

PART [A] - PROFESSIONAL INDEMNITY

1.0 INSURING CLAUSES – PART [A] ONLY

- 1.1 **We** will cover **You** for any **Claim**, first made against **You** and reported to **Us** during the **Insurance Period**, for civil liability arising from the conduct of the **Business** by **You**.
- 1.2 **We** will also cover **You** for the costs and expenses incurred in the defence, settlement or investigation of a **Claim** for which indemnity is available under Insuring Clause 1.1.

2.0 AUTOMATIC PROVISIONS – PART [A] ONLY

These provisions are included automatically and each is subject to the terms of the policy except where varied by the provision. Except for Automatic Provision 2.2, their inclusion does not increase the **Sum Insured**. The acts, errors or omissions recorded in Automatic Provisions 2.3, 2.4, 2.5, 2.7, 2.8, 2.11 and 2.12 must occur in the conduct of the **Business**.

CONTRACTUAL LIABILITY

- 2.1 Exclusion 8.11 [CONTRACTUAL OBLIGATIONS] will not apply to **Claims**:
- where the obligation arises from, or is in consequence of, an indemnity or hold-harmless provision of a written contract between **You** and a third party for the performance of the services or provision of **IT Products** of the **Business**.
 - arising from indemnities provided by **You** to **Your** customers/clients for liabilities those customers/clients may have to other parties arising from **Your** acts, errors or omissions in the conduct of the **Business**.
 - made by a **Licensee** of **Yours** under any any warranty or indemnity given by **You** in respect of **Your** ownership or ability to licence intellectual property rights.
 - arising from an implied warranty of fitness or quality of **IT Products**.
 - in respect of the treatment or use of confidential information.

ONE AUTOMATIC REINSTATEMENT

- 2.2 While **Our** liability for any one **Claim** remains unchanged, **We** agree to reinstate the **Sum Insured** if it is either partially or totally exhausted by any payment[s] made by **Us** so that **You** will be covered for the **Sum Insured** for subsequent unrelated **Claims**, but the aggregate of all such reinstatements shall not exceed an amount equal to the **Sum Insured**.

LIBEL and SLANDER

- 2.3 “civil liability” includes a liability arising from making a libellous or slanderous statement.

COMPETITION, CONSUMER and TRADE PRACTICES LEGISLATION

- 2.4 “civil liability” includes a liability arising from a breach of any provision of any Australian or New Zealand trade practices or fair trading legislation, including the Competition and Consumer Act 2010.

DISHONESTY

- 2.5 “civil liability” includes a liability arising from dishonest, fraudulent, criminal or malicious acts or omissions, but not if such acts or omissions cause loss of money, negotiable instruments, bearer bonds or coupons, bank or currency notes. No cover is provided under this provision to any person who commits or condones such act or omissions.

OUTGOING PRINCIPALS/OTHERS

- 2.6 “**You**” includes people who are no longer principals, partners, directors or employees of any party named in Item [1] of the Schedule.

LOSS OF DOCUMENTS/DATA

- 2.7 “civil liability” includes a liability arising from **Your** obligation to pay for the cost of replacing or restoring **Documents/Data** owned by others which have been lost, damaged, erased, corrupted or destroyed by **You** while entrusted to **You**.

BREACH OF FIDUCIARY DUTY

- 2.8 “civil liability” includes a liability arising from a breach of fiduciary duty owed to **Your** clients or customers.

ESTATES, SPOUSES and LEGAL REPRESENTATIVES

- 2.9 Should **You** die or become incapable of managing **Your** affairs, “**You**” includes **Your** estate, spouse, heirs, legal personal representatives or assigns. **We** will only do this if such persons observe, and are subject to, the terms of this policy.

PRIOR ENTITY

- 2.10 Definition 10.25 “**You**” includes corporate entities, other than entities contemplated by Optional Provision 3.2 [PREVIOUS BUSINESS], through which the entity named in Item [1] of the Schedule previously traded.

CONSULTANTS, SUB-CONTRACTORS AND AGENTS

- 2.11 “civil liability” includes a liability arising from the conduct of the **Business** by **Your** consultants, sub-contractors and agents, providing **You** preserve **Your** legal rights against them. No cover is provided for **Claims** made against such consultants, sub-contractors and agents except those referred to in Definition 10.25.

INTELLECTUAL PROPERTY

- 2.12 “civil liability” includes a liability arising from unintentional infringement of intellectual property rights, including copyright, patent, trademark, plagiarism, registered design, circuit layout rights, trade secrets, service marks and breach of confidentiality.

INQUIRIES

- 2.13 **We** will pay all legal costs and expenses reasonably incurred in connection with **Your** attendance at any **Inquiry** at which **You** are required by law to appear, but **We** will only do this if:

- the **Inquiry** is ordered or commissioned during the **Insurance Period**.
- **Our** consent is obtained before such costs are incurred.
- **You** notify **Us** before the **Insurance Period** expires that **You** are required to attend the **Inquiry**.
- the **Inquiry** is not being held in the **USA** or **Canada**.
- **Your** attendance is required because of **Your** involvement in the **Business**.
- at **Our** option, **We** can nominate legal advisers to be used.
- **Our** maximum liability under this Automatic Provision does not exceed \$250,000 in the aggregate for the **Insurance Period**.
- the first \$1,000 of such costs and expenses are borne by **You**.

