

# CyberEdge<sup>®</sup> Network Security and Privacy Insurance



AIG Australia Limited

## Policy Wording



## IMPORTANT NOTICES

This Policy is issued / insured by AIG Australia Limited (AIG), ABN 93 004 727 753 AFSL No 381686

<b>Sydney:</b>	2 Park Street, NSW 2000 (1300 030 886)
<b>Melbourne:</b>	Level 12, 717 Bourke Street, VIC 3008 (1300 030 886)
<b>Brisbane:</b>	10 Eagle Street, QLD 4000 (1300 030 886)
<b>Perth:</b>	77 St. George's Terrace, WA 6000 (1300 030 886)

## 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.

Subject to the Cancellation General Provision, 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.

## CLAIMS MADE AND NOTIFIED

Section 1 C (Third Party Liability) of this policy and some **Additional Coverage Sections** contain *claims-made and notified* Insuring Clauses. This means that those Insuring Clauses will only cover **Claims** first made against you during the **Policy Period** and notified to the **Insurer** as soon as practicable in the **Policy Period** or any applicable extended reporting period. This Policy may not provide cover for any **Claims** made against you if at any time prior to the commencement of this Policy you became aware of facts which might give rise to those claims being made against you.

Section 40(3) of the *Insurance Contracts Act 1984* provides that where you gave notice in writing to an insurer of facts that might give rise to a claim against you as soon as was reasonably practicable after you became aware of those facts but before insurance cover provided by an insurance contract expires, the insurer is not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the period of insurance cover provided by the contract.

This Policy excludes prior **Insured Events, Claims** and circumstances as outlined in the Exclusion 3.9 (Prior Claims and circumstances).

## CODE OF PRACTICE

The **Insurer** is a signatory to the General Insurance Code of Practice. This aims to raise the standards of practice and service in the insurance industry, improve the way that claims and complaints are handled and help people better understand how general insurance works. Information brochures on the Code are available upon request.

## PRIVACY NOTICE

This notice sets out how AIG collects, uses and discloses personal information about:

- you, if an individual; and
- other individuals you provide information about.

Further information about our Privacy Policy is available at [www.aig.com.au](http://www.aig.com.au) or by contacting us at [australia.privacy.manager@aig.com](mailto:australia.privacy.manager@aig.com) or on 1300 030 886.

## HOW WE COLLECT YOUR PERSONAL INFORMATION

AIG usually collects personal information from you or your agents.

AIG may also collect personal information from:

- our agents and service providers;
- other insurers;
- people who are involved in a claim or assist us in investigating or processing claims, including third parties claiming under your policy, witnesses and medical practitioners;
- third parties who may be arranging insurance cover for a group that you are a part of;
- providers of marketing lists and industry databases; and
- publically available sources.

## WHY WE COLLECT YOUR PERSONAL INFORMATION

AIG collects information necessary to:

- underwrite and administer your insurance cover;
- improve customer service and products and carry out research and analysis, including data analytics; and
- advise you of our and other products and services that may interest you.

You have a legal obligation under the Insurance Contracts Act 1984 to disclose certain information. Failure to disclose information required may result in AIG declining cover, cancelling your insurance cover or reducing the level of cover, or declining claims.

## TO WHOM WE DISCLOSE YOUR PERSONAL INFORMATION

In the course of underwriting and administering your policy we may disclose your information to:

- your or our agents, entities to which AIG is related, reinsurers, contractors or third party providers providing services related to the administration of your policy;
- banks and financial institutions for policy payments;
- your or our agents, assessors, third party administrators, emergency providers, retailers, medical providers, travel carriers, in the event of a claim;
- entities to which AIG is related and third party providers for data analytics functions;
- other entities to enable them to offer their products or services to you; and
- government, law enforcement, dispute resolution, statutory or regulatory bodies, or as required by law.

AIG is likely to disclose information to some of these entities located overseas, including in the following countries: United States of America, Canada, Bermuda, United Kingdom, Ireland, Belgium, The Netherlands, Germany, France, Singapore, Malaysia, the Philippines, India, Hong Kong, New Zealand as well as any country in which you have a claim and such other countries as may be notified in our Privacy Policy from time to time.

You may request not to receive direct marketing communications from AIG.

## ACCESS TO YOUR PERSONAL INFORMATION

Our Privacy Policy contains information about how you may access and seek correction of personal information we hold about you. In summary, you may gain access to your personal information by submitting a written request to AIG. In some circumstances permitted under the Privacy Act 1988, AIG may not permit access to your personal information. Circumstances where access may be denied include where it would have an unreasonable impact on the privacy of other individuals, or where it would be unlawful.

## COMPLAINTS

Our Privacy Policy also contains information about how you may complain about a breach of the applicable privacy principles and how we will deal with such a complaint.

## CONSENT

If applicable, your application includes a consent that you and any other individuals you provide information about consent to the collection, use and disclosure of personal information as set out in this notice.

## COPYRIGHT

The content of this policy, including but not limited to the text and images herein, and their arrangement, is the copyright property of AIG. All rights reserved. AIG hereby authorises you to copy and display the content herein, but only in connection with AIG business. Any copy you make must include this copyright notice. Limited quotations from the content are permitted if properly attributed to AIG; however, except as set forth above, you may not copy or display for redistribution to third parties any portion of the content of this policy without the prior written permission of AIG. No modifications of the content may be made. Nothing contained herein shall be construed as conferring by implication or otherwise any license or right under any patent, trademark, copyright (except as expressly provided above), or other proprietary rights of AIG or of any third party.

## CODE OF PRACTICE

The **Insurer** is a signatory to the General Insurance Code of Practice. This aims to raise the standards of practice and service in the insurance industry, improve the way that claims and complaints are handled and help people better understand how general insurance works. Information brochures on the Code are available upon request.

## DISPUTE RESOLUTION PROCESS

We are committed to handling any complaints about our products or services efficiently and fairly. If you have a complaint:

- (i) contact your insurance intermediary and they may raise it with us;
- (ii) if your complaint is not satisfactorily resolved you may request that your matter be reviewed by management by writing to:

The Compliance Manager  
AIG  
Level 12, 717 Bourke Street  
Docklands Vic 3008

- (iii) if you are still unhappy, you may request that the matter be reviewed by the **Insurer's** Internal Dispute Resolution Committee. We will respond to you with the Committee's findings within 15 business days.
- (iv) if you are not satisfied with the finding of the Committee, you may be able to take your matter to the insurance industry's independent dispute resolution body. This external dispute resolution body can make decisions with which we are obliged to comply.

This document contains your Insurance Policy terms, Provisos, Exclusions and Conditions. It is important that you read it, understand it and retain it in a safe place.

