



COMBINED PROFESSIONAL INDEMNITY & LIABILITY INSURANCE

INFORMATION TECHNOLOGY POLICY WORDING

IT-CHR WORDING V1

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THE INSURERS

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 Underwriters intermediary. In arranging this insurance Tailored Underwriting are acting as agent for the Underwriters and not as Insured agent. Tailored Underwriting are not the Underwriters for this contract and they are not liable for any loss or claim. The Underwriters 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 contact:
Tailored Underwriting
Phone: 1300 880306
Fax: (07) 3088 2079
Post: PO Box 1305, Spring Hill, Qld 4004

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 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. CHANGE IN CIRCUMSTANCES

You must tell Us as soon as practicably possible of any change in the information You have provided to Us which happens before or during any Period of Insurance.

When We are notified of a change We will tell You if this affects your policy. For example We may cancel Your Policy in accordance with the Cancellation and Cooling-Off Provisions, amend the terms of Your Policy or require You to pay more for Your insurance. If You do not inform Us about a change it may affect any claim You make or could result in Your insurance being invalid.

1.4. 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.

1.5. 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 0783
Fax: 02 8298 0788
Email: ldraustralia@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: 1800 367 287

1.6. **PRIVACY**

We are committed to protecting your privacy. We use the information you provide to advise about and assist with Your insurance needs. We provide Your information to insurance companies and agents that provide insurance quotes and offer insurance terms to You or the companies that deal with Your insurance claim (such as loss assessors and claims administrators). Your information may be given to an overseas insurer (e.g. Lloyd's) if We are seeking insurance terms from an overseas insurer, or to reinsurers who are located overseas. We will try to tell You where those companies are located at the time of advising You. We also supply Your information to the providers of Our policy administration and broking systems that help Us to maintain Our products and services to You. We do not trade, rent or sell your information.

If You don't provide Us with full information, We can't properly advise You, seek insurance terms for You, or assist with claims and You could breach your duty of disclosure.

For more information about how to access the personal information We hold about You and how to have the information corrected and how to complain if You think We have breached the privacy laws, ask Us for a copy of our Privacy Policy by phone (07) 3088 2070 or visit Our website www.tailoredunderwriting.com.au

1.7. **ACCESSIBILITY**

Upon request Tailored Underwriting can provide Braille, audio or large print versions of the policy and the associated documentation. If You require an alternative format You should contact Tailored Underwriting through whom this policy was arranged.

1.8. **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.

1.9. **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 practicably possible 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 despite 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 Liability, 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 Tailored Underwriting arranged:

- (i) Your Information Technology and Telecommunication Products and Information Technology and Telecommunication Services legal liability insurance at the time the facts or circumstances first became known to You (the "Previous Period of Insurance") and have continued to arrange 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 arranged by Tailored Underwriting 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 Liability, 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 Liability, 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 & EXPENSES 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 Liability:

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

4.2. If a paid claim exceeds the Limit of Liability, We will only be liable for that proportion of the Defence Costs and Expenses which the Limit of Liability 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 LIABILITY APPLICABLE TO ALL SECTIONS OF THE POLICY

5.1. LIMITS OF LIABILITY

Our liability under this Policy to You will not exceed the Limit of Liability 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. REINSTATEMENT OF THE POLICY LIMIT – APPLICABLE TO SECTION 2 ONLY

We agree to one reinstatement of the Limit of Liability under Section 2 in respect of any subsequent Claims which are totally unrelated to any previously notified Claim. If there is extra insurance in excess of the Limits of Liability of this Policy, then the Limit of Liability is only reinstated for so much of the liability (otherwise covered by this Policy) which is not covered by the extra insurance.

5.3. 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 Liability will apply.

5.4. 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 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 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 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 in regards to You as 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 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 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.

If You do not comply with the above condition it may impact Your ability to make a claim under this Policy.

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.

If You do not comply with the above condition it may impact Your ability to make a claim under this Policy.

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.

If You do not comply with the above condition it may impact Your ability to make a claim 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 practicably possible. 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 take all practicable steps 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.

In the event of breach of this condition, We shall have no liability under this Policy, unless you show that non-compliance with this condition could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

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 LIABILITY LIMIT**

We may at any time in connection with any Claim made pay to You the Liability Limit (after deduction of any sums already paid) or any lesser sum for which 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 practicably possible 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 in the nature of Your Business.

9.3. **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 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.

9.4. **SERVICE OF SUIT**

The Underwriters hereon agree that:

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.

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
Telephone: [02] 8298 0783
Fax: [02] 8298 0788
Email: idraustralia@lloyds.com

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.

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.

9.5. **FRAUD**

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the Assured or anyone acting on the Assured's behalf to obtain any benefit under this Policy, or if any loss hereunder be occasioned by the wilful act or with the connivance of the Assured, the Underwriters, without prejudice to any other right(s) they might have under this Policy, shall be entitled to refuse to pay such claim

9.6. **SUBROGATION**

In the event of payment under this Policy to or on behalf of the Insured, the Underwriters shall be subrogated to all the Insured's rights of recovery against all persons and organisations and the Insured shall execute and deliver instruments and papers and do all that is necessary to assist in the exercise of such rights.

