debit or other financial account numbers in combination with associated security codes, access codes, passwords or pins; if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual's financial account or medical record information;

but will not include information that is lawfully made available to the general public.

**Policy period** means the period of time between the inception date listed in the schedule and the effective date of termination, expiration or cancellation of this policy and specifically excludes any optional extension period or any **prior policy** period or renewal period.

**Professional services** means **professional services** performed for others by or on behalf of the **insured organisation** for a fee or for free if provided in conjunction with other fee based services or products provided for compensation or to potential or existing customers as an encourage to purchase such products or services.

**Prior policy** means any media, tech and data network liability coverage issued to the **insured** by the **insurer** only, prior to the commencement of the **policy period**.

**Privacy policy violation** means the failure by the **insured** to comply with that part of a **privacy policy** that specifically:

- 1 prohibits or restricts the **insured organisation's** disclosure, sharing or selling of **personally identifiable information**;

- 2 requires the **insured organisation** to provide an individual access to **personally identifiable information** or to correct incomplete or inaccurate **personally identifiable information** after a request is made;
- 3 mandates procedures and requirements to prevent the loss of **personally identifiable information**;
- 4 prevents or prohibits improper, intrusive or wrongful collection of **personally identifiable information** from another person;
- 5 requires notice to a person of the **insured organisation's** collection or use of, or the nature of the collection or use of his or her **personally identifiable information**; or
- 6 provides a person with the ability to assent to or withhold assent for (e.g. opt-in or opt-out) the **insured organisation's** collection or use of his or her **personally identifiable information**;

provided the **insured organisation** has in force, at the time of such failure, a **privacy policy** that addresses those subsections above that are relevant to such **claim**.

**Professionals services** means professional services performed for others by or on behalf of the **insured organisation** for a fee or for free if provided in conjunction with other fee based services or products provided for compensation or to potential or existing customers as an encourage to purchase such products or services.

**Professional services** will not include activities performed by or on behalf of the **insured organisation** as an accountant, architect, surveyor, health care provider, lawyer, insurance or real estate agent or broker, or civil or structural engineer.

**Regulatory proceeding** means a request for information, civil investigative demand, or civil proceeding brought by or on behalf of any federal, state, local or foreign governmental entity body or authority in such entity's regulatory or official capacity.

**Retroactive date** means the applicable date listed in the schedule.

**Securities** means negotiable and non-negotiable instruments or contracts representing either **money** or tangible property that has intrinsic value.

**Security breach** means a failure of computer security to prevent:

- 1 **unauthorised access or use of computer systems**, including **unauthorised access or use** resulting from the theft of a password from a **computer system** or

from any **insured**;

- 2 a denial of service attack affecting **computer systems**;
- 3 with respect to coverage under the liability insuring agreements, a denial of service attack affecting **computer systems** that are not owned, operated or controlled by an **insured**; or
- 4 infection of **computer systems** by malicious code or transmission of malicious code from **computer systems**.

**Subsidiary** means any entity:

- 1 which, on or prior to the inception date of this policy, the **named insured** owns, directly or indirectly, more than 50% of the outstanding voting securities ("management control"); and
- 2 which the **named insured** acquires management control after the inception date of this policy; provided that:
  - i the revenues of such entity do not exceed 15% of the **named insured's** annual revenues; or
  - ii if the revenues of such entity exceed 15% of the **named insured's** annual revenues, then coverage under this policy will be afforded for a period of 60 days, but only for any **claim** that arises out of any act, error, omission, incident or event first occurring after the entity becomes so owned. Coverage beyond such 60 day period will only be available if the **named insured** gives the **insurer** written notice of the acquisition, obtains the written consent of **insurer** to extend coverage to the entity beyond such 60 day period and agrees to pay any additional premium required by **insurer**.

This policy provides coverage only for acts, errors, omissions, incidents or events that occur while the **named insured** has management control over an entity.

**System failure** means an unintentional and unplanned interruption of **computer systems**.

**System failure** will not include any interruption of **computer systems** resulting from (i) a **security breach**, or (ii) the interruption of any third party **computer systems**.

**Tech products** means a computer or telecommunications hardware or software product, or related electronic product, that is created, manufactured or developed by the **insured**

**organisation** for others, or distributed, licensed, leased or sold by the **insured organisation** to others, for compensation, including software updates, service packs and other maintenance releases provided for such products.