**SCHEDULE**

<b>Item 1.</b>	<b>Policy Number</b>		
<b>Item 2.</b>	<b>Policyholder</b>		
	<b>Address</b>		
<b>Item 3.</b>	<b>Policy Period</b>	Inception Date:	
		Expiry Date:	
		Both days inclusive at address in Item 2. above.	
<b>Item 4.</b>	<b>Limit of Liability</b> Annual Aggregate Limit of Liability per Policy Period for all <b>Losses</b> of all <b>Insured</b> under all Insurance Covers (Sections A, B, C, and any <b>Additional Coverage Sections</b> ) combined: \$		
<b>Item 5.</b>	<b>Sublimits</b> Payable as part of the Limit of Liability		
	<b>Section A</b> Response Management Costs	Section A.1	100% of the limit in the annual aggregate
		Sections A.2 to A.6	100% of the limit in the annual aggregate
	<b>Section B</b> Data Protection Regulatory Obligations	Sections B.1 and B.2	100% of the limit in the annual aggregate
		Section B.3	
<b>Section C</b> Third Party Liability	Sections C.1 to C.5	100% of the limit in the annual aggregate	
<b>Item 6.</b>	<b>Retention</b>		
	<b>General Policy Retention (Each and Every Loss)</b>		\$
	<b>Section A</b> Response Management Costs		General Policy Retention However, no Retention applies to <b>Legal Services</b> performed within the first 72 hours of notification in accordance with Insuring Clause Section A.1
		Sections A.2 to A.6	General Policy Retention
	<b>Section B</b> Data Protection Regulatory Obligations	Sections B.1 and B.3	General Policy Retention
<b>Section C</b> Third Party Liability	Sections C.1 to C.5	General Policy Retention	

<b>Item 7.</b>	<b>Additional Coverage Sections</b> Only the Insurance Covers below ticked as "Included" are afforded by this policy. "Not Included" means not purchased.		
	<b>Cyber/Privacy Extortion</b>	<input type="checkbox"/> Included <input type="checkbox"/> Not Included	
		Sublimit	100% of the limit in the annual aggregate
		Retention	General Policy Retention However, no Retention applies to <b>Legal Services</b> performed within the first 72 hours of notification in accordance with Insurance Cover 1.2
	<b>Network Interruption</b>	<input type="checkbox"/> Included <input type="checkbox"/> Not Included	
		Sublimit	50% of the limit in the annual aggregate
		Waiting Hours Period	12 hours
	<b>Outsource Service Provider</b>	<input type="checkbox"/> Included <input type="checkbox"/> Not Included	
		Sublimit	\$
		Waiting Hours Period	12 Hours
		Retention	General Policy Retention However, no Retention applies to <b>Legal Services</b> performed within the first 72 hours of notification in accordance with Insurance Cover 1.1
	<b>Item 8.</b>	<b>Annual Premium</b> (including statutory taxes and charges) \$	
<b>Item 9.</b>	<b>Continuity date</b>		
<b>Item 10.</b>	<b>Extended Reporting Period</b>	90 days	0%
		1 year	100%
		2 years	175%
		3 years	200%
		of the full annual premium in effect at the expiration of the policy period.	
<b>Item 11.</b>	<b>Geographical Scope</b>	Worldwide, excluding USA and Canada	
<b>Item 12.</b>	<b>Endorsements</b>	1.	
		2.	
<b>Item 13.</b>	<b>Insurer</b>	AIG Australia Limited (ABN 92 004 727 753, AFSL 381686) Level 19, 2 Park Street Sydney NSW 2000  Claims Notification email address: <a href="mailto:finclaims@aig.com">finclaims@aig.com</a>	

<b>AIG Australia Limited</b>	
Signed for and on behalf of the Insurer	
Name	
Title	
Financial Lines	

## Response Advisors

AIG has developed a panel of experts to assist in the event of a breach. Response Advisors are lawyers who specialise in cyber breaches and are able to assist the Insured throughout the breach event. They will work with the Insured through an incident response to investigate, provide advice and contain a breach. The Response Advisor will also coordinate and engage specialist third party service providers including IT Specialists and public relations firms as necessary. They may also advise on regulatory notification obligations and provide ongoing legal advice and management of a cyber breach, including third party claims and potential recovery.

**In the event of a notifiable Breach, please contact the AIG CyberEdge Hotline for 24/7 emergency assistance from either one of the Response Advisor firms listed below:**

<b>Clyde &amp; Co</b>	<b>Norton Rose Fulbright</b>
<b>AIG Cyber Edge Hotline: 1800 290 982</b>	<b>AIG CyberEdge Hotline: 1800 316 349</b>
The relevant Clyde & Co contacts are: Dean Carrigan – Partner, Sydney Nitesh Patel – Senior Associate, Sydney Matthew Pokarier – Partner, Brisbane	The relevant NRF contacts are: Jacques Jacobs – Partner, Sydney Matthew Ellis – Partner, Melbourne

### Notification to AIG

Please Note: all claims should also be notified in writing to AIG at this address: [finclaims@aig.com](mailto:finclaims@aig.com)

## IT Specialists

Your Response Advisor will assist with the appointment of IT cybersecurity specialists to pro-actively investigate, contain and advise on resolving a cyber breach. AIG approved IT Specialists include:

<b>KPMG Forensic Pty Ltd</b>	<b>IBM X Force Incident Response</b>
Stan Gallo – Partner	Pelin Nancarrow – Asia Pacific Lead

## Public Relations

As required, your Response Advisor will also assist with the appointment of specialist public relations consultants who work closely with the Insured and IT Specialists to develop a comprehensive communications strategy designed to deliver consistent messaging to key stakeholders and to protect the reputation of your business. AIG approved public relations consultants include:

<b>Fleishman Hillard</b>	<b>Porter Novelli</b>
Jenna Orme – General Manager	Rhys Ryan – Managing Partner

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In consideration of the payment of the premium the **Insurer** and the **Policyholder** agree as follows:

## 1 INSURANCE COVERS

All coverages under this Section 1 (Insurance Covers) of the **Policy** are written specifically on a primary basis and are provided solely for **Claims** first made against an **Insured** and other **Insured Events** first discovered during the **Policy Period** and reported to the **Insurer** as required by this **Policy**.

### A. Response Management Costs

#### A.1 Legal Services

The **Insurer** will pay to or on behalf of the **Company** the reasonable and necessary fees and expenses (not to exceed the sublimit stated at Item 5 of the Schedule) of the **Response Advisor** in providing the **Legal Services** in connection with an actual or suspected **Breach of Personal Information, Breach of Corporate Information** or **Security Failure**. Such **Legal Services** shall include:

- (i) taking instruction regarding the factual background of the **Breach of Personal Information, Breach of Corporate Information** or **Security Failure** and coordinating the **IT Specialist** or **Public Relations Consultants**;
- (ii) advising on the requirement to notify, notifying and corresponding with any relevant **Regulator**;
- (iii) advising on **Data Subject** notifications;
- (iv) monitoring complaints raised by **Data Subjects** and advising the **Insured** on responding to questions raised by **Data Subjects**;
- (v) advising the **Company** on the **Company's** response to the **Breach of Personal Information, Breach of Corporate Information** or **Security Failure**.

The **Retention** specified in Item 6 of the Schedule shall only apply to **Legal Services** performed after the first 72 hours from when the **Responsible Officer** of the **Policyholder** first notifies the **Response Advisor** of the **Breach of Personal Information, Breach of Corporate Information** or **Security Failure**.

Such fees and expenses will only be paid by the **Insurer** to the extent they are incurred within one year after the date of notification to the **Insurer** in accordance with Section 4.1 (Notice and Reporting).

#### A.2 IT Services

**Insurer** will pay to or on behalf of the **Company** the reasonable and necessary fees and expenses (not to exceed the sublimit stated at Item 5 of the Schedule) of the **IT Specialist** in connection with an actual or suspected **Breach of Personal Information, Breach of Corporate Information** or **Security Failure** for the purpose of:

- (i) investigating and substantiating whether a **Breach of Personal Information, Breach of Corporate Information**, or **Security Failure**, has occurred, how it occurred and whether it is still occurring;
- (ii) establishing the extent of the **Personal Information** or **Corporate Information** that may have been compromised;
- (iii) containing a **Security Failure**, including containing a denial of service attack;
- (iv) resolving a denial of service attack and removing any malicious software, computer code or virus from the **Company's Computer System** and/or identifying any compromised **Data**; and
- (v) examining the **Company's Computer System** to determine the remediation actions that are required in order to comply with an **Enforcement Notice**.

