

INFORMATION TECHNOLOGY

COMBINED PROFESSIONAL
INDEMNITY & LIABILITY
INSURANCE POLICY

TAILORED UNDERWRITING
POLICY WORDING

TAILORED UNDERWRITING IS A TRADING NAME OF CERBEROS BROKERS PTY LTD
ACN: 106 769 886 | ABN: 61 106 769 886 | AFSL: 260668



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THE INSURERS

The insurers of this Policy:

- Certain Underwriters at Lloyd's

THE AGENT(S)

Tailored Underwriting (AFSL 260668, ABN 61 106 769 886)

Tailored Underwriting is a division of Cerberos Brokers Pty Ltd ABN 61 106 769 886, AFSL 260668 (hereinafter Tailored Underwriting) are the appointed insurer intermediary. In arranging this insurance Tailored Underwriting are acting as agent for the Insurer and not as **Your** agent. Tailored Underwriting are not the Insurer for this contract and they are not liable for any loss or claim. The Insurers are clearly shown on the Schedule.

Phone: 1300 880306

Fax: (07) 3088 2079

Post: PO Box 1305, Spring Hill, Qld 4004

CLAIMS

For all claims queries contact:

Proclaim Management Solutions

Phone: 02 9287 1300

Fax: 1300 858 329

Post: Level 6, 249 Pitt Street, Sydney 2000

SECTION 1 - GENERAL INFORMATION

The Underwriters in return for the payment of the premium by or on behalf of the Insured and subject to the terms, definitions, limits of liability, exclusions and conditions of this policy agree to provide the insurance as stated in this policy.

This policy the proposal the Schedule including any Schedule issued in addition or substitution and any endorsements or memoranda shall be considered one document and any word or expression to which a specific meaning has been attached shall bear such meaning wherever it appears.

1.1. This Policy

This Policy is an important document and should be kept in a safe place. Please read it carefully so that You understand the insurance provided.

1.2. Your Duty Of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

1.3. Penalty For Non-Disclosure

If You fail to comply with your duty of disclosure, the insurer may be entitled to reduce his liability under the contract in respect of a Claim or may cancel the contract. If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

1.4. Notify Us Of Any Change Of Risk

Also, You must notify Us, as soon as practicable, of any alteration to risk which may affect Your Policy during the period of insurance.

1.5. Money Back Guarantee

If for any reason You are not completely satisfied with this insurance contract, the Schedule may be returned to Us within fourteen (14) days of its receipt and subject to no claim having been made, We will cancel the Schedule and refund in full any premium paid.

1.6. General Insurance Code Of Practice

The Insurance Industry has developed the General Insurance Code of Practice. The Code aims to raise the standards of practice and service in the Insurance Industry. A copy of the Code can be obtained from www.codeofpractice.com.au or from us upon request.

1.7. **Complaints Procedure/Dispute Resolution**

Any inquiry or complaint relating to this insurance should be referred to Tailored Underwriting in the first place. We undertake to provide You with a response to any complaint made within fifteen (15) business days. If Our response to Your complaint or to any dispute does not resolve the matter for You, the next step is for You to contact:

Lloyd's Underwriters' General Representative in Australia
Level 9
1 O'Connell Street
Sydney NSW 2000
Telephone: [02] 8298 0700
Customer Complaint phone number: 02 8298 0783
Fax: [02] 8298 0788
Email: idraustralia@lloyds.com

Lloyd's Underwriters' General Representative has the authority to review Your unresolved complaint and will provide You with a response within fifteen (15) business days of receiving notification of the dispute.

If You are still dissatisfied, the dispute may be referred, at no cost, to the Financial Ombudsman Service operated under the terms of the General Insurance Code of Practice who can be contacted as follows:

Financial Ombudsman Service Limited
GPO Box 3
Melbourne VIC 3001
Australia
Telephone Number: 1300 78 08 08

1.8. **Service of Suit**

The Underwriters hereon agree that:

- (i) In the event of a dispute arising under this Insurance, the Underwriters at the request of the Assured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- (ii) Any summons notice or process to be served upon the Underwriters may be served upon:

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

who has authority to accept service and to enter an appearance on the Underwriters' behalf, and who is directed at the request of the Assured to give a written undertaking to the Assured that he will enter an appearance on the Underwriters' behalf.

- (iii) If a suit is instituted against any one of the Underwriters, all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

The amount of Premium specified herein is the amount due to the Underwriters and any commission allowed by them is to be regarded as remuneration of the Coverholder placing this Insurance. In the event of a claim arising under this Insurance IMMEDIATE NOTICE should be given to: Tailored Underwriting.

