

# **SWISS RE INTERNATIONAL SE – AUSTRALIA BRANCH**

## **TECHNOLOGY LIABILITY**

## Important Notices

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### Understanding the Policy

You should read the entire **Policy** carefully, including the definitions and the exclusions to ensure that it meets your requirements. We recommend that you consult an insurance adviser to ensure a clear understanding of your rights and obligations under this insurance contract.

### Claims Made and Notified; and Occurrence Policy

This is partly a claims made and notified policy and partly an occurrence policy. We shall only cover you for:

- claims made against you during the **Policy Period** and notified to us as soon as practicable during the **Policy Period** or any applicable **Extended Reporting Period**;  
or
- **Occurrences** happening during the **Policy Period**.

Except as may be provided by the **Continuity of Cover** provision the **Policy** does not provide cover in relation to facts known to you before the commencement of the **Policy**.

### Your duty of disclosure

When you are completing the **Proposal** it is important that you understand you are answering questions for yourself and anyone else that you want to be covered by the **Policy**.

Before you enter into the **Policy**, you have a duty to tell us anything that you know, or could reasonably be expected to know, which 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 the **Policy**.

You do not need to tell us anything that:

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

### If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we shall 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.

### Notification of Facts that might give rise to a claim

Section 40(3) of the *Insurance Contracts Act 1984* (Cth) provides that if you give notice in writing to us of facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of such facts but before the insurance cover provided

by the **Policy** expires, then we are not relieved of liability under the **Policy** in respect of the claim, when made, by reason only that it was made after the expiration of the period of the insurance cover provided by the **Policy**.

### **Privacy Statement - Privacy Information**

We are bound by the Australian Privacy Principles set out under the *Privacy Act 1988* (Cth) when we collect and handle your personal and or sensitive information. We shall only collect personal and or sensitive information that is necessary in order for us to process and administer the **Policy** and any claims made under the **Policy**. Where possible, we shall collect personal information directly from you or, where that is not reasonably practical, from other sources. We may also use your personal and or sensitive information for the purpose of designing or underwriting new insurance products, for research and analytical purposes, to perform administrative functions, and to comply with our legal obligations.

We may disclose your personal and or sensitive information to third parties for the purposes described above, including insurers, reinsurers, reinsurance brokers, loss adjusters, external claims data collectors, investigators and others involved in the claims handling process, agents and service providers and related entities some of whom may be located in overseas countries, including Hong Kong, India, Singapore, Switzerland, the United States of America and the Slovak Republic.

In providing personal and or sensitive information, you consent to the collection, use and disclosure, including overseas disclosure of your personal and or sensitive information for the purposes described above. Where you provide us with personal and or sensitive information about others, you represent to us that you have made them aware of that disclosure and of our privacy policy and that you have obtained their consent.

If you do not consent to provide us with the personal and or sensitive information that we request, or withdraw your consent to the use and disclosure of your personal and or sensitive information at any stage, we may not be able to offer or continue to offer you the products or provide the services that you seek including claims assessment and handling.

We realise that this information is often very sensitive in nature and shall treat it with the utmost care and security. Information on how we handle your personal and or sensitive information is explained in our privacy policy, including:

- What information we collect and how we use it;
- When do we disclose your information overseas;
- How do we hold and protect your information;
- How we disclose the information;
- How you can check, update or change the information we are holding;
- What happens if you wish to complain.

A copy of our privacy policy is available by contacting your broker or available on our website:

[corporatesolutions.swissre.com/australia-newzealand](https://corporatesolutions.swissre.com/australia-newzealand)

## Contact Details

You may seek access to, and correction of, the personal information we hold about you by contacting our Privacy Compliance Officer on (02) 8295 9500 or by writing to:

Privacy Compliance Officer  
Swiss Re International SE Australia Branch  
Level 36, Tower Two, International Towers Sydney  
200 Barangaroo Avenue, Sydney NSW 2000  
Email: [complaints\\_anz@swissre.com](mailto:complaints_anz@swissre.com)

We shall respond to your request within a reasonable time after we receive it.