COURT ATTENDANCE COSTS

- 2.14 **We** will pay any reasonable court attendance costs incurred by **You** with **Our** prior consent, if you are legally compelled to attend a civil proceeding as a witness in a **Claim** covered by this policy. **Our** maximum liability under this Automatic Provision shall not exceed \$1,000 per day or \$100,000 in the aggregate for the **Insurance Period**.

PUBLIC RELATIONS EXPENSES

- 2.15 **We** will pay all **Public Relations Expenses** incurred by **You** with **Our** prior consent. **Our** maximum liability under this Automatic Provision shall not exceed \$50,000 in the aggregate during the **Insurance Period**. The first \$1,000 of such **Public Relations Expenses** will be borne by **You**.

LOSS MITIGATION AND RECTIFICATION

- 2.16 **We** will pay reasonable direct costs and expenses incurred by **You** in taking necessary action to rectify or mitigate the effects of an act, error or omission of **Yours** in the conduct of **Your Business** that would otherwise result in a **Claim** under this policy, provided that:

- the act, error or omission is discovered by **You** and notified to **Us** as soon as practicable during the **Insurance Period**; and
- You notify **Us** of **Your** intention to take such action and receive **Our** consent before incurring these costs and expenses.

Our maximum liability under this Automatic Provision shall not exceed \$250,000 in the aggregate during the **Insurance Period**.

FEE RECOVERY

- 2.17 Despite Exclusion 8.20 [FEE RECOVERY] **We** will pay **Your** outstanding fee for which **You** have raised an invoice to **Your** client in circumstances where:

- **Your** client has expressed dissatisfaction with the work undertaken by **You** and refuses to pay the outstanding fees; and
- threatens to bring a **Claim** against **You**;

PROVIDED THAT:

- **We** believe payment of the outstanding fees would avoid such a **Claim**;
- **Our** maximum liability under this Automatic Provision shall not exceed \$250,000 in the aggregate during the **Insurance Period**.
- the first \$1,000 of such outstanding fees will be borne by **You**.

PRIVACY BREACH EXPENSES

- 2.18 **We** will pay **Breach Response Expenses** incurred by **You** arising from a **Breach of Privacy** in the conduct of **Your Business** first discovered and reported to **Us** during the **Insurance Period**.

For the purposes only of this provision:

- **Breach of Privacy** means: a breach of confidentiality, infringement or violation of any right to privacy, including public disclosure of commercial information or an individual's personal information, which occurs on or after the **Retroactive Date**.
- **Breach Response Expenses** means: the expenses reasonably incurred with **Our** prior consent, to notify any third party or employee of a **Breach of Privacy**, including the expense of call centre services to handle inquiries from affected persons.

Our maximum liability under this Automatic Provision shall not exceed \$50,000 in the aggregate for the **Insurance Period**, and all payments by **Us** under this Automatic Provision will be subject to the **Excess**.

DATA RECOVERY EXPENSES

- 2.19 **We** will pay **Data Recovery Expenses** incurred by **You** and arising from a **Breach of Security** in the conduct of **Your Business** first discovered and reported to **Us** during the **Insurance Period**.

For the purposes only of this provision:

- **Breach of Security** means: an intentional, malicious or wilful act that results in:
 - the misuse of **Your** computer systems or websites to modify, delete, corrupt or destroy **Data**; or
 - a denial of service attack against **Your** computer systems or websites.
- **Data Recovery Expenses** means: any costs reasonably incurred with **Our** prior consent, to restore, re-collect or replace **Data** owned by **You** including expenses for materials, working time and overhead cost allocation associated with restoring or replacing **Data** owned by **You** to the level or condition at which it existed prior to the **Breach of Security**.

Our maximum liability under this Automatic Provision shall not exceed \$50,000 in the aggregate for the **Insurance Period**, and all payments by **Us** under this Automatic Provision will be subject to the **Excess**.

STATUTORY LIABILITY

2.20 Despite Exclusion 8.16 [FINES/PENALTIES], **We** will cover **You** for **Your** liability to pay fines or pecuniary penalties awarded in, and under the laws of, the jurisdictions of Australia and New Zealand for:

- any civil offence.
- a strict liability offence in connection with the discharge, dispersal, release or escape of **Pollutants**.
- a strict liability offence in connection with a breach of workplace health and safety laws or regulations.

PROVIDED THAT:

- such liability is not directly or indirectly based on, arising out of, or attributable to, **Your** reckless or grossly negligent conduct, or any knowing or intentional breach or violation of law by **You**, established through a judgment or other final adjudication, or any admission by **You**; and
- arises from the conduct of the **Business** by **You**; and
- **We** are not legally prohibited from paying such fines or pecuniary penalties.