1.9. **Privacy**

We handle your personal information with care and in accordance with the Privacy Act 1988 and the Australian Privacy Principles. We collect personal information about you to provide you with insurance and

insurance related services. We may disclose your personal information to third parties for the purposes described in our Privacy Policy, including related entities, insurers, reinsurers, agents and service providers, some of whom may be located in the United Kingdom. By asking us to provide you with insurance and insurance related services, you consent to the collection, use and disclosure (including overseas disclosure) of your personal information for the purposes described in our Privacy Policy. Where you provide personal information about others, you represent to us that you have made them aware of that disclosure and of our Privacy Policy and that you have obtained their consent. If you do not consent to provide us with the personal information that we request, or withdraw your consent to the use and disclosure of your personal information at any stage, we may not be able to offer you the products or provide the services that you seek. For information about how to access and or correct the personal information we hold about you or if you have any concerns or complaints, ask us for a copy of our Privacy Policy.

1.10. **Australian Terrorism Insurance Act**

The Underwriters have treated this insurance (or part of it) as an insurance to which the Australian Terrorism Insurance Act 2003 as amended [ATIA] applies. ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism Exclusion to which this Policy is subject shall not apply to any “eligible terrorism loss” as defined in ATIA. Any coverage established by ATIA is only in respect of any “eligible terrorism loss” resulting from a “terrorist act” which is a “declared terrorist incident” as defined in ATIA. The Terrorism Exclusion to which this Policy is subject applies in full force and effect to any other loss and any act or event that is not a “declared terrorist incident”. All other terms, conditions, insurance coverage and Exclusions of this Policy including applicable limits and excesses remain unchanged. If any or all of the Underwriters have reinsured this insurance with the Australian Reinsurance Pool Corporation, then any such Underwriters will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a “reduction percentage” as defined in ATIA which results in a cap on the Underwriter’s liability for payment for “eligible terrorism losses”.

1.11. **Interpretation**

In this Policy:

- (i) Reference to a person includes any other entity recognised by law and vice versa.
- (ii) Words importing the singular number include the plural and vice versa
- (iii) Any reference to any of the parties to the Policy by their defined terms includes that party’s executors, administrators or permitted assigns, or being a company, its successors or permitted assigns.
- (iv) Words importing one gender include every gender; and
- (v) Clause headings are for reference purposes only.

1.12. **Claims Made - Section 2**

Section 2 of this Policy operates on a Claims Made and Notified basis. This means that the Policy covers You for Claims made against You and notified to Us during the Period of Insurance.

The Policy does not provide cover for:

- (i) Wrongful Acts that occurred before the Policy's Retroactive Date specified in the Schedule;
- (ii) Claims made after the Period of Insurance expires even where the event giving rise to the Claim occurred during the Period of Insurance;
- (iii) Claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy;
- (iv) Claims made or threatened against You prior to the commencement of the Period of Insurance;
- (v) Claims arising out of any facts or circumstances which were:
 - known to You prior to the inception of the Period of Insurance and which You knew or ought reasonably to have known might give rise to a Claim, or Defence Costs and Expenses;
- (vi) Claims arising out of circumstances noted in the Proposal for the current Period of Insurance or on any previous proposal form

Where You give notice in writing to Us of any facts that might give rise to a Claim against You as soon as reasonably practicable after You became aware of those facts but before the expiry of the Period of Insurance, You may have rights under Section 40 (3) of the Insurance Contracts Act 1984 to be indemnified in respect of any Claim subsequently made against You arising from those facts notwithstanding that the Claim is made after the expiry of the Period of Insurance. Any such rights arise under the legislation only. The terms of the Policy and the effect of the Policy is that You are not covered for Claims made against You after the expiry of the Period of Insurance.

POLICY TERMS AND CONDITIONS

In reliance on the Proposal and in consideration of You having agreed to pay the Premium, We agree to indemnify You in accordance with the provisions of this Policy.

SECTION 2 - PROFESSIONAL INDEMNITY

COVERAGE UNDER SECTION 2 OF THIS POLICY IS PROVIDED ON A CLAIMS MADE AND NOTIFIED BASIS.

2.1. Wrongful Act

We agree, subject to the provisions of this Policy, to indemnify You against all Claims, subject to the Limit of Indemnity, first made against You and notified to Us during the Period of Insurance caused by a Wrongful Act.

Automatic Extensions

For the sake of clarity, the coverage granted in 2.1 above includes the following automatic extensions of cover:

(a) **Contractual Liability**

An unintentional breach of a written contract with a Third Party arising from the provision of Your Information Technology and Telecommunication Products and/or Information Technology and Telecommunication Services caused by an actual or alleged breach of professional duty.