**Tech & professional services wrongful act** means any act, error, omission, misstatement, misleading statement, misrepresentation breach of the Competition and Consumer Act 2010 (Australian Consumer Law), or unintentional breach of a contractual obligation by the **insured**, or by any person or entity for whom the **insured** is legally liable, in rendering or failing to render **professional services** or **tech services** that occurs on or after the **retroactive date** and before the end of the **policy period**, but does not mean a **media wrongful act**.

**Tech product wrongful act** means:

- 1 any act, error, omission, misstatement, misleading statement, misrepresentation, breach of the Competition and Consumer ACT 2010 (Australian Consumer Law), or unintentional breach of a contractual obligation by the **insured** that results in the failure of **tech products** to perform the function or serve the purpose intended; or
- 2 software copyright infringement by the **insured** with respect to **tech products**;
- 3 that occurs on or after the **retroactive date** and before the end of the **policy period**.

**Tech services** means computer, cloud computing, and electronic technology services, including:

- 1 data processing, software as a service (SaaS), platform as a service (PaaS), infrastructure as a service (IaaS), network as a service (Naas);
- 2 data and application hosting, **computer systems** analysis, and technology consulting and training; or
- 3 custom software programming for a specific client of the **insured organisation** and, computer and software systems installation and integration;

performed by the **insured**, or by others acting under the **insured organisation's** trade name, for a fee or for a free if provided in conjunction with other technology services provided to customers as encouragement to purchase such **tech services**.

**Telephone fraud** means the act of a third party gaining access to and using the **insured organisation's** telephone system in an unauthorised manner.

**Third party information** means any trade secret, data, design, interpretation, forecast, formula, method,

practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party not insured under this policy which is not available to the general public.

**Unauthorised access or use** means the gaining of access to or use of **computer systems** by an unauthorised person(s) or the use of **computer systems** in an unauthorised manner.

**Unauthorised disclosure** means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorised by the **insured organisation** and is without knowledge of, consent or acquiescence of any member of the **control group**.

**Waiting period** means the period of time that begins upon the actual interruption of the **insured organisation's** business operations caused by a **security breach, system failure, dependent security breach** or **dependent system failure**, and ends after the elapse of the number of hours listed as the **waiting period** in the schedule.

## EXCLUSIONS

The coverage under this policy will not apply to any **loss** arising out of:

### BODILY INJURY OR PROPERTY DAMAGE

- 1 physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting from such physical injury, sickness, disease or death; but this exclusion will not apply to bodily injury arising in connection with **media activities, professional services** or **tech services** provided by the insured; or
- 2 physical injury to or destruction of any tangible property, including the loss of use thereof; but electronic data will not be considered tangible property;

### COTAMINATION DAMAGE AND NUCLEAR

arising out of, based upon or attributable to, directly or indirectly, loss, damage or destruction:

- 1 arising out of, based upon or attributable to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores, organic pathogens, organic chemicals, micro organisms or mycotoxins of any kind; or
- 2 arising out of, based upon or attributable to ionising

radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste as a consequence of the combustion of nuclear fuel, or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component; or

- 3 arising out of, based upon or attributable to any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
- 4 arising out of, based upon or attributable to the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes; or
- 5 arising out of, based upon or attributable to any chemical, biological, bio-chemical, or electromagnetic weapon.

### DECEPTIVE BUSINESS PRACTICES, ANTITRUST & CONSUMER PROTECTION

Any actual or alleged false, deceptive or unfair trade practices, antitrust violation, restraint of trade, unfair competition (except as provided in the media liability insuring agreement), this this expulsion will not apply to:

- 1 the breach response insuring agreement; or
- 2 coverage for a **data breach** or **security breach**, provided no member of the **control group** participated or colluded in such **data breach** or **security breach**.

### DISTRIBUTION OF INFORMATION

the distribution of unsolicited email, text messages, direct mail, facsimiles or other communications, wire tapping, audio or video recording, or telemarketing, if such distribution, wire tapping, recording or telemarketing is done by or on behalf of the **insured organisation**; but this exclusion will not apply to **claims expenses** incurred in defending the **insured** against allegations of unlawful audio or video recording.