Such fees and expenses will only be paid by the **Insurer** to the extent they are incurred within one year after the date of notification to the **Insurer** in accordance with Section 4.1 (Notice and Reporting).

### A.3 Public Relations Services

The **Insurer** will pay to or on behalf of the **Company** or any **Insured Person** all reasonable and necessary fees and expenses (not to exceed the sublimit stated at Item 5 of the Schedule) for advice and support from a **Public Relations Consultant** in order to mitigate or prevent the potential adverse effect, or reputational damage, of a **Newsworthy Event** including the design and management of a communications strategy.

Such fees and expenses will only be paid by the **Insurer** to the extent they are incurred within one year after the date of notification to the **Insurer** in accordance with Section 4.1 (Notice and Reporting).

### A.4 Data Restoration Costs

The **Insurer** will pay to or on behalf of the **Company** all reasonable and necessary costs and expenses incurred by the **Insured**, with the **Insurer's** prior written consent, (not to exceed the sublimit stated at Item 5 of the Schedule) resulting from a **Security Failure** in order to:

- (i) determine whether **Data** held by the **Company**, including **Data** held on behalf of a **Third Party**, can or cannot be restored, recollected or recreated;
- (ii) restore, recollect or recreate **Data** held by the **Company**, including **Data** held on behalf of a **Third Party**;
- (iii) reload and re-customise licensed software operated by the **Company** at the time of the **Security Failure**, where the licensed software is not machine readable anymore,

where such **Data** or licensed software are not machine readable or are corrupted.

Such fees and expenses will only be paid by the **Insurer** to the extent they are incurred within one year after the date of notification to the **Insurer** in accordance with Section 4.1 (Notice and Reporting).

### A.5 Data Breach Notification Costs

The **Insurer** will pay to or on behalf of the **Company** all reasonable and necessary fees, costs and expenses incurred by the **Insured**, including costs associated with setting up call centres (not to exceed the sublimit stated at Item 5 of the Schedule) in relation to the investigation, collation of information, preparation for and notification to **Data Subjects** and/or any relevant **Regulator** of any actual or suspected **Breach of Personal Information** or **Breach of Corporate Information**.

Such fees, costs and expenses will only be paid by the **Insurer** to the extent they are incurred within one year after the date of notification to the **Insurer** in accordance with Section 4.1 (Notice and Reporting).

### A.6 Credit and ID Theft Monitoring Costs

Following notification to **Data Subjects** under Insurance Cover Section 1 A.5 (Data Breach Notification Costs), the **Insurer** will pay to or on behalf of the **Company**:

- (i) all reasonable and necessary fees, costs and expenses incurred by the **Insured**, with the **Insurer's** prior written consent (not to exceed the sublimit stated at Item 5 of the Schedule) for credit or identity theft monitoring services to identify possible misuse of any **Personal Information** as a result of an actual or suspected **Breach of Personal Information**; and/or
- (ii) the reasonable and necessary premium for any **ID Theft Insurance** (not to exceed the sublimit stated at Item 5 of the Schedule).

Such fees, costs and expenses (including premium) will only be paid by the **Insurer** for **Data Subjects** that request and/or activate the credit or identity theft monitoring services and/or the **ID Theft Insurance** within 185 days following receipt of notification in accordance with Insurance Cover Section 1 A.5 (Data Breach Notification Costs) and this Insurance Cover A.6 (Credit and ID Theft Monitoring Costs) will only be provided with respect to each such **Data Subject** for a period of up to two years from the date of activation.

## B. Data Protection Regulatory Obligations

### B.1 Data Protection Investigation Costs

The **Insurer** will pay to or on behalf of any **Insured** all **Defence Costs** (not to exceed the sublimit stated at Item 5 of the Schedule) in respect of a **Regulatory Investigation**.

### B.2 Data Protection Fines

The **Insurer** will pay to or on behalf of any **Company** all **Data Protection Fines** (not to exceed the sublimit stated at Item 5 of the Schedule) that the **Company** is legally liable to pay in respect of a **Regulatory Investigation**.

### B.3 PCI – DSS Fines & Penalties

The **Insurer** will pay to the **Company** any **PCI-DSS Fines & Penalties**, not to exceed the sublimit stated at item 5 of the Schedule.

## C. Third Party Liability

### C.1 Breach of Personal and Corporate Information

The **Insurer** will pay to or on behalf of any **Insured** all **Damages** and **Defence Costs** arising from any **Claim** against the **Insured** in respect of an actual or alleged **Breach of Personal Information** or **Breach of Corporate Information** by an **Insured**.

### C.2 Security Failure

The **Insurer** will pay to or on behalf of any **Insured** all **Damages** and **Defence Costs** arising from a **Claim** by a **Third Party** against the **Insured** in respect of an actual or alleged **Security Failure**.

### C.3 Failure to Notify

The **Insurer** will pay to or on behalf of any **Insured** all **Damages** and **Defence Costs** arising from any **Claim** against the **Insured** in respect of a failure by the **Company** to notify a **Data Subject** and/or any **Regulator** of a **Breach of Personal Information** and/or **Breach of Corporate Information** in accordance with the requirements of **Data Protection Legislation** subject always to Exclusion 3.6 (**Enforcement Notice**) with respect to any failure to respond to or comply with a direction by a **Regulator** for the **Company** to give notification of a **Breach of Personal Information**.

### C.4 Breach by Information Holder

The **Insurer** will pay to or on behalf of any **Company** all **Damages** and **Defence Costs** arising from a **Claim** by a **Third Party** against the **Company** for which the **Company** is alleged to be liable and which results from any actual or alleged breach of duty by the **Information Holder** in respect of the handling on behalf of the **Company** of **Personal Information** and/or **Corporate Information** (for which the **Company** is responsible).

### C.5 Digital Media Liability

The **Insurer** will pay to or on behalf of any **Company** all **Damages** and **Defence Costs** (not to exceed the sublimit stated at Item 5 of the Schedule) arising from any **Claim** by a **Third Party** against the **Company** in respect of any of the following actual or alleged wrongful acts, but only to the extent that such acts relate to the **Insured's** performance of or failure to perform **Digital Media Activities**:

- (i) defamation, including libel, slander, or disparagement of trade reputation or the character of any person or organisation, or infliction of emotional distress or mental anguish arising from the foregoing;
- (ii) unintentional infringement of copyright, title, slogan, trademark, trade name, trade dress, mark, service mark, service name, domain name or license agreement;
- (iii) plagiarism, piracy or misappropriation or theft of ideas or information;

- (iv) invasion, infringement or interference with rights of privacy, publicity, morals, false light, public disclosure of private facts, intrusion and commercial appropriation of name, persona or likeness; or
- (v) passing-off but only if alleged in conjunction with any of the acts listed in (i) – (iv) above.

