

## PREAMBLE

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

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

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

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

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

## INSURING CLAUSES

### INSURING CLAUSE 1: PROFESSIONAL LIABILITY

#### SECTION A: BODILY INJURY

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

- a. negligent act, error or omission;
- b. **cyber event**;
- c. **system outage**;
- d. breach of any contractual term implied by law concerning necessary quality, safety or fitness, or **your** duty to use reasonable care and skill;
- e. loss or damage to any documents in paper format in **your** care, custody or control; or

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

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

## SECTION B: TECHNOLOGY ERRORS & OMISSIONS

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

- a. negligent act, error, omission, misstatement or misrepresentation;
- b. breach of any contractual term implied by law concerning necessary quality, safety or fitness, or **your** duty to use reasonable care and skill;
- c. loss or damage to any documents in paper format in **your** care, custody or control; or
- d. other act, error or omission giving rise to civil liability but not any breach of contract other than as specified above.

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

## SECTION C: BREACH OF CONTRACT

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

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

## SECTION D: PRODUCTS FAILING TO PERFORM

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

- a. negligent act, error, omission, misstatement or misrepresentation;
- b. breach of any contractual term implied by law concerning necessary quality, safe safety or fitness, or **your** duty to use reasonable care and skill;
- c. loss or damage to any documents in paper format in **your** care, custody or control; or
- d. other act, error or omission giving rise to civil liability but not any breach of contract other than as specified above.

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

## SECTION E: INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND DEFAMATION

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

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

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

## SECTION F: LOSS OF DOCUMENTS

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

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

## INSURING CLAUSE 2: CYBER AND PRIVACY

### SECTION A: NETWORK SECURITY AND PRIVACY LIABILITY

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

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

- d. identity theft, experienced by **your employees** or any **third party**.

We also agree to pay on **your** behalf any fines, penalties and card brand assessments including fraud recoveries, operational reimbursements, non-cooperation costs and case management fees which **you** become legally obliged to pay as a direct result of a **payment card breach** first discovered by **you** during the **period of the policy**.

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

#### **SECTION B: REGULATORY COSTS AND FINES**

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

#### **SECTION C: INCIDENT RESPONSE COSTS**

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

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

#### **SECTION D: LEGAL, FORENSIC AND BREACH MANAGEMENT COSTS**

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

- a. obtain initial legal advice and draft **privacy breach** notices;
- b. notify any appropriate regulatory body, respond to and defend any **regulatory investigation** and pay any fines and penalties imposed on **you** as a direct result of the **regulatory investigation**;
- c. engage with an external IT security consultant to identify the source and scope of the **cyber event**, contain and remove any malware discovered on **your computer systems** and conduct a forensic investigation of **your computer systems** where reasonable and necessary or as required by law or a regulatory body (including a requirement for a PCI Forensic Investigator);
- d. engage with a crisis communications consultant to obtain specific advice in direct relation to the **cyber event**;
- e. print and post appropriate notices for any individual affected by the **cyber event** or to send e-mail notices or issue substitute notices; and

- f. provide credit monitoring services, identity monitoring services, identity restoration services or identity theft insurance as appropriate to affected individuals including setting up a call centre to manage inbound and outbound calls in direct relation to the **cyber event**.

#### SECTION E: EXTORTION

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

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

#### SECTION F: SYSTEM DAMAGE AND RECTIFICATION COSTS

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

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

reasonably and necessarily incurred as a direct result of a **cyber event** first discovered by **you** during the **period of the policy**, including costs incurred in retrieving, restoring or replacing electronic health records (EHR), patient therapy plans and all other healthcare data.

#### SECTION G: SYSTEM BUSINESS INTERRUPTION AND REPUTATIONAL HARM

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

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

## SECTION H: CLAIM PREPARATION COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred to determine the amount of **your actual loss sustained** following an interruption to **your technology activities** covered under **INSURING CLAUSE 2 (SECTION G only)**. We will only pay these costs where they are incurred with an independent expert agreed by the **claims managers**.