(b) **Competition and Consumer Legislation**

Subject to Exclusion 7.9 of this Policy, an unintentional breach of the Competition and Consumer Act 2010 (Cth), Fair Trading Act 1987 (NSW), Fair Trading Act 1985 (Victoria) or similar legislation enacted in any State or Territory of the Commonwealth of Australia caused by an actual or alleged breach of professional duty but only in so far as the unintentional breach arises from the provision of Your Information Technology and Telecommunication Products and/or Information Technology and Telecommunication Services.

(c) **Intellectual Property Rights**

An unintentional infringement of an Intellectual Property Right of a Third Party caused by an actual or alleged breach of professional duty including any Claim made by a Third Party Licensee to whom You have licensed Your Information Technology and Telecommunication Products or Information Technology and Telecommunication Services and provided a warranty or indemnity in respect of Your ownership and/or permission to license Intellectual Property Rights.

(d) **Documents and Data**

Unintentional damage or destruction of Documents and/or Data caused by an actual or alleged breach of professional duty.

(e) **Defamation**

An unintentional libel, slander or defamation in the normal course of Your Business.

(f) **Dishonesty**

We will indemnify those of You who are not knowingly involved in conduct to which Exclusion 7.8 applies.

(g) Continuous Cover

We agree to indemnify You against any Claim that is first made against You during the Period of Insurance and is notified to Us during the Period of Insurance, that arises out of facts or circumstances which first became known to You prior to the Period of Insurance where:

- (i) We were Your Information Technology and Telecommunication Products and Information Technology and Telecommunication Services legal liability insurer at the time the facts or circumstances first became known to You (the "Previous Period of Insurance") and have continued to be Your Information Technology and Telecommunication Products and Information Technology and Telecommunication Services Legal Liability insurer from then until the date of actual notification; and
- (ii) but for Your failure to notify Us of the facts or circumstances during the Previous Period of Insurance, You would have been entitled to indemnity under the policy in effect during the Previous Period of Insurance; and
- (iii) but for Exclusion 7.23 You would be entitled to indemnity under this Policy; and
- (iv) You have not committed or attempted to commit fraudulent non-disclosure or fraudulent misrepresentation.

We are only liable to indemnify You to the extent that We would have been liable to indemnify You under the provisions of the policy in effect during the Previous Period of Insurance or, at Our election, to the extent We would have been liable under this policy. Further, We may reduce Our liability to You by the amount that fairly represents the extent to which We have been prejudiced as a result of the late notification.

2.2. Joint Venture/Partnership Cover

We will indemnify You against any Claim, subject to the Limit of Indemnity, first made against You and notified to Us during the Period of Insurance caused by a Wrongful Act committed or alleged to have been committed in the conduct of Your Business as a joint venture or partner provided always that such indemnity will not extend to:

- (a) any joint venture party or partner of Yours; or
- (b) Your liability for acts or omissions of any joint venture party or partner.

SECTION 3 - PUBLIC & PRODUCTS LIABILITY

COVERAGE UNDER SECTION 3 OF THIS POLICY IS PROVIDED ON AN OCCURRENCE BASIS.

We agree, subject to the provisions of this Policy, to indemnify You, subject to the Limit of Indemnity, in respect of any amount you become legally liable to pay in respect of any Claim for Personal Injury or Property Damage first occurring during the Period of Insurance caused by an Occurrence in the conduct of Your Business.

3.1. Joint Venture Cover

We will indemnify You against any Claim caused by an Occurrence in the conduct of Your Business as a joint venture or partner provided always that such indemnity will not extend to any joint venture party or partner of Yours or Your liability for acts or omissions of any joint venture party or partner.

3.2. Tenants Liability

We will extend indemnity under this Section to any lessor with whom you have executed a signed and dated rental or lease agreement to conduct Your Business provided that no further, broader or wider cover will be granted to such lessor than would have been granted to You under this section if You had been found legally liable for Personal Injury or Property Damage arising from the conduct of Your Business at the rental or leased premises.

SECTION 4 - DEFENCE COSTS & EXPENCES APPLICABLE TO ALL SECTIONS OF THE POLICY

4.1. General

We will indemnify You against Defence Costs and Expenses in addition to the Limit of Indemnity:

- (a) that We incur; or
- (b) that You incur with Our written consent.

4.2. If a paid claim exceeds the Limit of Indemnity, We will only be liable for that proportion of the Defence Costs and Expenses which the Limit of Indemnity bears to the amount of the paid claim.