### FINANCIAL SERVICES

Failure to provide, or the provision of, advice regarding, insurance, finance, accounting or tax matters.

### PRIOR KNOWN ACTS & PRIOR NOTICED CLAIMS

- 1 any act, error, omission, incident or event committed or occurring prior to the inception date of this policy if any member of the **control group** on or before the **continuity date** knew or could have reasonably foreseen that such act, error or omission, incident or event might be expected to be the basis of a **claim** or **loss**; or
- 2 any **claim, loss**, incident or circumstance for which notice has been provided under any **prior policy** of which this policy is a renewal or replacement;

### RACKETEERING, BENEFIT PLANS, EMPLOYMENT LIABILITY & DISCRIMINATION

- 1 any actual or alleged violation of any racketeering, fraud, organised crime or conspiracy law;
- 2 any actual or alleged acts, errors or omissions related to any of the **insured organisation's** superannuation, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts, including any violations of any legislation regulating such funds, trusts or plans;
- 3 any employer-employee relations, policies, practices, acts or omissions, or any actual or alleged refusal to employ any person, or misconduct with respect to employees; or
- 4 any actual or alleged discrimination;

but this exclusion will not apply to coverage under the breach response insuring agreement or coverage for a **data breach** or **security breach**, provided no member of the **control group** participated or colluded in such **data breach** or **security breach**;

### SALE OR OWNERSHIP OF SECURITIES & VIOLATION OF SECURITIES LAWS

- 1 the ownership, sale or purchase of, or the offer to sell or purchase stock or other securities; or
- 2 an actual or alleged violation of a securities law or regulation;

### CRIMINAL, INTENTIONAL OR FRAUDULENT ACTS

any criminal, dishonest, fraudulent, or malicious act or omission, or intentional or knowing violation of the law, if committed by an **insured**, or by others if the **insured** colluded or participated in any such conduct or activity; but this exclusion will not apply to:

- 1 **claims expenses** incurred in defending any **claim** alleging the foregoing until there is a written admission by the insured alleged to have engaged in such conduct or a final non-appealable adjudication establishing such conduct; or
- 2 with respect to a natural person **insured**, if such **insured** did not personally commit, participate in or know about any act, error, omission, incident or event giving rise to such **claim** or **loss**.

For purposes of this exclusion, only acts, errors, omissions or knowledge of a member of the **control group** will be imputed to the **insured organisation**;

### PATENT & MISAPPROPRIATION OF INFORMATION

- 1 infringement, misuse or abuse of patent or patent rights;
- 2 misappropriation of trade secret arising out of or related to **tech products** or any other products;
- 3 with respect to any **data & network wrongful act**, misappropriation of any **third party information** (i) by or on behalf of the **insured organisation**, or (ii) by any other person or entity if such misappropriation is done with the knowledge, consent or acquiescence of a member of the **control group**; or
- 4 disclosure, misuse or misappropriation of any ideas, trade secrets or confidential information that came into the possession of any person or entity prior to the date he or she became an **insured** or **subsidiary** of the **insured organisation**;

### GOVERNMENTAL ACTIONS

a **claim** brought by or on behalf of any state, federal, local or foreign governmental entity, in such entity's regulatory or official capacity; but this exclusion will not apply to the regulatory defence & penalties insuring agreement, or any **claim** made against the **insured organisation** by a governmental entity solely in its capacity as a customer of the **insured organisation**;

### OTHER INSUREDS & RELATED ENTERPRISES

a **claim** made by or on behalf of:

- 1 any **insured**; but this exclusion will not apply to a **claim** made by an individual that is not a member of the **control group** for a **data & network wrongful act**, or a **claim** made by an **additional insured**; or
- 2 any business enterprise in which any **insured** has greater than 15% ownership interest or made by any parent company or other entity which owns more

than 15% of the **named insured**;

### TRADING LOSSES & LOSS OF MONEY

- 1 any trading losses, trading liabilities or change in value of accounts;
- 2 any loss, transfer or theft of monies, securities or tangible property of the **insured** or others in the care, custody or control of the **insured organisation**;
- 3 the monetary value of any transactions or electronic fund transfers by or on behalf of the **insured** which is lost, diminished, or damaged during transfer from, into or between accounts; or
- 4 the value of coupons, price discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount;

but this exclusion will not apply to cover under the eCrime insuring agreement.