## INSURING CLAUSE 3: GENERAL LIABILITY

### SECTION A: PUBLIC LIABILITY

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

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

### SECTION B: PRODUCTS LIABILITY

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

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

### SECTION C: PERSONAL AND ADVERTISING INJURY

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

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

### SECTION D: POLLUTION LIABILITY

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

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

## INSURING CLAUSE 4: LOSS MITIGATION

In respect of **INSURING CLAUSE 1**, we agree to reimburse **you** for any reasonable costs necessarily incurred by **you** with **our** prior written agreement (which will not be unreasonably withheld) in respect of measures taken by **you** to rectify any act, error or omission that resulted in a **claim** or may result in a **claim** for which **you** would be entitled to indemnity under this Policy had these measures not been taken, provided that:

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

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

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

#### **INSURING CLAUSE 5: REPUTATION AND BRAND PROTECTION**

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

#### **INSURING CLAUSE 6: COURT ATTENDANCE COSTS**

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

## **HOW MUCH WE WILL PAY**

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

Where any **claim** is covered under multiple Sections, each Section will cover its part of the claim to the extent of the available **limit of liability**. In the event any Section covering the claim is exhausted, no other Section of this Policy covering the claim will provide additional cover. Regardless of how many Sections cover any claim, only one overall **limit of liability** will be available and this will be the highest **limit of liability** of the Sections covering the claim. The **limits of liability** available, other than the highest **limit of liability**, under the Sections covering the claim

will always be a part of and not in addition to the highest **limit of liability**. For the purposes of this paragraph, **INSURING CLAUSES 4, 5 and 6** will each be considered a Section.

Notwithstanding the **limit of liability**, for any **claim** made against **you** within the United States of America or territories which come under the jurisdiction of the United States of America, the **limit of liability** will be an annual aggregate limit for all **claims** under this Policy and inclusive of **costs and expenses**.

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

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

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

## YOUR DEDUCTIBLE

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

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

In respect of **INSURING CLAUSE 2 (SECTION G only)**, a single **waiting period, deductible and indemnity period** will apply to each claim. Where the same original cause or single source or event causes more than one period of computer systems downtime these will be considered one period of computer systems downtime whose total duration is equal to the cumulative duration of each individual period of computer systems downtime

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



## DEFINITIONS

1. **"Actual loss sustained"** means  
your income that, had the incident which gave rise to the claim not occurred, would have been generated directly from **your business activities** (less sales tax) during the **indemnity period**, less:
  - a. actual income (less sales tax) generated directly from **your business activities** during the **indemnity period**; and
  - b. any cost savings achieved as a direct result of the reduction in income.
2. **"Advertising injury"** means
  - a. oral or written publication of defamatory content;
  - b. oral or written publication of content that violates a person's right of privacy; or
  - c. infringement of copyright, trade dress, slogan or a **third party's** advertising idea;in your advertising or promotional material.
3. **"Approved claims panel providers"** means  
the approved claims panel providers stated in the Schedule.
4. **"Bodily injury"** means  
death, bodily injury, mental injury, illness or disease.
5. **"Business activities"** means  
the business activities stated in the Schedule.
6. **"Claim"** means
  - a. a written demand for compensation;
  - b. a written request for a retraction or a correction;
  - c. a threat or initiation of a lawsuit; and
  - d. in respect of **INSURING CLAUSE 2 (SECTIONS A and B only)**, a **regulatory investigation**;made against you.
7. **"Claims managers"** means  
the claims managers stated in the Schedule.

8. "Client" means

any **third party** with whom **you** have a contract in place for the supply of **your business activities** in return for a fee, or where a fee would normally be expected to be paid

9. "Computer systems" means

all electronic computers including operating systems, software, hardware, microcontrollers and all communication and open system networks and any data or websites wheresoever hosted, off-line media libraries and data back-ups and mobile devices including but not limited to smartphones, iPhones, tablets or personal digital assistants.

10. "Continuity date" means

the **inception date** or if **you** have maintained uninterrupted insurance of the same type with **us**, the date this insurance was first incepted with **us**.