This **coverage section** shall not cover **Damages** and **Defence Costs** arising out of, based upon or attributable to:

- (i) errors made in any financial data that the **Company** publicises including the **Company's** annual report and accounts and any communications to the stock market;
- (ii) any publication or broadcast of **Digital Media** posted or transmitted on any of the **Company's** internal instant message system, messaging boards, or chat rooms;
- (iii) any infringement of trademarks (other than unintentional infringements as covered under 1 above) by any goods, products or services displayed or contained in any **Digital Media**;
- (iv) any **Claim** against the **Company** brought by or on behalf of any independent contractor, third-party distributor, licensee, sub-licensee, joint venture, venture partner, any employee of the foregoing, or any employee or agent of the **Company** arising out of, based upon or attributable to disputes over the ownership or exercise of rights in **Digital Media**; or
- (v) any infringement of copyright related to software, source code or software license.

This **coverage section** shall always apply excess over any other valid and collectible general liability insurance policy available to the **Insured** as specified in the Schedule.

## 2 DEFINITIONS

<b>2.1 Acquiring Bank</b>	any financial institution which processes a merchant's <b>Credit Card</b> transactions and credits those transactions to a merchant's account.
<b>2.2 Additional Coverage Section</b>	any additional coverage module that is purchased by the <b>Policyholder</b> as specified at Item 7 of the Schedule and which forms part of this <b>Policy</b> .
<b>2.3 Breach of Corporate Information</b>	the loss or unauthorised access to, modification or disclosure of <b>Corporate Information</b> for which the <b>Company</b> is responsible.
<b>2.4 Breach of Personal Information</b>	the loss or unauthorised access to, modification or disclosure of <b>Personal Information</b> for which the <b>Company</b> is responsible under any applicable <b>Data Protection Legislation</b> .
<b>2.5 Card Association</b>	MasterCard, VISA Inc, Discover Financial Services, American Express, JCB International, Eftpos Payments Australia Ltd or any other card association or card network that issues or authorizes the issuance of a debit or credit card.
<b>2.6 Claim</b>	the receipt by or service upon the <b>Insured</b> of: <ul style="list-style-type: none"> <li>(i) a written demand seeking a legal remedy; or</li> <li>(ii) civil, administrative or regulatory proceedings, including proceedings brought by, or a complaint made to, a <b>Regulator</b>, seeking a legal remedy, compliance, enforcement of a determination or other sanction.</li> </ul>
<b>2.7 Company</b>	the <b>Policyholder</b> and any <b>Subsidiary</b> .
<b>2.8 Company's Computer System</b>	any computer hardware, software or any components thereof that are linked together through a network of two or more devices accessible through the Internet or internal network or that are connected through data storage or other peripheral devices which are owned, operated, controlled or leased by the <b>Company</b> . For the purposes of all Sections other than the "Network Interruption" Additional Coverage Section (if purchased), <b>Company's Computer System</b> also includes:

- (i) any **Third Party** computer or electronic device (including mobile phones, tablets or computers owned or controlled by an employee of a **Company**) used to access a **Company's Computer System** or **Data** contained therein, but only to the extent such computer or device is used for that purpose;
- (ii) any employee "Bring Your Own Device" used to access a **Company's Computer System** or **Data** contained therein, but only to the extent such device is used for that purpose; and
- (iii) any cloud service or other hosted computer resources, used by the **Company** and operated by a **Third Party** service provider under a written contract between such a **Third Party** service provider and the **Company**.

## 2.9 Continuity Date

the date specified in Item 9 of the Schedule.

## 2.10 Corporate Information

- (i) any trade secrets;
- (ii) any confidential **Data**, designs, forecasts, formulas, practices, processes, records, reports;
- (iii) any documents or information subject to legal privilege; and
- (iv) any other item of information that is not available to the general public.

## 2.11 Credit Card

credit cards, debit cards, stored value cards and pre-funded cards.

## 2.12 Cyber Terrorism

the premeditated use of disruptive activities against any **Company's Computer System**, **OSP's Computer System** or network, or the explicit threat to use such activities, with the intention to cause harm and further social, ideological, religious, economic, political or similar objectives, or to intimidate any person(s) in furtherance of such objectives. Under no circumstances shall **Cyber Terrorism** include any such activities which are part of or in support any form of war, invasion, act of foreign enemy, hostilities or warlike activities (whether declared or not), civil war, military rising, rebellion or revolution.

## 2.13 Damages

- (i) judgments, or arbitral awards rendered against the **Insured**;
- (ii) punitive or exemplary damages, where insurable by law; or
- (iii) monies payable by an **Insured** pursuant to any settlement agreement negotiated by the **Company** and which is approved by the **Insurer**; and
- (iv) any monetary amounts that an **Insured** is required by law or has agreed to
- (v) by settlement,

which the **Insured** is legally liable to pay resulting from a **Claim**.

**Damages** shall not mean and this **Policy** shall not cover any:

- (i) non-compensatory damages (except to the extent covered at (ii) above), multiple or liquidated damages;
- (ii) fines or penalties (except to the extent covered at B.2 ("Data Protection Fines") above);
- (iii) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief;
- (iv) costs or other amounts that the **Insured** is responsible for under a merchant services agreement, unless they are liable for such amounts in the absence of such agreement; or
- (v) discounts, service credits, rebates, price reductions, coupons, prizes, awards or other contractual or non-contractual incentives, promotions or inducements offered to the **Insured's** customers or clients.

## 2.14 Data

electronically stored digital or digitised information or media stored on the **Company's Computer System** or, for the purpose of the "Outsource Service Provider" Additional Coverage Section Extension (if purchased), the **OSP's Computer System**.

## 2.15 Data Protection Fines

any lawfully insurable fines and/or penalties which are adjudicated by a **Regulator**, or ordered by a court on the application of a **Regulator**, to be payable by a **Company** for a breach of **Data Protection Legislation**.