### CONTRACTUAL

with respect to coverage under parts 1. and 3. of the Media, Tech, Data & Network Liability insuring agreement:

any obligation the **insured** has under contract; but this exclusion will not apply to:

- 1 the obligation to perform **professional services** or **tech services**;
- 2 a **claim** for misappropriation of ideas under implied contract, or;
- 3 to the extent the **insured** would have been liable in the absence of such contract;

### RETROACTIVE DATE

any related or continuing act, error, omission, misstatement, misleading statement, misrepresentation, unintentional breach of a contractual obligation, incident or event where the first such act, error, omission, misstatement, misleading statement, misrepresentation or unintentional breach of a contractual obligation, incident or event was committed or occurred prior to the **retroactive date**;

### RECALL

any costs or expenses incurred or to be incurred by the **insured** or others for the reprinting, reposting, recall, inspection, repair, replacement, removal or disposal of any **tech products**, **media material** or work product, including when resulting from or incorporating the

results of **professional services** or **tech services**; but this exclusion will not apply to the resulting loss of use of such **tech products**, **media material** or work product resulting from or incorporating the results of **professional services** or **tech services**;

### INFRASTRUCTURE FAILURE

failure or malfunction of satellites or of power, utility, mechanical or telecommunications (including internet) infrastructure or services that are not under the **insured organisation's** direct operational control;

### LICENSING BODIES & JOINT VENTURES

- 1 the actual or alleged obligation to make licensing fee or royalty payments; or any **claim** brought by or on behalf of any intellectual property licensing bodies or organisations;
- 2 any **claim** made by or on behalf of any independent contractor, joint venturer or venture partner arising out of or resulting from disputes over ownership of rights in **media material** or services provided by such independent contractor, joint venturer or venture partner;

### OVER-REDEMPTION

- 1 any actual or alleged gambling, contest, lottery, promotional game or other game of chance; or
- 2 the value of coupons, price discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount;

### FIRST PARTY DATA & NETWORK LOSS

with respect to the first party data & network loss insuring agreements:

- 1 seizure, nationalisation, confiscation, or destruction of property or data by order of any governmental or public authority;
- 2 costs or expenses incurred by the **insured** to identify or remediate software program errors or vulnerabilities or update, replace, restore, assemble, reproduce, recollect or enhance data or **computer systems** to a level beyond that which existed prior to a **security breach**, **system failure**, **dependent security breach**, **dependent system failure** or **extortion threat**;
- 3 fire, flood, earthquake, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide, act of god or other physical event.

### WAR AND CIVIL WAR

war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority; provided, that this exclusion will not apply to **cyber terrorism**.

For purposes of this exclusion, "**cyber terrorism**" means the premeditated use of disruptive activities, or threat to use disruptive activities, against any **computer system** or network with the intention to cause harm, further social, ideological, religious, political or similar objectives, or to intimidate any person(s) or entity(ies) in furtherance of such objectives.

### LIMIT OF LIABILITY AND COVERAGE

The policy aggregate limit of liability listed in the schedule (the "**policy aggregate limit of liability**") is the **insurer's** combined total limit of liability for all **loss** payable under this policy.

The limit of liability payable under each insuring agreement will be an amount equal to the **policy aggregate limit of liability** unless another amount is listed in the schedule. Such amount is the aggregate amount payable under this policy pursuant to such insuring agreement and is part of, and not in addition to, the **policy aggregate limit of liability**.

The limit of liability under the media, tech, data and network liability coverage will be automatically reinstated in the event of erosion or exhaustion by payment of **damages** and **claims expenses** to the extent of such erosion or exhaustion. Such reinstated limit of liability will only apply once the limit of liability of all insurance policies sitting excess of this policy have been exhausted. This reinstatement will not apply to any other limit of liability under any other insuring agreement in this policy. This reinstatement will only apply once and is capped at twice the limit of liability. This reinstatement is payable and is not part of the policy aggregate limit of liability.

For the media, tech, data and network liability coverage, the **insurer** will not be liable for more than the limit of liability in the event of a single **claim** and twice the limit of liability for a single **claim** in the event of a reinstatement.

All **dependent business loss** payable under this policy is part of and not in addition to the **business interruption loss** limit listed in the schedule.