11. "Costs and expenses" means

- a. **third party** legal and professional expenses (including disbursements) reasonably incurred in the defence of **claims** or circumstances which could reasonably be expected to give rise to a **claim** or in quashing or challenging the scope of any injunction, subpoena or witness summons;
- b. any post judgment interest; and
- c. the cost of appeal, attachment and similar bonds including bail and penal bonds.

Subject to all **costs and expenses** being incurred with the **claims managers'** prior written agreement.

12. "Cyber event" means

any actual or suspected:

- a. unauthorised access to or electronic attack designed to damage, destroy, corrupt, overload, circumvent or otherwise impair the functionality of:
  - i. in respect of **INSURING CLAUSE 2**, **computer systems** used directly by **you**; and
  - ii. in respect of all other **INSURING CLAUSES**, any **computer systems**;

including a denial of service attack, cyber terrorism, hacking attack, Trojan horse, phishing attack, man-in-the-middle attack, application-layer attack, compromised key attack, malware infection (including spyware or ransomware) or computer virus; or

- b. **privacy breach**.

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

13. "Cyber incident response hotline" means

the cyber incident response hotline stated in the Schedule.

14. "**Cyber incident response team**" means  
the cyber incident response team accessible on the **cyber incident response hotline**.
15. "**Deductible**" means  
the amount stated as the deductible in the Schedule.
16. "**Employee**" means  
any **medical practitioner** and any employee, volunteer or contract employee of the **insured**.
17. "**Employee benefit program**" means  
the **insured's** insurance, pension or other benefit programs.
18. "**Expiry date**" means  
the expiry date stated in the Schedule.
19. "**Good Samaritan act**" means  
any unplanned first aid or emergency medical assistance provided by **you**.

**Good Samaritan act** does not include any first aid or emergency assistance provided by **you** in return for a fee or where a fee would normally be expected to be paid.

20. "**Healthcare services**" means  
the supply by **you** or on **your** behalf of:
- a. medical, clinical, mental or other similar healthcare professional services or treatments delivered by electronic means, including the examination, diagnosis, prognosis, treatment (including the prescription of drugs or therapy) or care of a patient; or
  - b. any **Good Samaritan act**.
21. "**Inception date**" means  
the inception date stated in the Schedule.
22. "**Increased cost of working**" means  
**your** reasonable sums necessarily incurred in addition to **your** normal operating expenses to mitigate an interruption to and continue **your business activities**, provided that the costs are less than **your** expected **actual loss sustained** had these measures not been taken.
23. "**Indemnity period**" means  
the period starting from the first occurrence of the **computer systems** downtime and lasting for the indemnity period stated in the Schedule.
24. "**Independent expert**" means  
a suitably qualified lawyer or accountant with a minimum of 5 years' experience in the subject matter of the claim.

25. **"Insured"** means
- the individual named as the insured in the Schedule; or
  - the entity named as the insured in the Schedule and any **subsidiary**.
26. **"Intellectual property rights"** means  
any intellectual property right including, but not limited to, copyright, trademark, trade dilution, trade dress, design rights, domain name rights, moral rights, service mark or service name, but not including patent.
27. **"Limit of liability"** means  
if expressed in the Schedule as:
- "limit of liability" or "amount insured", the maximum amount payable by **us** in respect of each claim; or
  - "aggregate limit of liability" or "aggregate amount insured", the maximum amount payable by **us** in respect of all claims under this Policy.
28. **"Medical practitioner"** means  
any registered medical or healthcare practitioner, but only in respect of **healthcare services** or **technology activities** performed on behalf of the **insured**.
29. **"Official authority"** means  
any governmental, regulatory or law enforcement agency.
30. **"Payment card breach"** means  
an actual or suspected unauthorised disclosure of payment card data stored or processed by **you** arising out of an electronic attack, accidental disclosure or the deliberate actions of a rogue **employee**.
- "Payment card breach"** does not mean a situation where payment card data is deliberately shared with or sold to a **third party** with the knowledge and consent of a **senior executive officer**.
31. **"Period of the policy"** means  
the period between the **inception date** and the **expiry date** or until the Policy is cancelled in accordance with **CONDITION 6**.
32. **"Personal injury"** means
- false arrest, detention or imprisonment;
  - malicious prosecution; or
  - wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies.