**Data Protection Fines** shall not include any other type of civil or criminal fines and penalties.

<b>2.16 Data Protection Legislation</b>	the <i>Privacy Act 1988</i> (Cth) and any subsequent legislation that alters, repeals or replaces such data protection act and any and all other equivalent laws and regulations relating to the regulation and enforcement of data protection and data privacy in any country.
<b>2.17 Data Subject</b>	any natural person whose <b>Personal Information</b> has been collected or processed by or on behalf of the <b>Company</b> .
<b>2.18 Digital Media Activities</b>	the publication or broadcast on the <b>Company's</b> website of any <b>Digital Media</b> content, including social media outlets.
<b>2.19 Digital Media</b>	any digitised content, including text, graphics, audio, and video, that can be transmitted over the internet or computer networks.
<b>2.20 Defence Costs</b>	reasonable and necessary legal fees, costs and expenses which the <b>Insured</b> incurs, with the prior written consent of the <b>Insurer</b> , in relation to the investigation, response, defence, appeal and/or settlement of a <b>Claim</b> or <b>Regulatory Investigation</b> made against the <b>Insured</b> . <b>Defence Costs</b> shall not include the remuneration of any <b>Insured</b> , <b>Outsource Service Provider</b> or <b>Information Holder</b> , cost of their time or any other costs or overheads of the <b>Insured</b> , <b>Outsource Service Provider</b> or <b>Information Holder</b> .
<b>2.21 Emergency Number</b>	The CyberEdge Hotline telephone numbers listed in the CyberEdge Breach Response Panel.
<b>2.22 Enforcement Notice</b>	a notice from, determination by or enforceable undertaking given to a <b>Regulator</b> requiring the <b>Company</b> to: (i) confirm compliance with the applicable <b>Data Protection Legislation</b> ; (ii) take specific measures to comply with the applicable <b>Data Protection Legislation</b> ; or (iii) refrain from processing any specified <b>Personal Information</b> or <b>Data</b> held on behalf of a <b>Third Party</b> , within a specified time period, but in no event later than five (5) years after the date of the notice, determination or enforceable undertaking.
<b>2.23 ID Theft Insurance</b>	an identity theft policy issued by the <b>Insurer</b> or by another carrier with the <b>Insurer's</b> prior written consent, to be offered to <b>Data Subjects</b> whose <b>Personal Information</b> has been compromised.
<b>2.24 Information Commissioner</b>	an Information Commissioner of the Office of the Australian Information Commissioner or position that replaces such a role under laws and regulations relating to the regulation and enforcement of data protection and data privacy in Australia and any equivalent position in any other jurisdiction.
<b>2.25 Information Holder</b>	a third party that: (i) a <b>Company</b> has provided <b>Corporate Information</b> or <b>Personal Information</b> to; or (ii) has received <b>Corporate Information</b> or <b>Personal Information</b> on behalf of a <b>Company</b> , including an <b>Outsource Service Provider</b> .
<b>2.26 Insured</b>	(i) the <b>Company</b> ; (ii) any <b>Insured Person</b> ; (iii) any natural person who is or has been an employee of the <b>Company</b> ; (iv) any independent contractor under the direction and supervision of the <b>Policyholder</b> but only in relation to the services provided by the independent contractor to the <b>Policyholder</b> ; and (v) any estates or legal representatives of any <b>Insured</b> described in (i), (ii) and (iii) of this definition to the extent that a <b>Claim</b> is brought against them in respect of an act, error or omission of such <b>Insured</b> .
<b>2.27 Insured Event</b>	any matter or event triggering coverage under Parts A and B of Section 1 (Insurance Covers) or under any <b>Additional Coverage Sections</b> .

- 2.28 Insured Person** any natural person who is or has been a director, principal, partner or officer (including any Responsible Officer) of the **Company** to the extent such person is or was acting in such capacity.
- 2.29 Insurer** AIG Australia Limited, ABN 93 004 727 753 AFSL No 281686
- 2.30 IT Specialists** One of the IT specialist firms listed in the CyberEdge Breach Response Panel or any other firm appointed by the **Company**, or by the **Response Advisor** on the **Company's** behalf, with the **Insurer's** prior written consent.
- 2.31 Legal Services** legal advice and support provided pursuant to a **Relevant Engagement**.
- 2.32 Limit of Liability** the amount specified in Item 4 of the Schedule.
- 2.33 Loss**
- (i) **Damages, Defence Costs, Data Protection Fines** which the **Insured** is legally liable to pay; and
  - (ii) any other amounts covered under any Insurance Covers or **Additional Coverage Sections**, but only to the extent set out in the relevant section.
- Loss** shall not include the remuneration of any **Insured, Outsource Service Provider or Information Holder**, cost of their time, or any other costs or overheads of the **Insured, Outsource Service Provider or Information Holder**.
- 2.34 Newsworthy Events** the actual or threatened public communication or reporting in any media which arises directly out of an actual or potential or suspected **Breach of Personal Information or Breach of Corporate Information, a Security Failure, or an OSP Security Failure** (if the "Outsource Service Provider" Additional Coverage Section is purchased) or an **Extortion Threat** (if the "Cyber/Privacy Extortion" Additional Coverage Section is purchased) or an **Digital Media Incident** and which is likely to bring the **Company** or any **Insured Person** into disrepute or tarnish its reputation and damage its goodwill amongst the community of people or businesses who are its customers or suppliers or with whom the **Company** habitually deals in the course of its business.
- 2.35 Outsource Service Provider (OSP)** an entity which is not owned, operated or controlled by the **Company** that the **Company** has appointed to provide specified services (including webhosting, payment processing and IT security data collection, data processing, delegation of data processing, storage of data and/or deletion or destruction of data) which would otherwise be provided internally whether based on an express contractual agreement, but only to the extent of the provision of such services.
- 2.36 PCI-Data Security Standards** generally accepted and published Payment Card Industry Standards for data security, including:
- (i) Installation and maintenance of a firewall configuration to protect cardholder **Data**;
  - (ii) No use of vendor-supplied defaults for system passwords and other security parameters;
  - (iii) Protection of stored cardholder **Data**;
  - (iv) Encryption of transmission of cardholder data across open or public networks;
  - (v) Use of and regularly updating anti-virus software;
  - (vi) Developing and maintaining secure systems and applications;
  - (vii) Restriction of access to cardholder **Data** by a business need-to-know standard;
  - (viii) Assigning a unique ID to each person with computer access;
  - (ix) Restriction of physical access to cardholder **Data**;
  - (x) Tracking and monitoring all access to network resources and cardholder **Data**;
  - (xi) Regularly testing of security systems and processes; and
  - (xii) Maintaining a policy that addresses information security.
- 2.37 PCI-DSS Fines & Penalties** any written demand received by an **Insured** from a **Card Association or Acquiring Bank** for a monetary fine or penalty due to an **Insured's** non-compliance with **PCI Data Security Standards** resulting from a **Breach of Personal Information** or a **Breach of Corporate Information**.



<b>2.38 Personal Information</b>	information about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not. <b>Personal Information</b> shall include a natural person's name, address, telephone number or medical information.
<b>2.39 Policy</b>	this policy and any purchased <b>Additional Coverage Section</b> .
<b>2.40 Policyholder</b>	the entity specified as such in Item 2 of the Schedule.
<b>2.41 Policy Period</b>	the period from the inception date to the expiry date specified in Item 3 of the Schedule.
<b>2.42 Pollutants</b>	Any solid, liquid, biological, radiological, gaseous or thermal irritant or containment whether occurring naturally or otherwise, including asbestos, smoke, vapour, soot, fibres, mould, spores, fungus, germs, acids, alkalis, nuclear or radioactive material of any sort, chemicals or waste. Waste includes material to be recycled, reconditioned or reclaimed.
<b>2.43 Premises</b>	The main address as noted on the Schedule or the premises from where the <b>Company</b> conducts its normal business operations.
<b>2.44 Public Relations Consultant</b>	One of the public relations consultants listed in the CyberEdge Breach Response Panel or any consultant appointed by the <b>Company</b> , or by the <b>Response Advisor</b> on the <b>Company's</b> behalf, with the <b>Insurer's</b> prior written consent, to provide public relations or crisis communications services.
<b>2.45 Regulator</b>	an <b>Information Commissioner</b> or statutory or government body established pursuant to <b>Data Protection Legislation</b> in any jurisdiction and which is authorised to enforce statutory obligations in relation to the handling, use and disclosure of <b>Personal Information</b> (or, where relevant, <b>Corporate Information</b> ).
<b>2.46 Regulatory Investigation</b>	any formal or official action, investigation, inquiry or audit by a <b>Regulator</b> against an <b>Insured</b> once the <b>Insured</b> is identified in writing by the <b>Regulator</b> arising out of the use or suspected misuse or disclosure of <b>Personal Information</b> or any aspects of the handling of <b>Personal Information</b> or delegation of handling data to an <b>Outsource Service Provider</b> which is regulated by <b>Data Protection Legislation</b> , but shall not include any industry-wide, non-firm specific, inquiry or action.
<b>2.47 Relevant Engagement</b>	an agreement between the <b>Response Advisor</b> and the <b>Company</b> governing the provision of the legal advice and support to the <b>Company</b> .
<b>2.48 Response Advisor</b>	One of the law firms listed in the CyberEdge Breach Consultant Response Panel or such other firm as the <b>Company</b> retains with the <b>Insurer's</b> prior written consent, with respect to whom the <b>Company</b> shall enter into a <b>Relevant Engagement</b> .
<b>2.49 Responsible Officer</b>	any Chief Executive Officer, Chief Financial Officer, Chief Compliance Officer, Chief Information Officer, Data Protection Officer, Risk Manager, Head of Information Technology or a person authorised on their behalf, or General Counsel (or equivalent positions).
<b>2.50 Retention</b>	the amounts specified as such in Item 6 of the Schedule, or for <b>Additional Coverage Sections</b> (if purchased) the amounts specified as such in Item 7 of the Schedule.
<b>2.51 Security Failure</b>	(i) any intrusion due to the failure or the circumvention of the security of the <b>Company's Computer System</b> , which results in any unauthorised access, unauthorised use, hacking, a denial of service attack, a denial of access, the receipt or transmission of a malicious code, malicious software, malicious email, ransomware, trojan or virus which causes the destruction, modification, corruption, damage or deletion of <b>Data</b> or <b>Third Party Data</b> stored on any <b>Company's Computer System</b> ;