For the purposes only of this provision:

- a **Claim** shall include a civil proceeding brought for recovery of fines or pecuniary penalties, or any written notice arising from an **Inquiry** requiring **You** to pay fines or pecuniary penalties.
- Exclusion 8.5 [EMPLOYER'S LIABILITY] will not apply to any **Claim** brought against **You** in the jurisdiction and under the laws of Australia or New Zealand, in connection with a breach of workplace health and safety laws or regulations.
- **Pollutants** means: any contaminant whether solid, liquid or gas, including, but not limited to, chemicals, smoke, vapours and fumes.

Our maximum liability to pay fines or pecuniary penalties under this Automatic Provision shall not exceed \$250,000 in the aggregate for the **Insurance Period**, and all payments by **Us** under this Automatic Provision will be subject to the **Excess**.

SEVERABILITY AND NON-IMPUTATION

2.21 If any person fails to:

- comply with their duty of disclosure, or
- makes a misrepresentation to **Us**, or
- fails to comply with a condition of this policy, then

We will not deny cover to any other person on these grounds if that other person was unaware of the matter not disclosed, the truth of the matter misrepresented, or did not breach the condition, as the case may be.

CONTINUOUS COVER

2.22 In the absence of fraudulent non-disclosure or fraudulent misrepresentation, where a **Claim** that would otherwise be covered by this policy is excluded by Exclusion 4.3 [KNOWN CLAIMS / CIRCUMSTANCES] because it arises from circumstances of which **You** were aware prior to the **Insurance Period** and which **You**, or a person in your position, ought reasonably to have realised to be circumstances which might result in a **Claim**, then **We** will cover such **Claim** PROVIDED THAT:

- **You** have not, prior to the **Insurance Period**, notified those circumstances to **Us** or any other insurer; and
- **You** first became aware of those circumstances prior to the **Insurance Period**; and

- **You** were insured by **Us** when **You** first became aware of those circumstances, and have since been insured continuously by **Us** under a policy for which this policy is a replacement; and
- the **Claim** is not excluded by the policy in force when **You** first became aware of such facts or circumstances; and
- the **Claim**, although not excluded by the policy in force when **You** first became aware of such facts or circumstances, is otherwise not covered by that policy, either pursuant to the terms of that policy or as a result of the application of the provisions of the Insurance Contracts Act 1984; and
- no **Related Claim** has been made against **You** prior to the **Insurance Period**.

The cover provided by this provision is otherwise subject to the terms of this policy EXCEPT THAT if the:

- amount of the excess applicable to the policy in force when **You** first became aware of those circumstances is higher than the amount of the Excess under this policy, then the amount of the Excess under this policy will be deemed to be such higher amount; and
- the amount of the limit of indemnity applicable to the policy in force when **You** first became aware of those circumstances is lower than the **Sum Insured** under this policy, then the amount of the **Sum Insured** will be deemed to be such lower amount.

Related Claim means a **Claim** arising directly or indirectly from the same or causally related act, error or omission or series of acts, errors or omissions.

RUN-OFF COVER

- 2.23 **We** agree that in the event **You** cease to exist or operate or are consolidated with, merged into or acquired by any other entity either before or during the **Insurance Period**, then the cover provided under this policy with respect to such person or entity will continue until the expiry of the **Insurance Period** or cancellation of the policy, whichever is earlier.

This Automatic Provision will only apply in respect of **Claims** arising from any act, error or omission occurring prior to the date that **You** ceased to exist or operate or were consolidated with, merged into or acquired by that other entity.

EXTENDED REPORTING PERIOD

- 2.24 In the event that this policy is not renewed or replaced with any similar or like IT Liability policy, then the cover provided under Insuring Clause 1.1 shall be extended to any **Claim** first made against **You** and notified to **Us** for a period of sixty (60) days immediately after the **Insurance Period**.

LIMITATION OF LIABILITY

- 2.25 Despite Exclusion 8.11 [CONTRACTUAL OBLIGATIONS], **We** recognise that in the performance of the services or provision of **IT Products** of the **Business**, **You** may enter into written contracts or agreements with other parties which may exclude or limit the liability of such parties. **We** agree that such agreements will not prejudice **Your** right to cover under the policy.

3.0 OPTIONAL PROVISIONS – PART [A] ONLY

The following provisions are optional and are not included unless recorded in Item [9] of the Schedule. Each provision is subject to the terms of this policy, except where varied by the provision.

FIDELITY

- 3.1 Despite Exclusion 8.12 [DISHONESTY] and Automatic Provision 2.5 [DISHONESTY], **We** will cover **You** for loss of money, negotiable instruments, bearer bonds or coupons, or bank or currency notes, which belong to **You** or for which **You** are legally liable, where such loss caused by fraudulent or dishonest acts or omissions.

We only cover loss which:

- is discovered and reported to **Us** during the **Insurance Period**.
- occurs prior its discovery, and on or after the **Retroactive Date**.

For the purposes of this Optional Provision, **You** does not include any person who committed or condoned the fraudulent or dishonest act or omission which caused the loss.

Our maximum liability under this Optional Provision will not exceed \$250,000 in the aggregate for the **Insurance Period**.

All claims under this Optional Provision are subject to the **Excess**.