33. **"Pollutants"** means

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

34. **"Pollution"** means

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

35. **"Premium"** means

the amount stated as the premium in the Schedule and any subsequent adjustments.

36. **"Privacy breach"** means

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

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

37. **"Product"** means

any tangible property that has been manufactured, altered, distributed or installed by **you** or on **your** behalf, including wearable and self-monitoring healthcare devices.

38. **"Property damage"** means

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

39. **"Regulatory investigation"** means

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

40. **"Reputational harm period"** means

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

41. **"Retroactive date"** means

the retroactive date stated in the Schedule.

42. **"Senior executive officer"** means

- a. the individual named as the insured in the Schedule; or
- b. board members, C-level executives, medical directors, in-house lawyers and risk managers of the entity named as the insured in the Schedule.

43. "Subsidiary" means

any entity which the entity named as the **insured** in the Schedule has majority ownership of, meaning more than 50% ownership, on or before the **inception date**.

44. "System outage" means

a degradation in the performance of **your computer systems** which renders them incapable of supporting their normal business function.

45. "Technology activities" means

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

46. "Technology error" means

any:

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

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

47. "Third party" means

any individual or entity other than **you**.

48. "Waiting period" means

the number of hours stated as the waiting period in the Schedule.

49. "We/our/us" means

the Underwriters stated in the Schedule.

50. "You/Your" means

the **insured**, **employees** and **senior executive officers** solely acting in the normal course of **your business activities**.

## EXCLUSIONS

We will not make any payment under this Policy:

### EXCLUSIONS RELATING TO CYBER AND PRIVACY

In respect of **INSURING CLAUSE 2** only:

#### 1. **Betterment**

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

However, in the event of a hacking attack, malware infection or computer virus, when rebuilding **your computer systems** we will pay the additional costs and expenses incurred to install a more secure and efficient version of the affected **computer system**, provided that the maximum amount we will pay is 25% more than the cost that would have been incurred to repair or replace the original model or license. Under no circumstances will we pay the cost of acquiring or installing **computer systems** which did not form a part of **your computer systems** immediately prior to the incident which gave rise to the claim.

#### 2. **Core internet infrastructure failure**

arising directly from a failure, material degradation or termination of any core element of the internet, telecommunications or GPS infrastructure that results in a regional, countrywide or global outage of the internet or core telecommunications network, including a failure of the core DNS root servers, satellite network or the IP addressing system or an individual state or non-state actor turning off all or part of the internet.

#### 3. **Power and utility failure**

arising directly or indirectly from any:

- a. failure in the power supply, including that caused by any surge or spike in voltage, electrical current or transferred energy; or
- b. failure, disruption or reduction in the supply of utilities, including but not limited to gas and water infrastructure or services.

#### 4. **Property and hardware costs**

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

However, where repairing or replacing hardware or tangible property or equipment is a more practical and cost effective solution than installing new firmware or software onto **your** existing components, we will pay the costs required to do so.

#### 5. Regular hours staff costs

for contracted salary and bonus costs paid to **employees**.

#### 6. Theft of funds

for theft of money or financial assets in any format, including but not limited to cash, bank notes, electronic currency, customer account balances, and stock or bond certificates.

In respect of **INSURING CLAUSE 2, SECTIONS F and G**:

#### 7. Business interruption liability

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

### EXCLUSIONS RELATING TO GENERAL LIABILITY

In respect of **INSURING CLAUSE 3** only:

#### 8. Cyber events

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

#### 9. Faulty workmanship

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

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

#### 10. Financial loss

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

#### 11. Land or water

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

#### 12. Marine and aviation

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

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



13. **Property in your care, custody or control**

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

In respect of **INSURING CLAUSE 3, SECTION C**:

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

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

**EXCLUSIONS RELATING TO ALL INSURING CLAUSES**

15. **Advertising injury**

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

However, this Exclusion will not apply to **INSURING CLAUSE 3 (SECTION C only)**.