4.3. If We elect to make a payment to You pursuant to Claims Condition 8.8 We shall have no liability to pay Defence Costs and Expenses incurred after the date upon which such payment is made.

SECTION 5 - LIMITS OF INDEMNITY APPLICABLE TO ALL SECTIONS OF THE POLICY

5.1. Limits of Indemnity

Our liability under this Policy to You will not exceed the Limit of Indemnity and is the maximum amount payable by Us for:

- (i) all Claims in the Period of Insurance covered under Section 3 arising out of Your Products; and
- (ii) any one claim in the Period of Insurance in respect of any other kind of claim,

5.2. One Claim

If the one originating cause results in more than one Claim, then all such Claims constitute one Claim and therefore one Deductible and Limit of Indemnity will apply.

5.3. Claims - Different Sections

We have no liability under Section 3 in relation to any Claim for which You have complete or partial indemnity under Section 2.

SECTION 6 - DEDUCTIBLE APPLICABLE TO ALL SECTIONS OF THE POLICY

6.1. You are liable for the first part of each and every Claim up to the Deductible. Our liability commences after the Deductible has been deducted from the amount of the Claim. The Deductible does not apply to Defence Costs and Expenses unless otherwise specified in the Schedule.

SECTION 7 - EXCLUSIONS APPLICABLE TO ALL SECTIONS OF THE POLICY

General Exclusions

We will not be liable for any Claim for, in relation to, or arising directly or indirectly from (or in respect of 7.19, brought by):

7.1. Avionics

the supply of Information Technology and Telecommunication Products or Information Technology and Telecommunication Services directly or indirectly to the Avionics Industry;

7.2. Refunds and Recalls

- (a) awards, court orders, or damages, to the extent that they relate to the refund of the purchase price for Information Technology and Telecommunication Products or Information Technology and Telecommunication Services supplied by You;

- (b) the recall, removal, repair, alteration, replacement or re-instatement of any of Your Information Technology and Telecommunication Products or Information Technology and Telecommunication Services;

7.3. Insolvency

Your liquidation, bankruptcy or insolvency;

7.4. Fines and Penalties

Taxes, fines or other penalties including exemplary, special, multiple, liquidated or punitive damages;

7.5. Fees and Trading Debts

Your own fees and disbursements and/or any trading debts of Yours;

7.6. Pollution and Nuclear Risk

- (a) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants into or upon real or personal property, the atmosphere any water course or body of water or any enforcement, action or proceeding in connection with the containment, clean up, removal, treatment or monitoring of such pollutants of seepage, pollution or contamination howsoever occurring; or
- (b) ionising radiation or the contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel; or
- (c) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
- (d) nuclear weapons material;

7.7. USA and Canada

- (a) the supply, or failure to supply, Information Technology and Telecommunication Products or Information Technology and Telecommunication Services to the United States of America or Canada, or a Claim which is made in or determined pursuant to the law of the United States of America or the Dominion of Canada or their territories or protectorates; or
- (b) arising out of the enforcement of judgments, orders or awards obtained within or determined pursuant to the law of the United States of America or the Dominion of Canada or their territories or protectorates.

7.8. Dishonesty

- (a) any actual or alleged dishonest, fraudulent, malicious, or reckless act, error, omission, representation or other conduct; or
- (b) any actual or alleged wilful violation or wilful breach of any statute, regulation, contract or duty of care; or
- (c) any actual or alleged deliberate or reckless breach, act, omission or infringement committed, condoned or ignored by You or
- (d) any actual or alleged deliberate, conscious or intentional disregard by your technical or administrative management of the need to take all reasonable steps to prevent injury, damage or loss;

by You or Your consultants or Contractors except as provided by Section 2.1(f) of this Policy.

7.9. Restrictive Trade Practices, Unconscionable Conduct and Resale Price Maintenance

any allegation of an infringement or breach of Parts IV (Restrictive Trade Practices), IVA (Unconscionable Conduct) or VIII (Resale Price Maintenance) of the Competition and Consumer Act 2010 (Cth) or similar legislation;

7.10. War

any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;

7.11. Workers Compensation and Employment Practices

- (a) Personal Injury to any Employee or Contractor;
- (b) imposed by any Workers' Compensation Law; or
- (c) any law relating to Employment Practices;

7.12. Terrorism

death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with Terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

7.13. Asbestos

loss or losses directly or indirectly arising out of, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity;

7.14. Motor Vehicle

the ownership, maintenance, operation, possession, use, loading or unloading by You or on Your behalf of any motor vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Personal Injury.