## Complaint & Dispute Resolution Process

We have Complaints Handling and Dispute Resolution processes in place. We aim to respond to a complaint or to a dispute within 15 business days once we have all necessary information and have completed any investigation that may be needed.

If we cannot respond within 15 business days, we shall let you know as soon as practicable within the 15 business day time frame, and nominate a reasonable alternative time. When doing this we shall attempt where possible to meet any reasonable time requirements you express.

We shall keep you informed about the progress of your complaint or dispute every 10 business days until we have responded to you on it.

Should you wish to make a complaint, you can contact our Complaints Officer on (02 8295 9500) or by writing to:

The Complaints Manager  
Swiss Re International SE, Australia Branch  
Level 36, Tower Two, International Towers Sydney  
200 Barangaroo Avenue, Sydney NSW 2000  
Email: [complaints\\_anz@swissre.com](mailto:complaints_anz@swissre.com)

If you feel our response does not resolve your complaint you may tell us and ask us to treat it as a dispute. It will then be independently reviewed by our Internal Dispute Resolution Panel comprising employees with appropriate experience, knowledge and authority who have not been involved in the matter before.

## The General Insurance Code of Practice

We abide by the General Insurance Code of Practice (Code). The Terms of the Code require us to be open, fair and honest in our dealings with you. The Code outlines the standards by which we have agreed to deal with you in relation to the standards for our employees, authorised representatives, financial hardship, information and education and access to information. The Code aims to:

- Commit us to high standards of service.
- Promote more informed relations between you and us.
- Promote trust and confidence in the insurance industry.

**LEGAL PANEL**

<p>HWL Ebsworth Lawyers Andrew Miers, Partner Level 14 Australia Square 264-278 George Street <b>Sydney</b> NSW 2000 +61 2 9334 8555 amiers@hwle.com.au</p>	<p>Wotton + Kearney Andrew Moore, Partner Level 26 85 Castlereagh St <b>Sydney</b> NSW 2000 +61 2 8273 9900 andrew.moore@wottonkearney.com.au</p>
<p>Moray &amp; Agnew Jodie Potts, Partner Level 6 505 Little Collins Street <b>Melbourne</b> VIC 3000 +61 3 9600 0877 JPotts@moray.com.au</p>	<p>Wotton + Kearney Nick Lux, Partner Level 15 600 Bourke Street <b>Melbourne</b> VIC 3000 +61 3 9604 7900 Nick.Lux@wottonkearney.com.au</p>
<p>Wotton + Kearney Raisa Conchin, Partner Level 23 111 Eagle Street <b>Brisbane</b> QLD 4000 +61 7 3236 8702 raisa.conchin@wottonkearney.com.au</p>	

**SCHEDULE**

1. **Policy Number:** <Please include>
2. **Policyholder:** <Company Name>  
<Company Number>
3. **Inception Date:** 4.00pm. Local Standard Time, <Date> at the **Policyholder's** principal place of business
4. **Expiry Date:** 4.00pm Local Standard Time, <Date> at the **Policyholder's** principal place of business
5. **Retroactive Date:** <Unlimited> / <Date>
6. **Limit of Liability:** **Section 1** - <[XX]> each and every **Claim** and in the aggregate inclusive of **Costs and Expenses**  
  