9.7. **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.

9.8. **CANCELLATION AND COOLING-OFF PERIOD**

- a. Insureds Right to Cancel during the Cooling-Off Period

Insured has the right to cancel the policy by notifying Underwriters in writing within twenty-one (21) days of the date the policy was issued to Insured (Cooling-Off Period). Insured is

entitled, during the Cooling-Off Period, to a complete refund of the amount Insured has paid for the policy. If Insured choose to cancel the policy during the Cooling-Off Period, Underwriters will treat the policy as never having existed. Insured is not entitled to a refund if, during the Cooling-Off Period, the policy has already expired or if Insured has made a claim under the policy.

b. Insureds Right to Cancel after the Cooling-Off Period

Insured may cancel the policy after the cooling-off period by notifying Underwriters in writing. The cancellation will take effect on the day Underwriters receive such notice in writing. Underwriters will refund the premium for the unexpired Period of Insurance. If more than one person, company or firm is named on the policy as an insured person(s), Underwriters will only cancel the policy if a written agreement to cancel the policy is received by Underwriters from all parties named as an insured person(s). Any return of premium due to Insured will be calculated at a proportional daily rate depending on how long the policy has been in force unless Insured have made a claim in which case the full annual premium is due.

c. Underwriters Right to Cancel

Underwriters are entitled to cancel this policy, if there is a valid reason to do so, including for example:

- The Insured breaches its duty of utmost good faith.
- The Insured breaches its disclosure obligations.
- The Insured misrepresents the facts to the Underwriters.
- The Insured does not do what the policy requires it to do.

A policy can also be cancelled if an act or omission occurs after the policy has been issued in the following circumstances:

- The policy includes a provision that requires the insured to notify the Underwriters of a specified act or omission by them;
- The effect of the policy is to authorise the Underwriters to refuse to pay a claim, either in whole or in part, by reason of an act or omission of the insured or of some other person.

by giving Insured (14) fourteen days' notice. Underwriters will advise Insured in writing if the Policy is cancelled by Underwriters. If Underwriters cancel the Policy Underwriters will refund the premium for the unexpired Period of Insurance. Any return of premium due to Insured will be calculated at a proportional daily rate depending on how long the policy has been in force unless Insured have made a claim in which case the full annual premium is due

9.9. 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.

9.10. 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 practicably possible after becoming aware of the conduct, the other Entity notifies Us of all facts relating to such conduct.

9.11. **LAW AND JURISDICTION**

This policy will be governed by the laws of the Commonwealth of Australia and subject to the exclusive jurisdiction of the courts of Australia.

The language of this policy and all communications relating to it will be in English

9.12. **SANCTIONS**

Underwriters shall not provide any benefit under this policy to the extent of providing cover, payment of any claim or the provision of any benefit where doing so would breach any sanction, prohibition or restriction imposed by law or regulation.

9.13. **PRIVACY**

We are committed to protecting your privacy. We use the information you provide to advise about and assist with Your insurance needs. We provide Your information to insurance companies and agents that provide insurance quotes and offer insurance terms to You or the companies that deal with Your insurance claim (such as loss assessors and claims administrators). Your information may be given to an overseas insurer (e.g. Lloyd's) if We are seeking insurance terms from an overseas insurer, or to reinsurers who are located overseas. We will try to tell You where those companies are located at the time of advising You. We also supply Your information to the providers of Our policy administration and broking systems that help Us to maintain Our products and services to You. We do not trade, rent or sell your information.

If You don't provide Us with full information, We can't properly advise You, seek insurance terms for You, or assist with claims and You could breach your duty of disclosure.

For more information about how to access the personal information We hold about You and how to have the information corrected and how to complain if You think We have breached the privacy laws, ask Us for a copy of our Privacy Policy by phone (07) 3088 2070 or visit Our website www.tailoredunderwriting.com.au

9.14. **UNITED KINGDOM DATA PROTECTION ACT**

Any information provided to Underwriters regarding Insured, any person insured or any employee will be processed by Underwriters, in compliance with the provisions of the United Kingdom Data Protection Act 1998, for the purpose of providing insurance and handling claims or complaints, if any. This may necessitate providing such information to third parties.

9.15. **UNITED KINGDOM THIRD PARTY RIGHTS**

A person who is not a party to this contract of insurance has no right under the United Kingdom Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract of insurance but this does not affect any right or remedy of a third party that exists or is available apart from that Act.

9.16. **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.

9.17. **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”.

9.18. AUSTRALIAN CURRENCY CLAUSE

All limits of liability, premiums and other amounts as expressed in this policy are in Australian currency.

9.19. 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 or 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:
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 Liability”** means:
the amount stated, under the respective heading, in the Limits of Liability 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 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:

Your business specified in the Schedule which is conducted in the Territory specified in the Schedule, but which is limited to Your supply of Information Technology and Telecommunication Products and Information Technology and Telecommunication Services.