16. **Antitrust**

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

- a. where specifically covered under **INSURING CLAUSE 2** for which **you** have purchased cover; or
- b. any covered portion of any **claim** based on **your** alleged unauthorised use of a **third party's** trademark.

17. **Asbestos**

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

18. **Associated companies**

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

#### 19. **Bodily injury**

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

However, this Exclusion will not apply to:

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

#### 20. **Breach of contract**

arising directly out of any breach of contract.

However, this Exclusion will not apply to:

- a. **INSURING CLAUSES 1 (SECTIONS C and E only) and 2 (SECTION A only)**; or
- b. **INSURING CLAUSE 3 (SECTION C only)** if liability would have attached in the absence of that contract.

#### 21. **Chargebacks**

for any credit card company or bank, wholly or partially, reversing or preventing a payment transaction.

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

#### 22. **Collection of private data without consent**

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

#### 23. **Criminal acts**

arising out of any wilful, criminal or fraudulent act or omission committed by **you** in collusion with any other person as proven by final adjudication, arbitral tribunal or written admitted by **you**.

#### 24. **Directors and officers liability**

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

25. **Employee benefit program advice**

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

26. **Employers' liability**

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

27. **Employment disputes**

arising directly or indirectly out of any:

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

28. **ERISA**

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

29. **Extended warranty**

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

30. **Failure to register**

if **you** were not registered or licenced by the appropriate **official authority** to provide **healthcare services** at the time the incident which gave rise to the claim took place.

31. **Insolvency**

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

32. **Intellectual property rights and defamation**

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

However, this Exclusion will not apply to **INSURING CLAUSES 1 (SECTION E only) or 3 (SECTION C only)**.

**33. Known claims and circumstances**

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

**34. Legal action**

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

**35. Liquidated damages, service credits and penalty clauses**

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

**36. Loss of economic value**

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

**37. Misleading advertising**

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

However, this Exclusion will not apply to **INSURING CLAUSES 2 (SECTION A only) and 3 (SECTION C only)**.

**38. Nuclear**

arising directly or indirectly from or contributed to by:

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

**39. Other insurance**

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

- a. any additional sum which is payable over and above the other insurance where that insurance has been declared to **us**; or

- b. any contribution that **we** are obliged to make by law and that contribution will be in proportion to the indemnity available under the policies.

#### 40. Patent infringement

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

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

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

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

#### 42. Personal injury

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

However, this Exclusion will not apply to **INSURING CLAUSE 3 (SECTION C)** only).

#### 43. Pollution

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

However, this Exclusion will not apply to: **INSURING CLAUSE 1** for the provision of **healthcare services** or **technology activities** by **you** to a patient who has suffered **bodily injury** as a result of **pollution**.

#### 44. Product recall

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

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

#### 45. Products liability

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

However, this Exclusion will not apply to **INSURING CLAUSE 3 (SECTION B)** only).

#### 46. Property damage

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

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

arising directly or indirectly out of any actual or alleged misappropriation, unauthorised use or disclosure by any **employee** of any idea, trade secret or other confidential business information which they were a party to or which they otherwise had possession of prior to being employed by the entity named as the **insured** in the Declarations page.

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

#### 48. Retroactive date

in respect of **INSURING CLAUSE 1**, arising out of any act, error or omission committed or alleged to have been committed on or before the **retroactive date**, or any related or continuing acts, errors or omissions where the act, error or omission was first committed or alleged to have been first committed on or before the **retroactive date**.

#### 49. RICO

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

#### 50. Sanctions

or will be deemed to provide any cover, to the extent that the provision of such payment or cover will expose **us** to any sanction, prohibition or restriction under the United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, Canada, the European Union, United Kingdom or United States of America.

#### 51. Securities violations

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

#### 52. Seizure of illegal property

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

#### 53. Sexual misconduct

arising directly or indirectly out of:

- a. any unwelcome conduct, physical acts, gestures or spoken or written words of a sexual nature, including, but not limited to, sexual intimacy (even if consensual), sexual molestation, sexual assault, sexual battery, sexual abuse, sexual harassment, sexual exploitation or any sexual act;

- b. the negligent employment, supervision, hiring, training or retention of a person for whom **you** are or were at any time responsible and who commits sexual misconduct as defined by a) above;
- c. **your** negligent reporting, or **your** failure to report, to the proper authorities the conduct of a person for whom **you** are or were at any time responsible and who commits sexual misconduct as defined by a) above; or
- d. any sexual discrimination;

as proven by final adjudication, arbitral tribunal or written admission by **you**.