PREVIOUS BUSINESS

- 3.2 “**Business**” includes any similar business of which **You** were a principal, partner or director before joining the **Business** conducted by a party named in Item [1] of the Schedule, but **We** will only do this if **You** are not entitled to cover under any insurance held by that similar business. **We** will not apply Exclusion 4.2 [PREVIOUS BUSINESS] to **Claims** under this provision.

4.0 EXCLUSIONS – PART [A] ONLY

We will not cover **You** for any **Claim**, including the costs and expenses incurred in the defence, settlement or investigation of a **Claim**:

PRIOR ACTS

- 4.1 arising from an act, error or omission occurring prior to the **Retroactive Date**.

PREVIOUS BUSINESS

- 4.2 arising from a business of which **You** were a principal, partner or director before joining the **Business** conducted by a party named in Item [1] of the Schedule, unless covered by Optional Provision 3.2 [PREVIOUS BUSINESS].

4.3 KNOWN CLAIMS/CIRCUMSTANCES

- first made, threatened or intimated against or to **You** prior to the **Insurance Period**.
- arising from any matter disclosed or notified to **Us** or any other insurer prior to the **Insurance Period** as being either a **Claim**, or circumstances which might result in a **Claim**.
- arising from any litigation or **Inquiry** that was in progress or pending prior to the **Insurance Period**.
- arising from circumstances of which **You** were aware prior to the **Insurance Period** and which **You**, or a person in **Your** position, ought reasonably to have realised to be circumstances which might result in a **Claim**.

For the purposes only of Exclusion 4.3, **Claim** includes, but is not limited to:

- a **Claim** as defined at Definition 10.2.
- a demand for compensation or damages.
- an assertion of a right or entitlement to compensation, damages or other legal relief.
- an assertion, allegation or complaint of any act, error or omission causing or potentially causing loss or damage.
- an intention to seek compensation, damages or other legal relief.

DIRECTORS and OFFICERS

- 4.4 arising from **You** acting as a trustee, director, secretary or officer of a trust or body corporate.

PART [B] – PUBLIC AND PRODUCTS LIABILITY

5.0 INSURING CLAUSES – PART [B] ONLY

- 5.1 **We** will cover **You** for **Your** liability to pay **Claims** for compensation for **Personal Injury** or **Property Damage** caused by an **Occurrence** in the conduct of the **Business** by **You**.
- 5.2 **We** will also cover **You** for the costs and expenses incurred in the defence, settlement or investigation of a **Claim** for which indemnity is available under Insuring Clause 5.1.
- 5.3 **We** will also cover **You** for the reasonable expenses [other than medical expenses prohibited by Section 126 of the Health Insurance Act 1973] incurred by **You** for first aid to others at the time of **Personal Injury** caused by the **Occurrence** which resulted in the **Claim** for which indemnity is available under Insuring Clause 5.1.

6.0 AUTOMATIC PROVISIONS – PART [B] ONLY

These provisions are included automatically and each is subject to the terms of the policy except where varied by the provision. Their inclusion does not increase the **Sum Insured**.

PRODUCT RECALL EXPENSES

- 6.1 **We** will pay **Product Recall Expenses** incurred by **You**, with **Our** prior consent, during the **Insurance Period** if **IT Products** are recalled from the market or from use, whether in response to a regulatory order or otherwise, because it has become known or reasonably anticipated that they may cause **Personal Injury** or **Property Damage** due solely to a defect in such **IT Products**.

There is no cover available under this Automatic Provision for any **Product Recall Expenses**:

- which are not incurred in the circumstances set out above; or
- where **IT Products** are known or are reasonably anticipated to have a propensity to cause **Personal Injury** or **Property Damage** arising from:
 - inherent or inevitable degradation, degeneration or corruption; or
 - mislabelling or misdirection due to the continued use of existing labels or instructions which have passed their internal review date or have ceased to be approved for **Your IT Products** by the relevant regulator; or
 - any other characteristics of which **You** knew, or ought reasonably to have known prior to the **Insurance Period**, to have a propensity to cause **Personal Injury** or **Property Damage**.

Our maximum liability under this Automatic Provision shall not exceed \$250,000 in the aggregate during the **Insurance Period**, and all payments by **Us** under this Automatic Provision will be subject to the **Excess**.

TENANTS LIABILITY

- 6.2 **We** will cover any lessor of **Yours** for its liability to pay **Claims** for compensation for **Personal Injury** or **Property Damage** caused by an **Occurrence** in the conduct of the **Business** by **You**.
- We** will also cover the lessor for the costs and expenses incurred in the defence, settlement or investigation of a **Claim** for which indemnity is available above.
- We** will only do this on the basis that:
- the lessor is subject to the terms of the policy as though it was **You**; and
 - cover under this policy would have been available to **You** had that **Claim** been made against **You**.

VENDOR'S LIABILITY

- 6.3 **We** will cover any vendor of **IT Products** for its liability to pay **Claims** for compensation for **Personal Injury** or **Property Damage** caused by an **Occurrence** in the conduct of the **Business** by **You**.
- We** will also cover the vendor for the costs and expenses incurred in the defence, settlement or investigation of a **Claim** for which indemnity is available above.