**Section 2** - <[XX]> any one **Occurrence**  
  
**Section 3** - <[XX]> any one **Occurrence** and in the aggregate
7. **Sub-limits of Liability:**

<b>Section 1: Professional Liability Extensions</b>		<b>Included / Not Included</b>
1.3	Vicarious Liability	<[\$Amount]>
1.4	Criminal Prosecution	<[\$Amount]>
1.5	Competition and Consumer Act	<[\$Amount]>
1.6	Intellectual Property	<[\$Amount]>
1.7	Defamation	<[\$Amount]>
1.8	Personal Injury and Property Damage	<[\$Amount]>
1.9	Innocent Insured	<[\$Amount]>
1.10	Continuity of Cover	<[\$Amount]>
1.11	Extended Reporting Period	<[\$Amount]>
<b>Section 1: Professional Liability Optional Extensions</b>		<b>Included / Not Included</b>
1.12	Reinstatement	<Not Included> / <[\$Amount]>

<b>Section 2: General Liability Extension</b>		<b>Included / Not Included</b>
2.3	Vicarious Liability	<[\$Amount]>
<b>Section 2: General Liability Optional Extension</b>		<b>Included / Not Included</b>
2.4	Costs and Expenses in Addition	<Not Included> / <[\$Amount]>
<b>Section 3: Product Liability Optional Extension</b>		<b>Included / Not Included</b>
3.3	Costs and Expenses in Addition	<Not Included> / <[\$Amount]>
<b>Section 4: Extensions Applicable to all Sections</b>		<b>Included / Not Included</b>
4.1	Complimentary Legal Advice	Included
4.2	Court and Inquiry Attendance Costs	<[\$Amount]>
4.3	Inquiry Costs	<[\$Amount]>
4.4	Automatic Cover for New Subsidiaries	<[\$Amount]>
4.5	Runoff Cover for Past Subsidiaries	<[\$Amount]>
4.6	Public Relations Expenses	<[\$Amount]>
4.7	Reputation Protection Expenses	<[\$Amount]>
4.8	Recoveries	Included
4.9	Emergency Costs	<[\$Amount]>
4.10	Proportionate Liability	<[\$Amount]>
4.11	Financial Interest In Covered Entities	<[\$Amount]>
<b>Section 5: Optional Extensions Applicable to all Sections</b>		<b>Included / Not Included</b>
5.1	Loss Mitigation	<Not Included> / <[\$Amount]>
5.2	Principal's Liability	<Not Included> / <[\$Amount]>
5.3	Contractual Penalties	<Not Included> / <[\$Amount]>

8. **Retention:** <[XX]> each and every **Claim** inclusive of **Costs and Expenses**
9. **Jurisdictional Cover:** <World Wide Excluding United States of America its territories and protectorates>
10. **Currency:** <[AUD unless otherwise specified]>
11. **Premium:** As Agreed

For and on behalf of the **Insurer**.

Dated 11 February 2020

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Authorised **Employee**

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Authorised **Employee**



## TECHNOLOGY LIABILITY POLICY

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## **PREAMBLE**

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Subject to payment of the **Premium**, and subject to all the provisions of the **Policy**, and, in reliance upon the disclosures made in the **Proposal**, the **Insured** and the **Insurer** agree as follows:

## **SECTION 1: PROFESSIONAL LIABILITY**

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### **Insuring Clauses**

#### **1.1 Civil Liability**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period** alleging civil liability arising from the **Provision of Technology Services**.

#### **1.2 Costs and Expenses**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Costs and Expenses** in the defence or settlement of any **Claim** covered under Section 1.

### **Extensions**

#### **1.3 Vicarious Liability**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period** alleging civil liability arising from the **Provision of Technology Services** by consultants, contractors, sub-consultants or sub-contractors of an **Insured**.

#### **1.4 Criminal Prosecution**

Notwithstanding Exclusion 6.5 – Fraud or Dishonesty, the **Insurer** agrees to pay for, or on behalf of the **Insured**, **Costs and Expenses** of legal representation arising out of a criminal prosecution first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period** alleging criminal liability arising from the **Provision of Technology Services**, provided that:

- (a) the **Insurer** shall be entitled to nominate a solicitor or barrister to represent the prosecuted **Insured**;
- (b) the **Insured** shall give to the **Insurer** written notice of any such criminal prosecution or notice of any criminal prosecution made against the **Insured** as soon as practicable but in no event later than fourteen (14) days of the **Insured** becoming aware of any criminal prosecution or notice of criminal

prosecution, and always within the **Policy Period** or any applicable **Extended Reporting Period**;

- (c) shall keep the **Insurer** fully informed as regards all developments relating thereto as soon as practicable; and
- (d) in the event that the **Insured** is found guilty the **Insured** shall repay to the **Insurer** within fourteen (14) days of such conviction all of the **Costs and Expenses** incurred or paid by the **Insurer** under this Extension.