#### 54. Terrorism

arising directly or indirectly out of:

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

However, this Exclusion does not apply to a **cyber event** affecting **your computer systems**.

#### 55. Toxic mould

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

#### 56. Uninsurable fines

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

#### 57. Unjust enrichment

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

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

#### 58. Unlawful surveillance

in respect of any actual or alleged eavesdropping, wiretapping, or unauthorised audio or video recording committed by **you** or by a **third party** on **your** behalf with the knowledge and consent of **your senior executive officers**.

#### 59. Unsolicited communications

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

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

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

#### 60. War

arising directly or indirectly out of:

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

#### 61. Website content accessibility

arising directly or indirectly out of the actual or alleged violation of any laws, regulations or guidelines relating to the accessibility of **your** website content.

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

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

## CONDITIONS

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

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

- a. notify the **claims managers** as soon as is reasonably practicable (in respect of cyber incidents, a telephone call to **our cyber incident response hotline** will constitute notification). However, in respect of **INSURING CLAUSE 1**, this notification must be made no later than the end of any applicable extended reporting period;
- b. in respect of **INSURING CLAUSE 2 (SECTION E)** only, report the theft or incident as soon as is reasonably practicable to the appropriate law enforcement authorities and provide **us** with a copy of this report on **our** request; and



- c. not admit liability for or settle or make or promise any payment or incur any **costs and expenses** without **our** prior written agreement (which will not be unreasonably withheld).

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

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

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

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

## 2. Additional insureds

**We** will indemnify any **third party** as an additional insured under this Policy, but only in respect of sums which they become legally obliged to pay (including liability for claimants' costs and expenses) as a result of a **claim** arising solely out of an act committed by **you**, provided that:

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

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

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

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

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

### 3. Agreement to pay claims

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

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

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

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

### 4. Allocation

In the event a claim includes both allegations, persons or matters that are covered under this Policy and allegations, persons or matters that are not covered under this Policy, then **you** and **we** will need to agree a fair and reasonable allocation of this claim, including any **costs and expenses**, judgment or settlement amount.

If **you** and **we** cannot agree a fair and reasonable allocation an **independent expert** will be appointed to determine the allocation. The cost of the **independent expert** will be paid for by **us**. Their determination will be based upon written submissions only and will be final and binding. The **independent expert** will be mutually agreed between **you** and **us** but if **you** and **we** cannot agree on the **independent expert** then the matter will be referred to mediation or arbitration in accordance with **CONDITION 9**.

### 5. Calculation of business interruption losses

In respect of **INSURING CLAUSE 2 (SECTION G only)**, in the event of a claim for any financial loss sustained by **you**, **you** must provide the **claims managers** with **your** calculation of the financial loss including.

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

If **we** are unable to agree with **your** calculation of the financial loss, **we** will appoint an independent expert agreed between **you** and **us** which will be paid for by **us**. If an independent expert cannot be agreed upon, one will be appointed by an arbitrator mutually agreed between **you** and **us** whose decision will be final and binding.

Once an independent expert has been appointed, their calculation of any financial loss sustained by **you** will be final and binding.

## 6. Cancellation

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

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

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

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

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

## 7. Continuous cover

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

- a. the indemnity will be subject to the applicable limit of liability of the previous renewal of this Policy under which the incident should have been reported to **us** or the applicable **limit of liability**, whichever is the lower;
- b. **we** may reduce the indemnity entitlement by the monetary equivalent of any prejudice which has been suffered as a result of the delayed notification; and
- c. the indemnity will be subject to all other terms and conditions of this Policy.

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

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

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

#### 8. Cross liability and severability

In respect of **INSURING CLAUSE 3** only, where there is more than one entity insured under this Policy, and subject to the **limit of liability**, any **claim** made by one insured entity against another insured entity will be treated as if they are a **third party** and knowledge possessed by one insured entity will not be imputed to any other insured entity.