- (ii) any disclosure or loss of **Data**:
  - (a) due to the physical theft or loss of hardware controlled by the **Company** (or components thereof);
  - (b) due to human error by an employee of the **Company**, which results in a **Breach of Personal Information** or **Breach of Corporate Information**;
- (iii) without limiting the above, **Security Failure** includes any failure or intrusion as described in (i) or (ii) above resulting from the theft of a password or network access code from:
  - (a) a **Company's premises**;
  - (b) a **Company's Computer System**;
  - (c) an officer, director or employee of a **Company**.

### 2.52 Single Claim

any one or more **Claims** or **Insured Events** to the extent that such **Claims** or **Insured Events** arise out of, are based upon, are in connection with, or are otherwise attributable to the same cause or source and all such **Claims** or **Insured Events** shall be regarded as a **Single Claim** regardless of whether such **Claims** or **Insured Events** involve the same or different claimants, **Insureds** or causes of action.

### 2.53 Subsidiary

means any company in which the **Policyholder**, either directly or indirectly through one or more of its **Subsidiaries**:

- (i) controls the composition of the board of directors;
- (ii) controls more than half of the voting power; or
- (iii) holds more than half of the issued share capital.

Cover under this policy shall only apply to any **Subsidiary**, or any **Insured** thereof, while such entity is, or was, a **Subsidiary** of the **Policyholder**.

### 2.54 Third Party

any entity or natural person except: (i) any **Insured**, **Outsource Service Provider** or **Information Holder**; or (ii) any other entity or natural person having a financial interest or executive role in the operation of the **Company**.

### 2.55 Third Party's Computer System

any computer hardware, software or any components thereof that are linked together through a network of two or more devices accessible through the Internet or internal network or that are connected through data storage or other peripheral devices which is owned, operated, controlled or leased by a **Third Party**.

## 3 EXCLUSIONS

The **Insurer** shall not be liable for **Loss** arising out of, based upon or attributable to:

- 3.1 **Anti-Competitive Conduct** any actual or alleged restrictive trade practice, restraint of trade or unfair competition.
- 3.2 **Betterment**
  - (i) any updating, upgrading, enhancing or replacing any **Company's Computer System** or **OSP's Computer System** to a level beyond that which existed prior to the occurrence of a **Material Disruption**; or
  - (ii) the removal of software program errors or vulnerabilities.
- 3.3 **Bodily Injury and Property Damage** any:
  - (i) physical injury, sickness, disease or death; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury; or
  - (ii) loss or destruction of tangible property, other than **Data**.
- 3.4 **Contractual Liability** any guarantee, warranty, contractual term or liability assumed or accepted by an **Insured** under any contract or agreement (including any service credits, rebates, price reductions, coupons, prizes, awards or other contractual or non-contractual incentives, promotions or inducements offered to the **Insured's** customers or clients) except to the extent such liability would have attached to the **Insured** in the absence of such contract or agreement, provided,

However, this exclusion shall not apply to:

- (i) the obligation to prevent a **Security Failure, Breach of Personal Information** or a **Breach of Corporate Information** under a contract;
- (ii) any liability or obligation under a confidentiality or disclosure agreement held within contracts with a third party with respect to any **Breach of Personal Information** or any **Breach of Corporate Information**; or
- (iii) the obligation to comply with **PCI-Data Security Standards**.

### 3.5 Conduct

- (i) any wilful disregard or non-compliance with a ruling, direction or injunction by a court, tribunal, arbitrator or a **Regulator** within the jurisdiction; any deliberate, intentional or reckless commission, aiding, abetting or condoning of or conniving in a dishonest, malicious or fraudulent act or a criminal breach of law or regulation; or
- (ii) any deliberate, intentional or reckless act by any **Insured**; if committed by the **Company's** or the **Outsource Service Provider's** or the **Information Holder's**:
  - (a) directors, principals, partners or **Responsible Officer** whether acting on their own or in collusion with others; or
  - (b) employees acting in collusion with any of the **Company's** or **Outsource Service Provider's** or **Information Holder's** directors, principals, partners or **Responsible Officer**.

The **Insurer** will continue to pay on behalf of an **Insured, Defence Costs** under this **Policy** until any of (i) to (iii) above are found by a court, tribunal, arbitrator or **Regulator** to have been committed by an **Insured** or admitted to by an **Insured**. Following such finding the **Insurer** shall be entitled to repayment of any amount paid to the **Insured** under this **Policy**.

### 3.6 Employer's Duties

any actual or alleged:

- (i) employment related practices; or
- (ii) violation of any responsibilities, obligations or duties protecting or regulating:
  - (a) any employee pension plans, employee welfare plans, employee retirement savings plans, employee profit sharing or employee benefits programme;
  - (b) social security benefits; or
  - (c) workplace health or safety;

unless arising from a **Claim** for any breach of data protection laws or regulations against the **Insured**.

### 3.7 Enforcement Notice

any failure to respond to or comply with an **Enforcement Notice** in the required time period.

### 3.8 Intellectual Property

any actual or alleged infringement of patents and trade secrets or to loss of rights to secure registration of patents due to an unauthorised disclosure.

### 3.9 Internal Expenses

any internal or overhead expenses of any **Insured** (including wages, salary or other remuneration) or the cost of any **Insured's** time, except as provided for in the "Network Interruption" Additional Coverage Section.

### 3.10 Prior Insured Events, Claims and Circumstances

- (i) any fact, matter or circumstance that, as of the inception of this **Policy**, may reasonably have been expected by a **Responsible Officer** to give rise to a **Claim**; or any fact, matter, circumstance, **Claim** or **Insured Event** of which notice has been given under any policy of which this **Policy** is a renewal or replacement or which it may succeed in time; or
- (ii) any pending or prior civil, criminal, administrative or regulatory proceeding, investigation, arbitration, mediation, other dispute resolution or adjudication of which the **Responsible Officer** had notice as of the **Continuity Date**, or alleging or deriving from the same or essentially the same facts alleged in such actions; or
- (iii) any **Claim** or **Insured Event** that would otherwise constitute a **Single Claim** with any claim or other matter reported under any policy of which this **Policy** is a renewal or a replacement or which it may succeed in time.