The **insurer** will not be obligated to pay any **loss**, or to defend any **claim**, after the **policy aggregate limit of liability** has been exhausted, or after deposit of the **policy aggregate limit of liability** in a court of competent jurisdiction.

## RETENTIONS

The retention listed in the schedule applies separately to each act, error, omission, incident, event or related acts, errors, omissions, incidents or events giving rise to a **claim** or **loss**. The retention will be satisfied by monetary payments by the **named insured** of covered **loss** under each insuring agreement. If any **loss** arising out of an incident or **claim** is subject to more than one retention, the retention for each applicable insuring agreement will apply to such **loss**, provided that the sum of such retention amounts will not exceed the largest applicable retention amount.

Coverage for **business interruption loss** and **dependent business loss** will apply after the **waiting period** has elapsed and the **insurer** will then indemnify the **named insured** for all **business interruption loss** and **dependent business loss** sustained during the **period of restoration** in excess of the retention.

Satisfaction of the applicable retention is a condition precedent to the payment of any **loss** under this policy, and the **insurer** will be liable only for the amounts in excess of such retention.

## OPTIONAL EXTENSION PERIOD

Upon non-renewal or cancellation of this policy for any reason except the non-payment of premium, the **named insured** will have the right to purchase, for additional premium in the amount of the optional extension premium percentage listed in the schedule of the full policy premium listed in the schedule, an optional extension period for the period of time listed in the schedule. Coverage provided by such optional extension period will only apply to **claims** first made against any **insured** during the optional extension period and reported to the **insurer** during the optional extension period, and arising out of any act, error or omission committed on or after the **retroactive date** (if applicable) and before the end of the **policy period**. In order for the **named insured** to invoke the optional extension period option, the payment of the additional premium for the optional extension period must be paid to the **insurer** within 60 days of the termination of this policy.

The purchase of the optional extension period will in no way increase the **policy aggregate limit of liability** or

any sublimit of liability. At the commencement of the optional extension period the entire premium will be deemed earned, and in the event the **named insured** terminates the optional extension period for any reason prior to its natural expiration, the **insurer** will not be liable to return any premium paid for the optional extension period.

All notices and premium payments with respect to the optional extension period option will be directed to the **insurer** through the entity listed for administrative notice in the schedule.

## GENERAL CONDITIONS

### Notice of Claim or Loss

The **insured** must notify the **insurer** of any **claim** as soon as practicable, but in no event later than: (i) 60 days after the end of the **policy period**; or (ii) the end of the optional extension period (if applicable). Notice must be provided through the contacts listed for notice of claim or loss section in the declarations.

With respect to **breach response services**, the **insured** must notify the **insurer** of any actual or reasonably suspected **data breach** or **security breach** as soon as practicable after discovery by the **insured**, but in no event later than 60 days after the end of the **policy period**. Notice must be provided to the **breach response services team** listed in the declarations. Notice of an actual or reasonably suspected **data breach** or **security breach** in conformance with this paragraph will also constitute notice of a circumstance that could reasonably be the basis for a **claim**.

With respect to **cyber extortion loss**, the **named insured** must notify the **insurer** via the email address listed in the notice of claim or loss in the declarations as soon as practicable after discovery of an **extortion threat** but no later than 60 days after the end of the **policy period**. The **named insured** must obtain the **insurer**' consent prior to incurring **cyber extortion loss**.

With respect to **data recovery costs**, **business interruption loss** and **dependent business loss** the **named insured** must notify the **insurer** through the contacts for notice of claim or loss in the declarations as soon as practicable after discovery of the incident or event giving rise to such loss. The **named insured** will provide the insurer a proof of **data recovery costs**, **business interruption loss** and **dependent business loss**, and this policy will cover the reasonable and necessary costs, not to exceed AUD 50,000, that the **named insured** incurs to contract with a third party to prepare such proof. All loss described in this paragraph must be reported, and all proofs of loss must be

provided, to the **insurer** no later than 6 months after the end of the **policy period**.

The **named insured** must notify the **underwriters** of any loss covered under the eCrime insuring agreement as soon as practicable, but in no event later than 60 days after the end of the **policy period**. Notice must be provided through the contacts listed for notice of claim, loss or circumstance in the schedule.