#### 1.5 **Competition and Consumer Act**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period** alleging misleading or deceptive conduct under the *Competition and Consumer Act 2010 (Cth)*, or any equivalent state or territory provisions, by the **Insured** in the **Provision of Technology Services**.

#### 1.6 **Intellectual Property**

Notwithstanding Exclusion 6.3 (b) – Commercial and Financial Risks, the **Insurer** shall pay for, or on behalf of the **Insured**, the **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period** alleging that the **Insured** has unintentionally infringed intellectual property rights in the **Provision of Technology Services**.

No coverage is provided under this Extension for any **Claim** resulting from any actual or alleged infringement of patent or the misappropriation of trade secrets.

#### 1.7 **Defamation**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period** alleging any unintentional libel, slander, defamation or injurious falsehood by the **Insured** in the **Provision of Technology Services**.

#### 1.8 **Personal Injury and Property Damage**

Notwithstanding Exclusion 1.13 – Personal Injury and Property Damage, the **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period** alleging **Personal Injury or Property Damage** arising from the **Provision of Technology Services**.

### 1.9 Innocent Insured

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** resulting from **Fraud or Dishonesty** which would, in the absence of Exclusion 6.5 – Fraud or Dishonesty, be covered under the **Policy**.

This Extension shall not provide cover to an **Insured** that has committed or condoned any **Fraud or Dishonesty**.

No coverage is provided under this Extension if the **Fraud or Dishonesty** is actually or allegedly committed or condoned by shareholders who own more than five per cent (5%), the principals or directors of the **Policyholder** or any **Subsidiary**.

### 1.10 Continuity of Cover

Notwithstanding Exclusion 1.17 (b) and (c) – Prior or Pending Matters, the **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** or **Inquiry Costs** resulting from facts or circumstances which were known to the **Insured** but notified to the **Insurer** after the **Inception Date**, provided that:

- (a) such facts or circumstances were not notified under any earlier insurance policy;
- (b) such facts or circumstances did not constitute a **Claim** or **Inquiry** as at the **Inception Date**;
- (c) the **Insured** demonstrates to the satisfaction of the **Insurer** that the failure to notify was innocent and inadvertent as at the **Inception Date**; and
- (d) the **Insured** has continuously held a comparable Professional Indemnity or Technology Liability policy issued by the **Insurer** since the **Insured** first became aware of such facts or circumstances.

The **Insurer** may reduce its liability to the extent of any prejudice suffered in connection with the failure to notify such facts or circumstances. The cover provided by this Extension shall not result in any payment greater than the amount that would have been paid under the earliest policy to which the notification could have been made. Any limit of liability applying to that policy is part of, and not in addition to, the **Limit of Liability** of the **Policy** and any amount paid under this Extension shall erode the **Limit of Liability** and **Sub-Limits of Liability**.

### 1.11 Extended Reporting Period

The **Insurer** agrees that the **Insured** may notify a **Claim** or **Inquiry** during the **Policy Period** or within ninety (90) days after the **Expiry Date**; provided that such **Claim** or **Inquiry** was first made against, or notified to, the **Insured** before the **Expiry Date**, or the **Insured** first became aware of such fact or circumstance that may give rise to a **Claim** or **Inquiry** before the **Expiry Date**.

If the **Policy** is neither renewed nor replaced, the **Insured** shall be entitled, upon payment of the respective additional premium amount described below, to any applicable **Extended Reporting Period**.