7.15. Own Property Damage

damage to property owned, leased, hired by, under hire purchase, on loan or rented to You or otherwise in Your care, custody or control other than:

- (a) vehicles not owned by You or used in the course of Your Business, whilst within a free car park provided by You for the use of customers, visitors or Employees;
- (b) Your Employees' property; and

In respect of (a) and (b), no indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which You are or have been working.

7.16. Assumed Contractual Liability

any liability assumed pursuant to a written contract including by warranty, indemnity or guarantee whereby You assume liability above and beyond the liability that would have arisen at common law within the jurisdiction of the Commonwealth of Australia from the provision of Your Information Technology and Telecommunication Products and/or Information Technology and Telecommunication Services;

7.17. Non Information Technology and Telecommunication Products and/or Information Technology and Telecommunication Services

the provision or supply of non-Information Technology and Telecommunication Products and/or Information Technology and Telecommunication Services unless noted under Your Business in the Schedule;

7.18. Aircraft and Watercraft

arising out of the ownership, possession or use of Aircraft or Watercraft or any part of any Airport or Aerodrome used for the landing, moving or parking of Aircraft;

7.19. Related Entities

an Entity insured by this Policy;

7.20. Known Defects

the provision or supply of Information Technology and Telecommunication Products or Information Technology and Telecommunication Services You knew or ought to have known were defective or incapable of fulfilling the essential purpose they were intended to perform as specified, guaranteed or warranted by You;

7.21. Breach of Management Duties

Any actual or alleged breach by any director, officer, partner or employee of their duty to You under statute or common law in connection with their direction or management of the insured specified in the schedule.

7.22. Financial

- (a) Your failure to obtain or maintain any form of bond or Insurance;
- (b) Actual or alleged advice in relation to finance, accounting, investment, marketing, insurance, legal or tax matters;
- (c) Any trading debt, or guarantee of such a debt, incurred by You;
- (d) The provision of finance.

ADDITIONAL EXCLUSIONS APPLICABLE TO SECTION 2

We will not be liable for, in relation to or arising, directly or indirectly from, or in any way connected with:

7.23. Prior Claims and circumstances

- (a) any Claim first made or threatened against You prior to the commencement of the Period of Insurance;
- (b) any claim arising out of any Wrongful Act or other act or omission giving rise to coverage under section 2 of the policy that occurred before the Policy's Retroactive Date specified in the Schedule;
- (c) any Claims arising out of facts or circumstances which were:
 - (i) known to You prior to the inception of the Period of Insurance and which you knew or reasonably ought to have known might give rise to a Claim, or Defence Costs and Expenses; or
 - (ii) notified, or which ought reasonably to have been notified under any insurance that was in force prior to the inception of the Period of Insurance: or
- (d) Claims arising out of circumstances noted on the Proposal form for the current Period of Insurance or on any previous proposal form.

7.24. Subsidiaries

any claim against:

- (a) a current Subsidiary; or
- (b) a former Subsidiary; or
- (c) a Subsidiary that You acquire or create during the Period of insurance,

in respect of any Wrongful Act, or other act or omission giving rise to coverage under section 2 of this policy committed or alleged to have been committed by the Subsidiary either:

- (i) before You acquire or create the Subsidiary; or
- (ii) after the Subsidiary ceases to be your Subsidiary.

7.25. Electromagnetic Fields

Any claim arising directly or indirectly from Electromagnetic Fields.

ADDITIONAL EXCLUSIONS APPLICABLE TO SECTION 3

We will not be liable for, in relation to or arising, directly or indirectly from, or in any way connected with:

7.26. Loss of Data and Economic Loss

Any claim for loss, damage, deterioration of or corruption (whether permanent or temporary) to computer programs or electronic data including consequential or pure financial loss.

SECTION 8 - CLAIMS CONDITIONS

8.1. Notification

You must notify Us of any Claim made against You during the Period of Insurance as soon as practicable and no later than the end of the Period of Insurance. You must give notice of any Claim, loss or other matter in writing, and send it to Tailored Underwriting.

8.2. Conduct of Proceedings

We may elect at any time to take over and conduct in Your name any proceedings in relation to which We:

- (a) have advanced Defence Costs and Expenses to You; or
- (b) are liable to indemnify You under this Policy.

8.3. Settlement of Claims

You must not incur any Defence Costs and Expenses, settle any Claim, make any admission, offer or payment or otherwise assume any contractual obligations with respect to any Claim without Our prior written consent. We are not liable to indemnify You in respect of any Defence Costs and Expenses, settlement, admission, offer or payment or assumed obligation unless We give Our written consent. However, We must not withhold consent unreasonably.