We will only do this on the basis that:

- the vendor is subject to the terms of the policy as though it was **You**; and
- in respect of the **IT Products**, the vendor has not made any modifications, representations or warranties unauthorised by **You**; and
- cover under this policy would have been available to **You** had that **Claim** been made against **You**.

PRINCIPAL'S INDEMNITY

6.4 **We** will cover any **Principal** for its liability to pay **Claims** for compensation for **Personal Injury** or **Property Damage** caused by an **Occurrence** in the conduct of the **Business** by **You**.

We will also cover the **Principal** for the costs and expenses incurred in the defence, settlement or investigation of a **Claim** for which indemnity is available above.

We will only do this on the basis that:

- the **Principal** is subject to the terms of the policy as though it was **You**.
- cover under this policy would have been available to **You** had that **Claim** been made against **You**.

7.0 AUTOMATIC PROVISIONS – PARTS [A] AND [B]

These provisions are included automatically and each is subject to the terms of the policy except where varied by the provision. Their inclusion does not increase the **Sum Insured**.

JOINT VENTURE

7.1 “**Business**” includes any joint venture to which **You** are a party, but cover will be limited to a sum equivalent to **Your** proportion of liability as defined by the joint venture arrangement.

ADVANCEMENT OF DEFENCE COSTS

7.2 If **We** have not confirmed or denied indemnity, and subject to Condition 9.7 [EXCESS], **We** will pay costs and expenses incurred in the defence or investigation of a **Claim**, provided **Our** consent is obtained by **You** prior to incurring such costs and expenses.

If **We** subsequently deny indemnity for the **Claim**, **You** must repay those costs and expenses to **Us** immediately.

Our maximum liability under this Automatic Provision shall not exceed \$100,000 in the aggregate during the **Insurance Period**.

NEWLY CREATED OR ACQUIRED SUBSIDIARIES

7.3 A **Subsidiary** includes any entity acquired or created by **You** during the **Insurance Period** for a period of up to (60) sixty days from the date of such acquisition or creation or the expiry of the **Insurance Period**, whichever is the earliest.

When **You** provide **Us** with full details of the new subsidiary, **We** will consider providing coverage beyond the above period on such terms, conditions and additional premium as **We** may require.

For the purposes of this provision, the **Retroactive Date** will be the date of acquisition or creation of the entity, and the **Occurrence** must happen after such acquisition or creation occurs.

8.0 GENERAL EXCLUSIONS – PARTS [A] AND [B]

We will not cover **You** for any **Claim**, including the costs and expenses incurred in the defence, settlement or investigation of a **Claim**:

USA/CANADA – JURISDICTION / TERRITORY

8.1 brought in a court in **USA** or **Canada**, or any court exercising jurisdiction under any law of **USA** or **Canada**, or in any other court to enforce a judgement or order of those courts.

8.2 arising from an act, error or omission occurring in **USA** or **Canada**.

NUCLEAR

- 8.3 arising from nuclear weapons materials, or radiation or contamination from any nuclear fuel or waste.

ASBESTOS

- 8.4 arising from asbestos.

EMPLOYER'S LIABILITY

- 8.5 arising from **Your** liability as an employer, including **Claims** arising from physical injury, death, sickness, disease, mental illness or emotional distress of any employee of **Yours**, or damage to their property unless covered by exception under Exclusion 8.10 [PROPERTY in PHYSICAL or LEGAL CONTROL].

AIRCRAFT and MARINE CRAFT

- 8.6 arising from:
- **Your** liability as an owner, user, or operator of any aircraft or marine craft.
 - the provision of services or **IT Products** to the aviation or aerospace industry.

KNOWN DEFECTS

- 8.7 arising from the provision or supply of **IT Products** which **You** knew, or ought reasonably to have known, to be defective or ineffective or incapable of fulfilling the purpose for which they were intended to perform as specified, guaranteed or warranted by **You**.

RESTRAINT OF TRADE

- 8.8 arising from any law governing unconscionable conduct or antitrust or competition law or other law prohibiting restraint of trade, or business.

VEHICLES

- 8.9 arising from **Your** liability as an owner, user or operator of any **Vehicle** which is required to be registered or in respect of the use of which insurance is required by law, but this exclusion will not apply to **Claims**:
- arising from the collection or delivery of goods to or from the **Vehicle** where the **Personal Injury** or **Property Damage** occurs beyond the limits of a carriageway or thoroughfare.
 - where the **Personal Injury** or **Property Damage** occurs when the **Vehicle** is being used as a tool of trade on **Your** premises, or on any site where **You** are conducting the **Business**.

PROPERTY in PHYSICAL or LEGAL CONTROL

- 8.10 arising from damage to property owned or occupied by **You**, or in **Your** physical or legal control, unless such property is:
- leased or rented by **You** for the purpose of conducting the **Business**.
 - a vehicle [not belonging to **You**, nor being used by **You** or on **Your** behalf] in a car park owned or operated by **You**.
 - **Your** employee's property.
 - not a **Vehicle**, and is entrusted to **You** for repair, service, maintenance or alteration [or is on temporary loan or hire to **You**].