The additional premium amount for one year shall be one hundred (100%) per cent

of the previous annual premium attributable to this Section.

The rights available pursuant to this Extension shall terminate unless written notice by any **Insured** of election of any applicable **Extended Reporting Period**, together with the additional premium due, is received by the **Insurer** no later than thirty (30) days after the **Expiry Date**.

The exercise of any applicable **Extended Reporting Period** shall not in any way increase the **Limit of Liability** of the **Policy**.

### **Optional Extensions**

#### **1.12 Reinstatement**

Notwithstanding General Condition 8.1 – Limit of Liability, in the event of the exhaustion of the **Limit of Liability** for this Section and exhaustion of any applicable excess layer, the **Limit of Liability** shall be reinstated once for this Section in respect of any future **Claims** or **Inquiries** which are not causally connected to any act, error or omission alleged in any **Claim** or **Inquiry** paid under the **Policy**.

The maximum amount payable under the reinstated **Limit of Liability** shall not exceed the **Limit of Liability**

### **Exclusions**

No cover shall be provided under Section 1 for, arising out of, or in any way connected with:

#### **1.13 Personal Injury and Property Damage**

bodily injury, sickness, disease, emotional distress, mental anguish, or death of any person or damage to or destruction of any tangible property including loss of use.

#### **1.14 Related Entity**

any **Claim** brought by or on behalf of a **Related Entity**, other than a claim for contribution or indemnity which results from another **Claim** which would be covered under the **Policy** if made against the **Insured**.

#### **1.15 Natural Catastrophe**

fire, smoke, explosion, lightening, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God, or any other such physical event, however caused.

#### **1.16 Pollution**

the presence, discharge, dispersal, release or escape of **Pollutants**.

1.17 **Prior or Pending Matters**

- (a) any **Claim** made, threatened or intimated against the **Insured** prior to the **Inception Date**;
- (b) any fact or circumstance of which notice has been given, or could have been given, under any earlier insurance policy;
- (c) any fact or circumstance of which the **Insured** first became aware prior to the **Inception Date** and which the **Insured** knew or should reasonably have known had the potential to give rise to a **Claim** or **Inquiry**; or
- (d) any act, error or omission or series of acts, errors or omissions committed, or alleged to have been committed, prior to the **Retroactive Date**.



## **SECTION 2: GENERAL LIABILITY**

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### **Insuring Clauses**

#### **2.1 General Liability**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** alleging civil liability in respect of any:

- (a) **Personal Injury;**
- (b) **Property Damage;** or
- (c) **Advertising Liability,**

caused by an **Occurrence** during the **Policy Period**.

#### **2.2 Costs and Expenses**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Costs and Expenses** incurred in the defence or settlement of any **Claim** covered under Section 2. **Costs and Expenses** paid under Section 2 form part of the applicable **Limit of Liability**.

### **Extensions**

#### **2.3 Vicarious Liability**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** for an **Occurrence** during the **Policy Period** alleging civil liability arising from an act, error or omission by consultants, contractors, sub-consultants or sub-contractors of an **Insured**.

### **Optional Extension**

#### **2.4 Costs and Expenses In Addition**

**Costs and Expenses** incurred in the defence or settlement of any **Claim** covered under Section 2 shall be paid by the **Insurer** in addition to the applicable **Limit of Liability**.

In respect to any **Claim** brought in any court or before any other legally constituted body in the United States of America, all amounts claimed for **Costs and Expenses** shall be part of and not in addition to the **Limit of Liability**.

### **Exclusions**

No cover shall be provided under Section 2 for, arising out of, or in any way connected with:

#### **2.5 Technology Services**

the **Provision of Technology Services** or any other professional advice or service.

2.6 **Technology Products**

any **Technology Products** or any other product, material or goods of the **Insured**.