8.4. Co-Operation

You must:

- (a) give Us and Our investigators and legal representatives all information and assistance that We or they reasonably require; and
- (b) give to Tailored Underwriting on Our behalf, unanswered, every letter of claim, writ, summons or other process and all documents relating thereto Immediately they are received; and
- (c) co-operate fully with Us and Our investigators and legal representatives in any proceedings in relation to which We are liable to indemnify You under this Policy.

8.5. Senior Counsel

(a) General

Neither We nor You may require the other to contest any Claim unless Senior Counsel advises that the Claim should be contested. In formulating his or her advice, Senior Counsel must take into consideration the damages and costs which are likely to be recovered by the plaintiff, the likely Defence Costs and Expenses and Your prospects of successfully defending the Claim.

(b) Appointment of Senior Counsel

For the purpose of (a), We may nominate a Senior Counsel. If We nominate a Senior Counsel, You must notify Us whether or not You approve of Our nominee as soon as practicable. If We cannot agree with You upon Senior Counsel within a reasonable time, Senior Counsel will be such person as the President of the New South Wales Bar Association appoints.

(c) Costs of Senior Counsel's Opinion

The cost of Senior Counsel's opinion under this Claims Condition is included in the Defence Costs and Expenses.

(d) Meaning of 'Senior Counsel'

For purposes of this Claims Condition, 'Senior Counsel' means a practising barrister who is entitled to practise as a Queens Counsel or Senior Counsel in Australia.

8.6. Mitigation

You must use all due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability, Defence Costs and Expenses or loss in respect of which We are liable to indemnify You under this Policy.

8.7. Election to Contest

If We recommend settlement in respect of any Claim and You do not agree to settlement, You may elect to contest the Claim. However, Our liability in connection with the Claim is then limited to the amount We recommend in settlement plus Defence Costs and Expenses incurred with Our consent up to the date We recommend settlement to You.

8.8. Payment of Indemnity Limit

We may at any time in connection with any Claim made pay to You the Indemnity Limit (after deduction of any sums already paid) or any lesser sum for which, in Our sole opinion, the Claim can be settled and upon such payment being made We shall relinquish the conduct and control of, and have no further liability in connection with, the Claim.

SECTION 9 - GENERAL CONDITIONS

9.1. Assignability

You must not assign this Policy, or any of Your rights under this Policy, without Our prior written consent.

9.2. Alteration to Risk

You must notify Us as soon as practicable of any material alteration to risk during the Period of Insurance including:

- (a) if You submit to voluntary bankruptcy, receivership or liquidation; or
- (b) if You fail to pay debts; or
- (c) if You breach any other obligation giving rise to the appointment of a receiver, bankruptcy, or winding-up proceedings; or
- (d) any material change in the nature of Your Business.

9.3. Subrogation

If We make a payment under this Policy, We are subrogated to all Your rights of contribution, indemnity or recovery. You must always act to secure and preserve Your rights of contribution, indemnity and recovery, and must do all things and execute all Documents to enable Us to sue in your name for such contribution, indemnity or recovery.

9.4. Several Liability Notice

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

9.5. Cancellation

(a) Your Right to Cancel the Policy

You may cancel this Policy at any time by notifying Us in writing.

(b) **Our Right to Cancel the Policy**

We may cancel this Policy in accordance with section 60 of the Insurance Contracts Act 1984 (C'wealth).

(c) **Effect of Cancellation**

On cancellation, We agree to refund to You a pro rata less 10% proportion of the Premium, based upon the unexpired portion of the Period of Insurance.

9.6. Imputation

Where more than one Entity is insured under this Policy:

- (a) failure by one of them to comply with the duty of disclosure under the Insurance Contracts Act 1984 (C'wealth); or
- (b) misrepresentation by one of them to Us before this Policy commences; or
- (c) failure by one of them to comply with any provision of this Policy,

does not prejudice the right of any other to indemnity under this Policy. However, this clause only applies if:

- (a) the other Entity is innocent of, and has no knowledge of, such conduct; and
- (b) as soon as practicable after becoming aware of the conduct, the other Entity notifies Us of all facts relating to such conduct.

9.7. Sanctions

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

9.8. Governing Law and Jurisdiction

This Policy is governed by the laws of the Commonwealth of Australia and the State or Territory where the Policy was issued. Any disputes relating to interpretation shall be submitted to the exclusive jurisdiction of the Courts of Australia.

9.9. Goods And Services Tax (GST)

This policy has a GST provision in relation to premium and our payment to You for claims. It may have an impact on how you determine the amount of insurance you need.