Our maximum liability for such property will not exceed \$250,000 in the aggregate for the **Insurance Period**.

CONTRACTUAL OBLIGATIONS

- 8.11 arising from any obligation assumed by **You** by way of warranty, guarantee, contract or indemnity unless such obligation would have existed independently of such assumption, or unless covered by Automatic Provision 2.1 [CONTRACTUAL LIABILITY] or Automatic Provision 2.25 [LIMITATION OF LIABILITY].

DISHONESTY

- 8.12 arising from any dishonest, fraudulent, criminal or malicious act or omission, unless covered by Automatic Provision 2.5 [DISHONESTY] or Optional Provision 3.1 [FIDELITY], nor will **We** cover any person who commits or condones any such act or omission.

PRODUCT RECALL

- 8.13 arising from the recall, withdrawal, inspection, repair, modification, replacement, adjustment, removal, or disposal of **IT Products** [including any property of which such **IT Products** form a part] where such **IT Products** are recalled or withdrawn from the market [or from use] due to a known defect, deficiency, inadequacy, or dangerous condition.

TRADING / OTHER DEBT

- 8.14 in connection with any personal or trading debt, or any guarantee given for any debt.

RELATED PARTIES / EPL

- 8.15 brought by, or arising from an act, error or omission affecting, a **Related Party**.

FINES/PENALTIES

- 8.16 Except as provided under Automatic Provision 2.20 [STATUTORY LIABILITY], **We** will not cover **You** for **Your** liability to pay fines, penalties or exemplary damages or any costs and expenses incurred in connection with any **Claim**, demand or other process seeking the payment of fines, penalties or exemplary damages.

- 8.17 **WAR and TERRORISM**

We will not cover **You** for any **Claim**, loss, liability, cost or expense directly or indirectly caused by, resulting from, or in connection with:

- war, invasion, acts of foreign enemies, hostilities or warlike operations [whether war be declared or not], civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority; or
- any act of terrorism. "Terrorism" includes an act involving the use or threat of force or violence 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] which from its nature or context is committed for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any Government and/or to put the public or any section of the public in fear;

and regardless of any other cause or event contributing to such **Claim**, loss, liability, cost or expense.

We will also not cover **You** for any **Claim**, loss, liability, cost or expense directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing or suppressing or in any way relating to any of the above acts or events.

The burden of proving that this exclusion does not apply shall be upon **You**.

RECOVERY RIGHTS

- 8.18 **Our** liability under this policy is reduced to the extent by which **Our** subrogation rights against any other party have been impaired because of an agreement between **You** and that other party.

SANCTIONS

- 8.19 No **Security** shall be deemed to provide cover and no **Security** shall be liable to pay any **Claim** or provide any benefit under this policy to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose that **Security** 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, Australia or United States of America.

FEE RECOVERY

- 8.20 Except as provided under Automatic Provision 2.17 [FEE RECOVERY], **We** will not cover **You** for **Claims** to refund, or for damages calculated by reference to, any fee or charge rendered or incurred by **You**.

9.0 CONDITIONS – PARTS [A] AND [B] UNLESS STATED OTHERWISE

REPORTING CLAIMS

- 9.1 As soon as **You** can, [and within the **Insurance Period** for **Claims** under Part [A] of this policy], **You** must give **Us** written notice of any **Claim**, and give **Us** such information and assistance as **We** consider necessary in connection with the **Claim**, including identification of any parties against whom **You** may have rights.

MANAGEMENT OF CLAIMS

- 9.2 **You** must not admit liability for or settle any **Claim**, or incur any costs or expenses in connection with any **Claim**, without **Our** prior consent.

We may assume conduct of the defence and settlement of any **Claim** and may appoint legal advisers for that purpose, but we will not force **You** to contest any **Claim** unless Counsel [agreed to by **You** and **Us**] advises that the **Claim** should be contested having regard to the economics and prospects of the defence of the **Claim**.

Legal advisers retained by **Us** to act on **Your** behalf are free to disclose to **Us** any information obtained while acting for **You** and **You** agree to waive any legal professional or client privilege to the extent that such privilege may have prevented such disclosure to **Us**.

We may allow **You** to conduct the defence of the **Claim** if **We** believe the **Claim** will not exceed the **Excess**. If **We** do this, **You** will be required to provide **Us** with regular progress reports and **We** reserve the right to take over conduct of the **Claim**.

We may settle the **Claim** if **We** so choose upon such terms as **We** have been properly advised and, in doing so, may take into account the economics of the defence of the **Claim**.

LIMITED LIABILITY – PART [A] ONLY

- 9.3 **Our** liability under this policy will not exceed in the aggregate, in respect of any one **Claim**, and for all **Claims**, the **Sum Insured** stated in Item [5] of the Schedule, EXCEPT THAT **We** will, in addition, pay the costs and expenses incurred under Insuring Clause 1.2, PROVIDED THAT, if a payment greater than the **Sum Insured** is required to dispose of a **Claim**, **Our** liability under Insuring Clause 1.2 will be limited to the proportion that the **Sum Insured** bears to the payment required to dispose of the **Claim**, subject to such proportion not exceeding the **Sum Insured**.