2.7 **Pollution**

the presence, discharge, dispersal, release or escape of **Pollutants**.

This Exclusion does not apply to any liability that arises from a sudden identifiable, unintended and unexpected discharge, dispersal, release or escape of **Pollutants** from the standpoint of the **Insured** which takes place in its entirety at a specific time and place during the **Policy Period** and occurs outside of the United States of America, its territories and possessions; and, Canada.

2.8 **Aircraft, Hovercraft, Watercraft and Motor Vehicles**

The ownership, use, maintenance or operation by or on behalf of the **Insured** of:

- (a) any aircraft or aerial device including a drone;
- (b) any watercraft exceeding ten (10) metres in length;
- (c) any hovercraft;
- (d) any **Vehicle** or **Trailer** which is legally required to be registered or insured. This Exclusion does not apply to the extent that no other indemnity is available under any motor insurance policy; or
- (e) any **Vehicle** or **Trailer** which is not owned, leased or used by the **Insured** which is in the **Insured's** physical or legal control whilst in a car park operated by the **Insured**.

## **SECTION 3: PRODUCT LIABILITY**

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### **Insuring Clauses**

#### **3.1 Product Liability**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** which the **Insured** is legally liable to pay for any **Claim** alleging civil liability in respect of any:

- (a) **Personal Injury;**
- (b) **Property Damage;** or
- (c) **Advertising Liability;**

caused by an **Occurrence** during the **Policy Period** arising out of any **Technology Product** of the **Insured**.

#### **3.2 Costs and Expenses**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Costs and Expenses** incurred in the defence or settlement of any **Claim** covered under Section 3. **Costs and Expenses** paid under Section 3 form part of the applicable **Limit of Liability**.

### **Optional Extension**

#### **3.3 Costs and Expenses In Addition**

**Costs and Expenses** incurred in the defence or settlement of any **Claim** covered under Section 3 shall be paid by the **Insurer** in addition to the applicable **Limit of Liability**.

In respect to any **Claim** brought in any court or before any other legally constituted body in the United States of America, all amounts claimed for **Costs and Expenses** shall be part of and not in addition to the **Limit of Liability**.

### **Exclusions**

No cover shall be provided under Section 3 for, arising out of, or in any way connected with:

#### **3.4 Technology Services**

the **Provision of Technology Services** or any other professional advice or service.

#### **3.5 Aircraft Products**

any **Products** or part thereof which the **Insured** knew or had reasonable cause to believe would be or are installed in any aircraft.

3.6 **Pollution**

the presence, discharge, dispersal, release or escape of **Pollutants**.

This Exclusion does not apply to any liability that arises from a sudden identifiable, unintended and unexpected discharge, dispersal, release or escape of **Pollutants** from the standpoint of the **Insured** which takes place in its entirety at a specific time and place during the **Policy Period** and occurs outside of the United States of America, its territories and possessions; and, Canada.

3.7 **Product Defect**

- (a) sale, storage or distribution;
- (b) any manufacturing, (re)installation or dismantling;
- (c) defect or deficiency in the materials used; or
- (d) the costs relating to recall;

of any products, goods or materials.

## SECTION 4: EXTENSIONS APPLICABLE TO ALL SECTIONS

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### 4.1 Complimentary Legal Advice

The **Insurer** has arranged for any **Insured** to receive up to one (1) hour of **Complimentary Legal Advice** during the **Policy Period** or any applicable **Extended Reporting Period** from a member of its **Legal Panel** with respect to matters arising under the **Policy**.

Contact details for members of the **Legal Panel** are located on page 4 of the **Policy** and are accurate as at the date of placement but may be updated from time to time. Please contact the **Insurer** if further information is required.

### 4.2 Court and Inquiry Attendance Costs

The **Insurer** shall pay for, or on behalf of the **Insured**, **Court and Inquiry Attendance Costs** incurred by an **Insured** who is required to attend any legal proceeding or at an **Inquiry** which is the subject of cover under the **Policy**.