- 3.11 Securities Claims** any actual or alleged violation of any law, regulation or rule (whether statutory or common law) relating to the ownership, purchase, sale or offer of, or solicitation of an offer to purchase or sell, securities.
- 3.12 Terrorism/War** any form of:  
 (i) war, invasion, act of foreign enemy, hostilities or warlike activities (whether declared or not), civil war, military rising, rebellion or revolution;  
 (ii) terrorism (not including **Cyber Terrorism**); or  
 (iii) riot.
- 3.13 Monetary Value** any trading losses or trading liabilities; monetary value of any electronic fund transfers or transactions by or on behalf of the **Insured** which is lost, diminished or damaged during transfer from, into or between accounts; or the face value of coupons, price discounts, prizes, awards or any other valuable consideration given in excess of the total contracted or expected amount.
- 3.14 Natural Disaster** Any fire, smoke, explosion, lightening, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, Act of God or any other physical event howsoever caused.
- 3.15 Uninsurable Loss** any matters which the **Insurer** is prohibited from paying by the law of this **Policy** or the jurisdiction where a **Claim** is made or where an **Insured Event** first arises.
- 3.16 USA/Canada**  
 (i) **Insured Events** occurring wholly or partly within; or  
 (ii) **Claims** made, occurring or pending within; or to enforce a judgment obtained in,  
  
 the United States of America, Canada, or any of their territories or possessions.
- 3.17 Pollution**  
 (i) the actual, alleged or threatened discharge, dispersal, seepage, release, migration or escape of **Pollutants**; or  
 (ii) any direction, request or effort to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants** or respond to or assess the effects of **Pollutants**.
- 3.18 Infrastructure** any:  
 (i) electrical or mechanical failure of infrastructure, including but not limited to any electrical power interruption, surge, brownout or blackout;  
 (ii) failure of telephone lines, data transmission lines or other telecommunications or networking infrastructure; or  
 (iii) satellite failure.
- 3.19 Tax** taxes incurred by an **Insured**.

## 4 CONDITIONS / CLAIMS

### 4.1 Notice and Reporting

The cover provided under this **Policy** is granted solely with respect to **Claims** first made against an **Insured**, and **Insured Events** first discovered, during the **Policy Period**.

For the purpose of Section 4 (Conditions / Claims), an **Insured Event** is first discovered when the **Insured** first learns of the **Insured Event** or learns of information from which it would have discovered the **Insured Event** following reasonable investigations.

The **Insured** shall, as a condition precedent to the obligations of the **Insurer** under this **Policy** (a) provide notice to the **Insurer** of any **Claim** made against the **Insured** as soon as practicable after the **Company's**

**Responsible Officer** first becomes aware of such **Claim**; or (b) provide notice to the **Insurer** of any other **Insured Event** as soon as practicable after the **Insured Event** first arises. In all events, notice must be given no later than ninety (90) days after the end of the **Policy Period**.

The extended reporting period referred to immediately above may be further extended from the end of the **Policy Period** provided that the **Policyholder** requests the extension in writing and pays the applicable additional premium listed under item 10 in the schedule, and the **Insurer** agrees to the request, within 30 days prior to the expiry of this policy.

The **Company's Responsible Officer** may, during the **Policy Period**, notify the **Insurer** of any circumstance reasonably expected to give rise to a **Claim** or an **Insured Event**. The notice must include the reasons for anticipating such a **Claim** or such an **Insured Event**, and full relevant particulars with respect to dates, the alleged, suspected, potential or supposed breach, the potential **Insured** and claimant(s) concerned, an estimate of possible loss and the potential media or regulatory consequences.

All notifications relating to **Claims, Insured Events** or circumstances must be sent in writing by email to the address specified at Item 13 of the Schedule.

#### 4.2 Related Claims and Insured Events

If notice of a **Claim** or an **Insured Event** is given as required by this **Policy** then any subsequent **Claim** or **Insured Event** that, together with the first **Claim** or **Insured Event**, would constitute a **Single Claim**, shall be considered to have been made or discovered and reported to the **Insurer** at the time the required notices with respect to the first **Claim** or **Insured Event** were first given.

#### 4.3 Fraudulent Claims

If any **Insured** shall give any notice or claim cover for any **Loss** under this **Policy** knowing such notice or claim to be false or fraudulent as regards amounts or otherwise, such **Loss** shall be excluded from cover under the **Policy**, and the **Insurer** shall have the right, in its sole and absolute discretion, to avoid its obligations under or void this **Policy** in its entirety, and in such case, all cover for **Loss** under the **Policy** shall be forfeited and all premium deemed fully earned and non-refundable.

## 5 DEFENCE AND SETTLEMENT

### 5.1 Defence

The **Insured** must render all reasonable assistance to and cooperate with the **Insurer** in the investigation, defence, settlement or appeal of a **Claim**, an **Insured Event** or circumstance, and provide the **Insurer** with all relevant information pertaining to any **Claim, Insured Event** or circumstance, as the **Insurer** may reasonably require. In the event of a **Claim, Insured Event** or circumstance each **Insured** shall take reasonable steps to reduce or diminish any **Loss**.

The **Insurer** does not assume any duty to defend and the **Insured** shall have the obligation to defend and contest any **Claim** or **Insured Event** made against them. The **Insurer** shall be entitled to participate fully in the defence and in the negotiation of any settlement that involves or appears reasonably likely to involve the **Insurer** making payment under the **Policy**.

### 5.2 Insurer's Consent

As a condition precedent to cover under this **Policy**, the **Insured** shall not admit or assume any liability, enter into any settlement agreement, or consent to any judgment or incur any **Defence Costs** or incur any amounts covered under any Insurance Cover or incur any amounts where consent is required under any **Additional Coverage Section** without the **Insurer's** prior written consent (which shall not be unreasonably delayed or withheld). Only liabilities, settlements and judgments resulting from **Claims** defended in accordance with this **Policy** or other **Insured Events** handled in accordance with this **Policy** shall be recoverable as a **Loss** under this **Policy**.

Compliance with a legal obligation to give notice in respect of an actual or potential breach of **Data Protection Legislation** will not be considered as an admission of liability for the purposes of this Section 5.2 (Insurer's Consent).

### 5.3 Insured's Consent

The **Insurer** may make any settlement of any **Claim** or **Insured Event** it deems expedient with respect to any **Insured**, subject to such **Insured's** written consent (which shall not be unreasonably withheld or denied). If any **Insured** withholds consent to such settlement, the **Insurer's** liability for all **Loss** on account of such **Claim** or **Insured Event** shall not exceed the amount for which the **Insurer** could have settled such **Claim** or **Insured Event**, plus **Defence Costs** incurred as of the date such settlement was proposed in writing by the **Insurer**, less coinsurance (if any) and the applicable **Retention**.

### 5.4 Subrogation and Recovery

If any payment is to be made under this policy in respect of a **Claim** or **Insured Event**, the **Insurer** shall be subrogated to all rights of recovery of the **Insured** whether or not payment has in fact been made and whether or not the **Insured** has been fully compensated for its actual loss. The **Insurer** shall be entitled to pursue and enforce such rights in the name of the **Insured**, who shall provide the **Insurer** with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. The **Insured** shall do nothing to prejudice these rights. Any amount recovered in excess of the **Insurer's** total payment shall be restored to the **Insured** less the cost to the **Insurer** of such recovery. The **Insurer** agrees not to exercise any such rights of recovery against any employee unless the **Claim** or **Insured Event** is brought about or contributed to by serious or wilful misconduct of the employee in the course of or arising out of the employment. In its sole discretion, the **Insurer** may, in writing, waive any of its rights set forth in this "Subrogation Clause".