This condition does not apply to Part [B] of this policy.

LIMITED LIABILITY – PART [B] ONLY

- 9.4 **Our** liability under this policy in respect of any one **Occurrence** will not exceed the **Sum Insured** stated in Item [6] of the Schedule, EXCEPT that **We** will, in addition, pay the costs and expenses incurred under Insuring Clauses 5.2 and 5.3 up to the limit of the **Sum Insured**. All **Personal Injury** and **Property Damage** arising from continuous or repeated exposure to the same general conditions will be regarded as arising out of one **Occurrence**.

Our liability under this policy for **Product Liability** will not exceed in the aggregate, in respect of any one **Claim**, and for all **Claims**, the **Sum Insured** stated in Item [6] of the Schedule, EXCEPT that **We** will, in addition, pay the costs and expenses incurred under Insuring Clauses 5.2 and 5.3 up to the limit of the **Sum Insured**.

This condition does not apply to Part [A] of this policy.

MULTIPLE CLAIMS – PART [A] ONLY

- 9.5 For the purposes of determining the **Sum Insured** and the **Excess**, all **Claims** which arise from acts, errors, or omissions which are the same or related to each other will be regarded as one **Claim**.

This condition does not apply to Part [B] of this policy.

CROSS LIABILITY - PART [B] ONLY

- 9.6 Where **You** are comprised of more than one person or entity, each of the parties will be considered as a separate and distinct unit and the cover afforded under Part [B] Public and Products Liability will be considered as applying to each party in the same manner as if a separate Public and Products Liability policy had been issued to each of them, provided that nothing in this Condition will result in an increase to the **Sum Insured**.

This condition does not apply to Part [A] of this policy.

EXCESS

- 9.7 **You** must bear the amount of the **Excess** in respect of each **Claim** covered by this policy and/or for claims for payment under Automatic Provisions 2.20, 6.1 and 7.2 and/or Optional Provision 3.1. Where the **Excess** is described in the Schedule as “Costs Inclusive”, all external expenses incurred by **Us** in connection with each **Claim**, will be borne by **You** up to the limit of the **Excess**.

CANCELLATION

- 9.8 **You** may cancel this policy at any time by notifying **Us** in writing. **We** may also cancel this policy, but **We** can only do so in accordance with the law. In the event of cancellation, any refund of premium, and the amount of that refund, is at **Our** sole discretion.

SUBROGATION

- 9.9 Where **We** have paid a **Claim** under this policy, **We** become entitled to any rights **You** may have against any party in relation to that **Claim** [subject to law]. **You** must assist **Us** [including giving evidence at any civil trial] and provide such information [including signed statements] as **We** reasonably require to exercise such rights.

HEADINGS

- 9.10 Paragraph [unboxed] titles used in this policy are included for descriptive purposes only and do not form part of this policy for the purpose of its construction or interpretation.

GOVERNING LAW

- 9.11 This policy will be construed in accordance with the laws of Australia and the state or territory where the policy was issued. All disputes relating to interpretation of this policy will be determined by the courts [or a federal court] based in that state or territory.

CONSIDERATION

- 9.12 The cover provided by **Us** under this policy is in consideration of the payment of the agreed premium.

VALIDITY

- 9.13 To be valid, this policy must have a Schedule attached to it which has been signed by an authorised officer of **Ours**.

GENERAL INSURANCE CODE of PRACTICE

- 9.14 Other than for **Claims** managed outside Australia, this policy complies with the Insurance Council of Australia’s General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry and is proudly supported by the **Security**. Any enquiry or complaint relating to this policy should be referred to **Us**, but if **You** are not satisfied with the way **We** dealt with the complaint, **You** should write to:

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

who will refer the matter to Policyholder and Market Assistance at Lloyd’s. If they are unable to resolve the complaint, it may be referred to the Financial Ombudsman Service [UK], but further details will be provided at the appropriate juncture.

SERVICE OF SUIT

- 9.15 Any summons or process to be served upon the **Security** 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 behalf of the **Security**, and who is directed at **Your** request to give a written undertaking to **You** that they will enter an appearance on behalf of the **Security**.