### 4.3 Inquiry Costs

The **Insurer** shall pay for, or on behalf of the **Insured**, **Inquiry Costs** incurred in preparing for and being represented at an **Inquiry** first served upon the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period**.

### 4.4 Automatic Cover for New Subsidiaries

If, during the **Policy Period**, the **Policyholder** acquires voting rights in another entity or creates another entity which as a result of such acquisition or creation becomes a **Subsidiary**, then, subject to the provisions of the **Policy** including the provisions of this Extension, such entity and its **Insured** shall be covered under the **Policy** but only with respect to **Claims** or **Inquiries** for the **Provision of Technology Services** or **Occurrences** taking place after such acquisition or creation.

If the total gross annual revenue of the entity at the date of acquisition or creation does not exceed twenty per cent (20%) of the total gross annual revenue of the **Policyholder** declared at the **Inception Date** and the activity of the acquisition or creation is the **Provision of Technology Services**, cover shall be provided until the **Expiry Date**.

Coverage otherwise afforded under this Extension for such acquisition or creation shall terminate ninety (90) days after the effective date of such acquisition or creation, or at the **Expiry Date**, whichever is earlier, unless the **Policyholder** agrees to and pays any additional premium and agrees to any additional terms and conditions of the **Policy** as determined by the **Insurer**.

### 4.5 Runoff Cover for Past Subsidiaries

If, during the **Policy Period**, a **Subsidiary** ceases to be a **Subsidiary** of the **Policyholder**, coverage under the **Policy** will continue to apply in full force and effect until the end of the **Policy Period**, or any applicable **Extended Reporting Period**, with respect to **Claims** or **Inquiries** that would have been covered under the **Policy**, provided that:

- (a) the **Claim or Inquiry** for the **Provision of Technology Services or Occurrences**, or allegedly committed, whilst the entity was a **Subsidiary**; and
- (b) no other insurance is available to respond to the **Claim or Inquiry**.

#### 4.6 **Public Relations Expenses**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Public Relations Expenses** incurred in respect of a covered **Claim or Inquiry**.

#### 4.7 **Reputation Protection Expenses**

The **Insurer** shall pay for, or on behalf of the **Insured**, **Reputation Protection Expenses** incurred in respect of a covered **Claim or Inquiry**.

#### 4.8 **Recoveries**

Any amounts recovered by the **Insurer** or the **Insured** in connection with a payment under the **Policy** will be distributed in order of priority as follows:

- (a) firstly, in satisfaction of reasonable legal costs incurred in effecting a recovery, regardless of whether the **Insurer** or **Insured** incurred such recovery costs;
- (b) secondly, to the **Insured** for sums exceeding the **Limit of Liability**, to the extent that such sums would have otherwise been covered under the **Policy**;
- (c) thirdly, to the **Insurer** for all amounts paid by the **Insurer** under the **Policy**;
- (d) fourthly, to the **Insured** in satisfaction of the applicable **Retention**; and
- (e) lastly, to the **Insured** for any amounts in excess of the total amount paid by the **Insurer** under the **Policy**.

#### 4.9 **Emergency Costs**

Notwithstanding Claims Condition 7.2 – Reporting and Notice and 7.5 – Consent to Payments, the **Insurer** shall pay for, or on behalf of the **Insured**, **Costs and Expenses** and **Inquiry Costs** insured under the **Policy** which are incurred by the **Insured** in cases of emergency or legal restraint where it was not possible for the **Insured** to obtain the **Insurer's** prior written consent provided that:

- (a) the **Insured** shall not admit liability or negotiate any settlement; and
- (b) the **Insured** obtains the retrospective consent of the **Insurer** as soon as practicable but not later than the end of the **Policy Period**.