### 5.5 Allocation

Where any loss or liability is incurred in respect of any **Claim** or **Insured Event** which arises from both covered matters and matters not covered by this policy, the **Insurer's** liability under this policy is limited to the proportion of the such loss or liability which represents a fair and equitable allocation between each **Insured** and the **Insurer**, taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy.

Where the **Insurer's** liability under this policy is limited under this clause, the **Insured** and **Insurer** must use their best endeavours to agree upon the allocation to be adopted by them as the fair and equitable allocation.

### 5.6 Allocation Disputes

If the parties are unable to agree, then the fair and equitable allocation is to be determined by a senior lawyer (to be mutually agreed upon by the **Policyholder** and the **Insurer**, or in the absence of agreement, to be appointed by the President of the Law Society, or equivalent organisation, in the jurisdiction in which the loss or liability was incurred).

The senior lawyer is to determine the fair and equitable allocation as an expert, not as an arbitrator. The **Policyholder** (or its designee) and the **Insurer** may make submissions to the senior lawyer. The senior lawyer is to take account of the parties' submissions, but the senior lawyer is not to be fettered by such submissions and is to determine the fair and equitable allocation in accordance with his or her own judgment and opinion, the senior lawyer's determination shall be final and binding. The costs of the senior lawyer's determination are to be borne by the **Insurer**.

For so long as the proportion of **Defence Costs** or other fees, costs or expenses to be paid under the policy remain unagreed and undetermined, the **Insurer** shall pay the proportion of the **Defence Costs** and other fees, costs or expenses which it considers represents a fair and equitable allocation. The fair and equitable allocation finally agreed or determined shall be applied retrospectively to any **Defence Costs** incurred prior to agreement or determination.

## 6 LIMIT OF LIABILITY AND RETENTION

### 6.1 Limit of Liability

The total amount payable by the **Insurer** under this **Policy** and any **Additional Coverage Section** (as applicable) shall not exceed the **Limit of Liability**.

Each Sublimit and any **Additional Coverage Sections** are part of the **Limit of Liability**. The **Insurer** shall have no liability in excess of all such limits, irrespective of the number of **Claims, Insured Events, Insured's** or amount of any **Loss**, including with respect to all **Claims** and **Insured Events** that constitute a **Single Claim** whenever first made or arising.

In the event that another insurance is provided by the **Insurer** or any member company or affiliate of the **Insurer**, then the maximum amount payable by the **Insurer** under all such policies shall not exceed the **Limit of Liability** of that policy referred to above which has the highest applicable **Limit of Liability**. Nothing contained herein shall be construed to increase the **Limit of Liability** of this **Policy**. To the extent that another insurance policy imposes upon the **Insurer** a duty to defend a claim, defence costs arising out of such a claim shall not be covered under this **Policy**.

### 6.2 Retention

The **Insurer** will only pay for any amount of **Loss** which is in excess of the **Retention**. The **Retention** amount is to be borne by the **Company** and shall remain uninsured.

No **Retention** is applicable to Insurance Covers Section 1 A.1 (Legal Services) for **Legal Services** performed during the first 72 hours from when the **Responsible Officer** of the **Policyholder** first notifies the **Response Advisor** of the **Breach of Personal Information, Breach of Corporate Information** or **Security Failure**. Any payment by the **Insurer** for **Legal Services** incurred during that first 72 hours will not be deemed to constitute an acceptance by the **Insurer** that coverage is necessarily available under this **Policy** for the **Insured Event**.

No additional **Retention** is applicable to **Additional Coverage Sections** that are subject to a Waiting Hours Period stated under item 7 in the schedule.

A single **Retention** shall apply to **Loss** arising from all **Claims** and **Insured Events** that constitute a **Single Claim**.

In the event that a **Single Claim** triggers more than one **Retention**, then, as to such **Single Claim** the highest of such **Retentions** shall be deemed the **Retention** applicable to **Loss**.

## 7 GENERAL PROVISIONS

### 7.1 Sanctions

If, by virtue of any law or regulation which is applicable to the **Insurer**, its parent company or its ultimate controlling entity, at the inception of this **Policy** or at any time thereafter, providing coverage to the **Insured** is or would be unlawful because it breaches an applicable embargo or sanction, that **Insurer** shall provide no coverage and have no liability whatsoever nor provide any defense to the **Insured** or make any payment of defense or other costs, or provide any form of security on behalf of the **Insured**, to the extent that it would be in breach of such embargo or sanction.

### 7.2 Policy Purchase

In granting cover to the **Insured**, the **Insurer** has relied upon the material statements and particulars in the proposal together with its attachments and other information supplied.

### 7.3 Changes in Risk

The **Policyholder** shall notify the **Insurer** of any data which is materially different in quality, sensitivity or value from that which is disclosed in any proposal form, information or representation (a "**Data Change**"), provided to the **Insurer** prior to the inception date of the **Policy**. In the event of a **Data Change** cover may be extended under this **Policy** provided that the **Policyholder** gives the **Insurer** sufficient details to enable the **Insurer** to assess and evaluate the exposure with respect to such **Data Change** and the **Policyholder** accepts any consequential amendments to the **Policy** terms and conditions, including payment of additional premium required by the **Insurer**.

#### 7.4 Assignment

This **Policy** and any rights under or in respect of it cannot be assigned without the prior written consent of the **Insurer**.

#### 7.5 Cancellation

This policy may be cancelled by the **Policyholder** at any time only by written prior notice of at least 14 days to the **Insurer**. In such case, if no **Claim** has been made or other covered event has arisen and no circumstance has been notified prior to such cancellation, the **Insurer** shall retain an amount of the premium calculated in accordance with its short rate proportion rates. Otherwise, premium shall not be returnable and shall be deemed fully earned at cancellation.

This policy may be cancelled by the **Insurer** only as prescribed by the *Insurance Contracts Act 1984* (Cth). In such case, the **Insurer** shall be entitled to a pro-rata proportion of the **Premium**. Payment or tender of any unearned **Premium** by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payments shall be made as soon as practicable.

#### 7.6 Governing Law

Any interpretation of this **Policy** relating to its construction, validity or operation shall be made exclusively in accordance with the laws of Australia without regard to its laws related to conflicts of law.

#### 7.7 Maintenance of Technology

The **Insured** will take all commercially reasonable steps to maintain data and information security procedures to no lesser standard than disclosed in the proposal form. The **Insured** will take all commercially reasonable steps to maintain software and hardware to current recommended industry standards.

The **Insured** will ensure that back-up systems and processes are maintained to no lesser standard than disclosed in the proposal form and that the ability to restore such data is regularly tested (at least every six (6) months).

#### 7.8 Plurals, Headings and Titles

The descriptions in the headings and titles of this policy are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular shall include the plural and vice versa. In this policy, words in **bold** typeface have special meaning and are defined or specifically mentioned in the Schedule. Words that are not specifically defined in this policy have the meaning normally attributed to them.

#### 7.9 Validity

This policy is not binding upon the **Insurer** unless it is countersigned on the Schedule by an authorised representative of the **Insurer**.





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