To the extent permitted by the insurance act 1984 (cth) if the insured does not give notice of any **claim** in accordance with this section, then the **insurer** will have no liability under this policy in respect of that claim.

### Notice of Circumstance

With respect to any circumstance that could reasonably be the basis for a **claim**, the **insured** may give written notice of such circumstance to the **insurer** through the contacts listed for notice of claim, loss or circumstance in the schedule as soon as practicable during the **policy period**. Such notice must include:

- 1 the specific details of the act, error, omission or event that could reasonably be the basis for a **claim**;
- 2 the injury or damage which may result or has resulted from the circumstance; and
- 3 the facts by which the **insured** first became aware of the act, error, omission or event.

Any subsequent **claim** made against the **insured** arising out of any circumstance reported to **insurer** in conformance with the foregoing will be considered to have been made at the time written notice complying with the above requirements was first given to the **insurer** during the **policy period**.

Notice of an actual or suspected **data breach** or **security breach** to the beazley breach response services team will qualify such incident as a notified circumstance under this policy.

### Beazley Breach Response Services

The **insurer's** dedicated business unit focused exclusively on helping **insureds** successfully prepare for and respond to actual or suspected **data breaches** and **security breaches** (the "Beazley Breach Response Services Team") will be available to assist the **named insured** in responding to an actual or suspected **data breach** or **security breach**. The Beazley Breach Response Services Team will work in collaboration with the **named insured** to triage and assess the severity of a data breach incident, while assisting the coordination of the range of resources and services the **named**

**insured** may need to meet legal requirements and maintain customer confidence.

The Beazley Breach Response Services Team may be reached at:

1800 984 283 or Email: [bbaustralia@beazley.com](mailto:bbaustralia@beazley.com)

The **named insured** will have access, via the beazley breach response services team, to the **insurer's** network of third party breach response service providers, products and services to respond to an actual or suspected **data breach** or **security breach**. Coverage for the costs of products and services provided by any breach response service provider is subject to the terms and conditions of this policy.

The **named insured** will also have access to educational and loss control information and services made available by the **insurer** from time to time and includes access to [beazleybreachsolutions.com](http://beazleybreachsolutions.com), a dedicated portal through which it can access news and information regarding breach response planning, data and network security threats, best practices in protecting data and networks, offers from third party service providers, and related information, tools and services. The **named insured** will also have access to communications addressing timely topics in data security, loss prevention and other areas.

Notwithstanding the foregoing, an actual or suspected **data breach** or **security breach** must be reported to the insurer in accordance with the notice of claim or loss clause in order for such incident to be eligible for coverage under the breach response insuring agreement.

### Defence of Claims

Except with respect to coverage under the payment card liabilities & costs insuring agreement, the insurer has the right and duty to defend any covered **claim** or **regulatory proceeding**. Defence counsel will be mutually agreed by the **named insured** and the insurer but, in the absence of such agreement, the insurer's decision will be final.

With respect to the payment card liabilities & costs insuring agreement, coverage will be provided on an indemnity basis and legal counsel will be mutually agreed by the **named insured** and the insurer.

The insurer will pay actual loss of salary and reasonable expenses resulting from the attendance by a corporate officer of the **insured organisation** at any mediation meetings, arbitration proceedings, hearings, depositions, or trials relating to the defence of any **claim**, subject to a maximum of AUD2,000 per day



and AUD100,000 in the aggregate, which amounts will be part of and not in addition to the **policy aggregate limit of liability**.

### Settlement of Claims

If the **insured** refuses to consent to any settlement recommended by the **insurer** and acceptable to the claimant, the insurer's liability for such **claim** will not exceed:

- 1 the amount for which the **claim** could have been settled, less the remaining retention, plus the **claims expenses** incurred up to the time of such refusal; plus
- 2 sixty percent (60%) of any **claims expenses** incurred after the date such settlement or compromise was recommended to the **insured** plus sixty percent (60%) of any **damages, penalties and PCI fines, expenses and costs** above the amount for which the **claim** could have been settled;

and the insurer will have the right to withdraw from the further defence of such **claim**.

The **insured** may settle any **claim** where the **damages, penalties, PCI fines, expenses and costs** and **claims expenses** do not exceed 50% of the retention, provided that the entire **claim** is resolved and the **insured** obtains a full release on behalf of all **insureds** from all claimants.