Please read the following information carefully. Seek professional advice if You have any queries about GST and this insurance.

Where You are liable to pay an amount for GST in respect of an acquisition relevant to any claim and We agree to pay the claim, We will pay the GST amount.

If the Limit of Indemnity is not sufficient to cover a loss, We will only pay the GST amount that relates to Our settlement of the claim. We will reduce the GST amount We pay by any input tax credits to which can You are or would be entitled on a relevant acquisition.

We will reduce the GST amount We pay by the amount of any input tax credits to which You are or would be entitled.

If You register or are registered for GST, You are required to tell Us Your entitlement to an input tax credit on Your premium.

If You fail to disclose all understate Your entitlement, You may be liable for GST on a claim We may pay and this Policy does not cover that GST liability or for any fine, penalty or charge for which You may become liable because of Your failure to disclose or to misstate Your entitlement to an input tax credit for the premium.

"GST", "input tax credit", "acquisition", "supply", "tax invoice" and "adjustment note" has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999.

SECTION 10 - DEFINITIONS

10.1. **"Accidental"** means:

unexpected or unintentional.

10.2. **"Aircraft"** means:

any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

10.3. **"Avionics Industry"** means:

any business involved in the design, inspection, supervision, manufacture, supply, assembly and/or construction of any aircraft, space craft, missile or the guidance and control systems of any such items.

10.4. **"Claim"** means:

- (a) a written demand by a Third Party for compensation or damages; or
- (b) a civil proceeding brought by a Third Party for recovery of compensation or damages, under Section 2 in respect of an actual or alleged Wrongful Act or under Section 3 in respect of an Occurrence.

10.5. **"Contractor"** means:

an individual or Entity that is providing Information Technology Products or Information Technology Services on Your behalf pursuant to a written contract between You and the Contractor.

10.6. **"Data"** means:

any information stored electronically, magnetically or electro magnetically on a hard drive or portable media.

10.7. **"Deductible"** means:

the sum specified as such in the Schedule.

10.8. **"Defence Costs and Expenses"** means:

reasonable costs, charges, fees (including legal counsels' fees and experts' fees) and expenses incurred in defending, investigating or monitoring a Claim and costs of appeal.

10.9. **"Disciplinary Enquiry"** means:

any legal or quasi legal process enquiring whether You have breached any relevant professional code of conduct administered by any overseeing professional association.

10.10. **"Documents"** means:

all documents that relate to Your Business including but not limited to written, printed or computer records and electronic data material but not including any currency, and whether Your property or not but which are in Your personal control, or the control of any other person with whom You have lodged, deposited or entrusted such Documents.

- 10.11. **“Employee”** means:
any person that You employ under a contract of service or apprenticeship or internship during or prior to commencement of the Policy.
- 10.12. **“Employment Practices”** means:
any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination (sexual or otherwise) in respect of employment by You.
- 10.13. **“Entity”** means:
any corporation, trust, partnership, joint venture or natural person.
- 10.14. **“Information Technology and Telecommunications Products”** means:
any hardware, firmware, peripherals, software, cabling or electronic equipment.
- 10.15. **“Information Technology and Telecommunication Services”** means:
services, advice or work provided including consultancy services, design, specification, training, testing, data processing, data hosting, data communications service, project management, systems integration, or project implementation, analysis or maintenance.
- 10.16. **“Intellectual Property Right”** means:
a statutory right, conferred within the Territory, in or to any patent, copyright or design (including in respect of semiconductor topographies) or a right in confidential information or trade secrets, claimed by any party other than You.
- 10.17. **“Limit of Indemnity”** means:
the amount stated, under the respective heading, in the Limits of Indemnity section of the Schedule.
- 10.18. **“Occurrence”** means:
an event, or series of events consequent on or attributable to one source or originating cause, including continuous or repeated exposure to substantially the same general conditions which results in Personal Injury or Property Damage and which is neither expected nor intended by You.
- 10.19. **“Period of Insurance”** means:
the period specified in the Schedule.
- 10.20. **“Personal Injury”** means:
- (a) bodily injury, death, sickness, disease,
 - (b) disability, shock, fright, mental anguish and mental injury;
 - (c) false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution and humiliation;
 - (d) libel, slander, defamation of character or invasion of right of privacy;
 - (e) assault and battery not committed by You or at Your direction unless committed for the purpose of preventing or eliminating danger to persons or property.
- 10.21. **“Policy”** means:
- (a) all provisions of this document;
 - (b) all information contained in the Proposal, Schedule and other documents attached to them from time to time; and
 - (c) all endorsements issued from time to time for incorporation in this document,
- all of which shall be read together and constitute the contract of insurance between Us and You.