10.0 DEFINITIONS – PARTS [A] AND [B]

- 10.1 **Business** means: the business described in Item [3] of the Schedule.
- 10.2 **Claim** means:
- A civil proceeding brought by a third party for recovery of compensation or damages.
 - A written or verbal demand by a third party for compensation or damages.
- 10.3 **Documents/Data** means: deeds, wills, agreements, maps, plans, books, letters, certificates, forms and documents of any nature, whether written, printed or reproduced by any method and includes computer records, electronically stored data, and information such as text, numbers, sounds, and images that can be processed by any electronic device. **Documents/Data** does not mean: money negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.
- 10.4 **Excess** means: the amounts stated in Items [7] and [8] of the Schedule relevant to Part [A] and Part [B] respectively.
- 10.5 **Inquiry** means: any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution empowered by law to investigate **Your** affairs, or the affairs of the **Business**.
- 10.6 **Insurance Period** means: the period stated in Item [4] of the Schedule, unless terminated earlier.
- 10.7 **IT Product[s]** means: anything [after it has ceased to be in **Your** physical or legal control] manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by **You** [including any container other than a **Vehicle**] AND shall include anything deemed by the Trade Practices Act 1974 to have been manufactured by **You**.
- 10.8 **Licensee** means: any party who enters into a licence agreement with **You**.
- 10.9 **Occurrence** means: an event, including continuous or repeated exposure to substantially the same general conditions, which causes **Personal Injury** or **Property Damage** which is unexpected or unintended by **You**.
- 10.10 **Our[s]** means: pertaining to Nova Underwriting Pty Ltd on behalf of the **Security**.
- 10.11 **Personal Injury** means:
- physical injury, death, sickness, disease, disability, shock, fright, mental anguish, mental injury or loss of consortium.
 - false arrest, false imprisonment, wrongful eviction or detention, or malicious prosecution.
 - assault and/or battery not committed by **You** [or at **Your** direction] unless committed for the purpose of preventing or eliminating danger to persons or property.
- which occurs during the **Insurance Period**.
- 10.12 **Principal** means: any party [other than a vendor of **IT Products**, or **Your** lessor] with whom **You** conduct **Business**.
- 10.13 **Property Damage** means:
- physical damage to, loss or destruction of, tangible property, including the loss of use of such property.
 - loss of use of tangible property which has not been physically damaged, lost or destroyed, caused by physical damage to, loss or destruction of, other tangible property.
- which occurs during the **Insurance Period**.
- 10.14 **Product Liability** means: **Personal Injury** or **Property Damage** arising out of an **IT Product** [or reliance upon a representation or warranty made in connection with that **IT Product**], but only where such **Personal Injury** or **Property Damage** occurs away from **Your** premises AND after **You** have relinquished physical possession of the **IT Product**.
- 10.15 **Product Recall Expenses** means: reasonable and necessary costs personally and directly incurred by **You**, in respect of:
- communications including radio and television announcements and printed advertisements;
 - the cost of shipping **IT Products** from any purchaser, distributor or user to the place or places designated by **You**;

- the cost of hire of necessary, additional persons other than **Your** regular employees;
- remuneration paid to **Your** regular employees at basic rates for necessary straight time or overtime, if required;
- expenses incurred for transportation and accommodation of **Your** employees where necessary;
- the extra expense for rent or hire of additional warehouse or storage space;
- the disposal or destruction of **IT Products** recalled;

but only when such costs are incurred exclusively for the purpose of recalling **IT Products** [including any property of which such **IT Products** form a part] because of an **Occurrence**. It does not include the actual value of the **IT Products** [including any property of which such **IT Products** form a part] themselves, or any legal liability to pay damages or compensation of any sort to any other person.

- 10.16 **Public Relations Expenses** means: reasonable fees, costs and expenses of a public relations or crisis management consultant to prevent or minimise adverse or negative publicity in connection with a **Claim** or **Inquiry** covered under this policy.
- 10.17 **Related Party** means: a party insured by this policy, or a party related to **You**, including entities which are part of the same group of entities as **You**; or any person who unsuccessfully sought employment with **You**, but only in relation to **Your** failure to employ them.
- 10.18 **Retroactive Date** means: the date stated in Item [10] of the Schedule. If no date is shown, and the word “Unlimited” appears, then Exclusion 4.1 will not apply.
- 10.19 **Security** means: certain Underwriters at Lloyd’s, each of whom [including their executors and administrators] is only liable for their share of any claim, loss, liability or expense payable by this policy. Details of each Syndicate and its share can be obtained from Nova Underwriting Pty Ltd. The subscribing Underwriters 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 Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations.
- 10.20 **Subsidiary** means:
- any entity deemed to be **Your** subsidiary by virtue of any applicable legislation or law.
 - any entity where **You** own or control, directly or indirectly, greater than 50% of the issued voting shares of such entity.
- 10.21 **Sum Insured** means: the amounts stated in Items [5] and [6] of the Schedule relevant to Part [A] and Part [B].
- 10.22 **Us** and **We** means: Nova Underwriting Pty Ltd on behalf the **Security**.
- 10.23 **USA** or **Canada** means: the United States of America or the Dominion of Canada, and any dependency, protectorate, colony, state or territory of either country.
- 10.24 **Vehicle** means: any type of machine [including any machinery or apparatus attached to it] designed to travel on wheels or self laid tracks AND be propelled by other than manual or animal power.
- 10.25 **You** means:
- any party named in Item [1] of the Schedule and its Subsidiaries.
 - any person who is during the **Insurance Period** a principal, partner, director or employee of the above but only when acting on behalf of the **Business**.
 - any appointed contractor, consultant or sub-consultant acting under the control of a principal, partner, director or employee of **You** in the conduct of the **Business**.
- 10.26 **Your(s)** means: pertaining to **You**.