### Assistance and Cooperation

The insurer will have the right to make any investigation they deem necessary, and the **insured** will cooperate with the insurer in all investigations, including investigations regarding coverage under this policy and the information and materials provided to the insurer in connection with the underwriting and issuance of this policy. The **insured** will execute or cause to be executed all papers and render all assistance as is requested by the insurer. The **insured** agrees not to take any action which in any way increases the insurer's exposure under this policy. Expenses incurred by the **insured** in assisting and cooperating with the insurer do not constitute **claims expenses** under the policy.

The **insured** will not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **claim** without the written consent of the insurer, except as specifically provided in the settlement of the claims clause above. Compliance with a **breach notice law** will not be considered an admission of liability.

### Subrogation and Recoveries

If any payment is made under this policy and there is available to the underwriters any of the **insured's** rights of recovery against any other party, then the underwriters will maintain all such rights of recovery. The **insured** will do whatever is reasonably necessary to secure such rights and will not do anything after an incident or event giving rise to a **claim** or **loss** to prejudice such rights. If the **insured** has waived its right to subrogate against a third party through written agreement made before an incident or event giving rise to a **claim** or **loss** has occurred, then the underwriters waive their rights to subrogation against such third party. Any recoveries will be applied first to subrogation expenses, second to **loss** paid by the underwriters, and lastly to the retention. Any additional amounts recovered will be paid to the **named insured**.

### Goods and Services Tax

When the **insurer** makes a payment under this policy for the acquisition of goods, services or other supply, the **insurer** will reduce the amount of the payment by the amount of any input tax credit that the **insured** is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

When the **insurer** makes a payment under this policy as compensation instead of payment for the acquisition of goods, services or other supply, the **insurer** will reduce the amount of the payment by the amount of any input tax credit that the **insured** is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or supply.

Where and to the extent that the **insurer** is entitled to claim an input tax credit for a payment made under the policy, then any monetary limit in the policy applying to the **insurer's** obligation to make such a payment, shall be net of the entitlement to the input tax credit.

Where and to the extent that the **insured** is entitled to claim an input tax credit for a payment required to be made by the **insured** as a **retention**, then the amount of the **retention** shall be net of the **insured's** entitlement to the input tax credit.

### Other Insurance

This policy will only pay **loss** that is in excess of any amount recoverable from a more specific civil/technology professional, media liability or cyber insurance available to the **insured**. As excess insurance,

this policy will not apply or contribute to the payment of any **loss** until the amounts of that other insurance have been exhausted.

### Entire Agreement

By acceptance of the policy, all **insureds** agree that this policy embodies all agreements between the insurer and the **insured** relating to this policy. Notice to any agent, or knowledge possessed by any agent or by any other person, will not effect a waiver or a change in any part of this policy or stop the insurer from asserting any right under the terms of this policy; nor will the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy signed by the Insurer.

### Mergers or Consolidations

If during the **policy period** the **named insured** consolidates or merges with or is acquired by another entity, or sells more than 50% of its assets to another entity, then this policy will continue to remain in effect through the end of the **policy period**, but only with respect to events, acts or incidents that occur prior to such consolidation, merger or acquisition. There will be no coverage provided by this policy for any other **claim** or **loss** unless the **named insured** provides written notice to the insurer prior to such consolidation, merger or acquisition, the **named insured** has agreed to any additional premium and terms of coverage required by the insurer and the insurer have issued an endorsement extending coverage under this policy.

### Cancellation

This policy may be canceled by the **named insured** by giving written notice to the insurer through the entity listed for administrative notice in the declarations stating when the cancellation will be effective.

This policy may be canceled by the Insurer in accordance with the Insurance Contracts Act 1984 (cth).

If this policy is canceled in accordance with the paragraphs above, the earned premium will be computed pro rata; but the premium will be deemed fully earned if any **claim**, or any circumstance that could reasonably be the basis for a **claim** or **loss**, is reported to the insurer on or before the date of cancellation. payment or tender of unearned premium is not a condition of cancellation.

### Third Parties

Nothing in this policy is intended to confer a directly

enforceable benefit on any third party other than an insured.

### Assignment

Neither this policy nor any right under it may be assigned without the prior written consent of the **insurer**.