10.22. **"Pollutants"** means:

- (a) any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapour, soot, fumes, acids, alkalis and chemicals; and
- (b) any waste materials, including materials to be recycled, reconditioned or reclaimed; and
- (c) any other air emission, odour, waste, water, oil, oil products, infectious or medical waste, asbestos, asbestos products or any noise emission.

10.23. **"Premium"** means:

the amount specified as such in the Schedule.

10.24. **"Products"** means:

Information Technology and Telecommunication Products and Information Technology and Telecommunication Services (after they have ceased to be in Your physical possession or under Your control) manufactured or deemed to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, repaired, serviced, treated, sold, supplied (including services) or distributed by You (including any container other than a Vehicle);

10.25. **"Property Damage"** means:

- (a) physical damage to, loss of or destruction of property including the loss of use thereof or resulting there from; or
- (b) loss of use of property which has not been physically damaged or destroyed provided such loss of use is caused by physical damage to or destruction of other tangible property during the Period of Insurance.

10.26. **"Proposal"** means:

all documentation and information provided by You or on Your behalf in the course of proposing for this cover.

10.27. **"Related Entity"** means:

any Entity which:

- (a) employs or employed staff engaged in Your Business; or
- (b) provides or provided administration, nominee or like services to Your Business,

but only in respect of such Entity acting or having acted in the course of Your Business.

10.28. **"Retroactive Date"** means:

the date specified in the Schedule.

10.29. **"Schedule"** means:

the schedule affixed to this document and any other documents attached to it.

10.30. **"Shrink Wrap Licence"** means:

a non-negotiated written contract in which standard conditions relating to the use of Information Technology and Telecommunication Products or Information Technology and Telecommunication Services are imposed and which is legally enforceable.

10.31. **"Subsidiary"** means:

- (a) any Entity in which You own or control, directly or indirectly, in any combination, more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors; or
- (b) any Entity deemed to be Your subsidiary under any applicable legislation, law or Australian Accounting Standard.

10.32. **“Territory”** means:

the territory specified in the Schedule.

10.33. **“Terrorism”** means:

any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- (a) involves violence against one or more persons; or
- (b) involves damage to property; or
- (c) endangers life other than that of the person committing the action; or
- (d) creates a risk to health or safety of the public or a section of the public; or
- (e) is designed to interfere with or to disrupt an electronic system.

Terrorism also includes any action taken to control, prevent, suppress, retaliate against, or respond to the above action.

10.34. **“Third Party”** means:

any Entity other than You.

10.35. **“Third Party Licensee”** means:

a Third Party to whom You have licensed Your Information Technology Products pursuant to a legally enforceable, written contract (including a Shrink Wrap Licence).

10.36. **“Watercraft”** means:

any vessel, craft or thing made or intended to float on or in or travel on or through or under water.

10.37. **“We, Our, Us”** means:

Certain Underwriters at Lloyd’s.

10.38. **“Workers' Compensation Law”** means:

any law relating to compensation for personal injury to employees.

10.39. **“Wrongful Act”** means:

act, error, omission, representation or conduct by You which might give rise to a Claim caused by or in respect a defect in or failure to perform of Your Information Technology and Telecommunication Products and/or Information Technology and Telecommunication Services caused by an actual or alleged breach of professional duty.

10.40. **“You or Your(s)”** means:

- (a) the person, partnership, company or other entity specified in the Schedule;
- (b) any Subsidiary Companies listed in the Schedule;
- (c) where You are a partnership or limited liability partnership, any person who is a partner at any time during the Period of Insurance;
- (d) any person who is a director of You during the Period of Insurance;
- (e) any person who is an Employee of You during the Period of Insurance;
- (f) Prior Corporate entities through which You previously traded, in the course of the conduct of the Your Information Technology and Telecommunication Services;
- (g) any officer, committee or member of the canteen, social, sports, first aid/medical, fire fighting and employee welfare organisations of Yours; and

- (h) any Contractor who is engaged by You pursuant to a written Contract that is signed and dated by You and the Contractor and specifies the information Technology and Telecommunication Products or Information Technology and Telecommunication Services to be provided or supplied by the Contractor. No coverage is granted for Claims arising from Contractors where the scope of work agreed has not been reduced to a written contract.

10.41. **“Your Business”** means:

- (a) Your business specified in the Schedule which is
- (b) conducted in the Territory specified in the Schedule, but which is
- (c) limited to Your supply of Information Technology and Telecommunication Products and Information Technology and Telecommunication Services.



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