#### 9. Dispute resolution

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

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

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

Nothing in this Condition is intended to remove **your** rights under **CONDITION 19**. However, if a determination is made in any mediation or arbitration proceeding, **CONDITION 19** is intended only as an aid to enforce this determination.

#### 10. Extended reporting period

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

- a. in respect of **INSURING CLAUSE 1**, any **claim** first made against **you** during the **period of the policy** and reported to **us** during this extended reporting period;

- b. **INSURING CLAUSE 2**, any **cyber event** first discovered by **you** during the **period of the policy** and reported to **us** during this extended reporting period; and
- c. any circumstance that a **senior executive officer** became aware of during the **period of the policy** and reports to **us** during this extended reporting period.

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

## 11. Optional extended reporting period

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

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

- a. in respect of **INSURING CLAUSE 1**, any **claim** first made against **you** and reported to **us** during this optional extended reporting period, provided that the **claim** arises out of any act, error or omission committed prior to the date of cancellation or non-renewal; and
- b. in respect of **INSURING CLAUSE 2**, any **cyber event** first discovered by **you** during this optional extended reporting period, provided that the **cyber event** first occurred during the **period of the policy**.

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

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

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

## 12. Fraudulent claims

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

### 13. Mergers and acquisitions

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

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

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

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

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

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

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

- a. whose business activities are materially different from **your business activities**;
- b. that has been the subject of any lawsuit, disciplinary action or regulatory investigation in the 3 year period prior to its acquisition; or
- c. that has experienced a **cyber event** in the 3 year period prior to its acquisition, if the **cyber event** cost more than the highest **deductible** of this Policy.

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

### 14. Our rights of recovery

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

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

Any recoveries will be applied as follows:

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

#### 15. Prior subsidiaries

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

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

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

**We** will not be liable for any portion of the costs **you** incur under **INSURING CLAUSE 2 (SECTION D only)** that exceed the costs that **you** would have incurred had **you** gained **our** prior written consent. In the absence of **our** prior written consent **we** will only be liable to pay **you** the equivalent cost of a notification made using the most cost effective means permissible under the governing law.

#### 17. Waiver of subrogation

Notwithstanding **CONDITION 14**, **we** agree to waive **our** rights of recovery against any **third party** if, prior to the claim or incident which **you** reasonably expected to give rise to a claim, **you** entered into a contract that contains a provision requiring **you** to do this.

#### 18. Your duty of disclosure

It is **your** duty to provide **us** with all information which may be material to the cover provided to **you** under this Policy. Failing this, **you** must provide sufficient information to put **us** on notice that **we** should make further enquiries in order to reveal material matters. A matter is material if it would influence a prudent insurer as to whether to accept the risk, the terms of cover provided or the amount of the premium charged.

In the event of any non-disclosure or misrepresentation by **you** of the information **you** provided prior to commencement of this Policy, including representations made in any application document or other material submitted during the underwriting process, the following remedies will be available to **us** based upon what **we** would have done had the information been disclosed or not misrepresented:

- a. if **we** would have issued this Policy on different terms, **we** have the right to amend the terms and conditions of this Policy effective from the **inception date**;
- b. if **we** would have issued this Policy on the same terms but charged a higher premium, **we** have the right to reduce proportionately the amount to be paid on any claim under this Policy and if applicable, the amount already paid on prior claims under this Policy. The amount will be reduced by applying a percentage that has been calculated using the following formula:  $(\text{premium actually charged} / \text{higher premium}) \times 100$ ; or
- c. if **we** would not have issued this Policy, treat this Policy as if it had not existed and return any paid premium.

#### 19. Choice of law and jurisdiction

This policy will be interpreted under, governed by and construed in all respects in accordance with the law of the jurisdiction of the place of registration of the company stated as the insured in the Schedule and **we** and **you** agree to submit to the exclusive jurisdiction of the courts within the territorial limits and jurisdiction of the place of registration of the company stated as the insured in the Schedule.