### Policy Interpretation

This policy, its schedule and any endorsements are one contract in which, unless the context otherwise requires:

- 1 headings and subheadings are descriptive only, solely for convenience, not an aid to interpretation and form no part of the terms and conditions of coverage;
- 2 the singular includes the plural, and the masculine includes the feminine, and vice versa;
- 3 "Including" and "include(s)" means without limitation;
- 4 references to specific legislation include amendments to and re-enactments of that legislation and any similar or equivalent legislation in the relevant jurisdiction;
- 5 references to positions, offices or titles will include their equivalents in any jurisdiction;
- 6 if any provision of this policy is or becomes void or illegal, is invalid or unenforceable by a court or other competent body under the law of any applicable jurisdiction, such provision will be deleted. The **insurer** and the **insured** will use their best efforts to agree a replacement for the provision which achieves as far as possible the same effect as would have been achieved by the deleted provision.

### Named insured as agent

The **named insured** will be considered the agent of all **insureds**, and will act on behalf of all **insureds** with respect to the giving of or receipt of all notices pertaining to this policy, and the acceptance of any endorsements to this policy. The **named insured** is responsible for the payment of all premiums and retentions and for receiving any return premiums.

### Governing Law

This policy will be governed by and construed in accordance with the laws of the Commonwealth of Australia.

In the event of any dispute arising under this policy

including, but not limited to, its construction and/or validity and/or performance and/or interpretation, the **insured** will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

Any summons, notice or process to be served upon the **insurer** may be served upon:

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

Who has authority to accept service and to appear on the behalf of the **insurer**.

### Jurisdictional limits

This policy will only apply to **claims** brought within the jurisdictional limits stated in the Schedule.

### Insurer's consent

Where the **insured** is required under this policy to seek the consent of the **insurer**, the **insurer** will not unreasonably withhold, delay or deny such consent.

### Complaints

#### General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

The Code Governance Committee (CGC) is an independent body that monitors and enforces **insurers'** compliance with the Code. For more information on the Code Governance Committee (CGC) go to [www.insurancecode.org.au](http://www.insurancecode.org.au)

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Delta Insurance Australia Pty Ltd in the first instance:

Managing Director  
Delta Insurance Australia Pty Ltd  
Email: [complaints@deltainsurance.com.au](mailto:complaints@deltainsurance.com.au)  
Telephone: 07 3017 4720  
Post: GPO BOX 1832, Brisbane QLD 4001

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your 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: [idraustralia@lloyds.com](mailto:idraustralia@lloyds.com)  
Telephone: (02) 8298 0783  
Post: Suite 1603 Level 16, 1 Macquarie Place,  
Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Post: GPO Box 3 Melbourne VIC 3001  
Website: [www.afca.org.au](http://www.afca.org.au)

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

The **insurer** accepting this Insurance agree that:

- i if a dispute arises under this Insurance, this insurance will be subject to Australian law and practice and the **insurer** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- ii any summons notice or process to be served upon the **Insurer** may be served upon:

Lloyd's Insurer' General Representative  
in Australia  
Suite 1603, Level 16, 1 Macquarie Place  
Sydney NSW 2000

who has authority to accept service on the **insurer's** behalf;

- iii if a suit is instituted against any of the insurer, all Insurer participating in this Insurance will abide by

the final decision of such Court or any competent Appellate Court.

### Several Liability

The liability of the **insurer** under this policy is several and not joint with other insurers who may be a party to this policy. Any insurer is liable only for the proportion of liability it has underwritten. The **insurer** and any insurers are not jointly liable for the proportion of liability underwritten by any other **insurer**; nor is an insurer otherwise responsible for any liability of any other **insurer** that may underwrite this policy.

The proportion of liability under this policy underwritten by any insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion; nor is any member otherwise responsible for any liability of any insurer that may underwrite this policy. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to this policy in the singular, where the circumstances so require this should be read as a reference to Policies in the plural.

### Sanction limitation

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



**Embrace  
Change.**

**Delta Insurance Australia**

[contactus@deltainsurance.com.au](mailto:contactus@deltainsurance.com.au)

(07) 3017 4720

GPO Box 1832, Brisbane QLD 4001

**Delta Insurance Australia Pty Ltd**

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Representative (CAR 001296353) of DIA Licence Pty Ltd  
(ACN 654 160 513) AFSL535427