#### 4.10 **Proportionate Liability**

Notwithstanding Exclusion 6.3 (e) – Commercial and Financial Risks, coverage under the **Policy** will not be prejudiced by the **Insured** entering into a contract with a third party which assumes a liability under a contract by reason of having contracted out of the operation of the **Proportionate Liability Legislation**.

#### 4.11 Financial Interest in Covered Entities

The **Insurer** shall make best efforts to reimburse the **Policyholder** for its **Financial Interest** if the **Policyholder** has suffered loss due to the **Insurer** being prevented from making a payment under the **Policy** to an **Insured** solely because the **Insureds** claim under the **Policy** has been brought in a **Non-Admitted Jurisdiction**. This is provided that:

- (a) matters known to the **Insured** are deemed to be known to the **Policyholder**;
- (b) the **Policyholder** and the **Insured** comply with all the provisions and requirements of the **Policy**; and
- (c) the total reimbursed under this Extension shall be calculated as the equivalent of the payment the **Insurer** had been prevented from paying to the **Insured** and shall fully release the **Insurer** from any further payments of such amounts.

### **SECTION 5: OPTIONAL EXTENSIONS AVAILABLE TO ALL SECTIONS**

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#### 5.1 Loss Mitigation

The **Insurer** shall pay for, or on behalf of the **Insured**, **Costs and Expenses** incurred by the **Insured** in taking action necessary to rectify, or to mitigate the effects of, any act, error or omission of the **Insured**, entity or person for whom the **Insured** is legally liable that would otherwise result in a covered claim under the **Policy**, provided that the **Insured** establishes to the satisfaction of the **Insurer** that:

- (a) the act, error or omission would otherwise result in a covered **Claim**;
- (b) the proposed mitigation costs are less than the likely costs of such **Claim**; and
- (c) such costs are reasonable in all of the circumstances.

No coverage is provided under this Optional Extension for any:

- (d) indirect costs and expenses such as loss, diminution or additional profit, bonus, incentive payment or opportunity cost;
- (e) salary, wages, overheads, administrative or office costs of the **Insured**;
- (f) **Costs and Expenses** which would result in any betterment;
- (g) the costs relating to recall of any products, goods or materials;
- (h) liability that arises from taking such action; or
- (i) **Retention**.

Notwithstanding anything to the contrary in this Extension in the event of an emergency which poses an immediate threat to life or property the **Insured** shall take all reasonable steps to mitigate potential **Loss** and shall thereafter comply with the provisions of this Extension as soon as reasonably practicable.

## 5.2 **Principal's Liability**

The **Insurer** shall pay for, or on behalf of the **Principal**, **Loss** which the **Principal** is legally liable to pay for any **Claim** arising from any act, error or omission of the **Insured** and for which the **Insured** is liable; provided that, and only to the extent that, the **Claim** against the **Principal** would have been covered had such a **Claim** been brought directly against the **Insured**.

For the purpose of this Extension only;

- (a) **Loss** does not include consequential loss; and
- (b) whilst the **Principal** is not an **Insured**, the **Principal** shall comply with the terms and obligations of the **Policy** and at law generally as if they were an **Insured**.

## 5.3 **Contractual Penalties**

The **Insurer** shall pay for, or on behalf of the **Insured**, contractual penalties that arise directly from a **Claim** first made against the **Insured**, or **Inquiry** first served upon the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Extended Reporting Period**, provided that such penalties are insurable at law and do not result from **Fraud or Dishonesty**.

## **SECTION 6: EXCLUSIONS APPLICABLE TO ALL SECTIONS**

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No cover shall be provided under the **Policy** for, arising out of, or in any way connected with:

### 6.1 **Obligations to Employees**

- (a) any harassment, unlawful termination of employment or any other liability arising from the employee and employer relationship; or
- (b) **Personal Injury** for any **Employee** or person deemed to be an **Employee** of the **Insured** under any workers compensation law except to the extent that it is not required to be insured under any workers compensation law.

### 6.2 **War and Terrorism**

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to popular rising, military rising, martial law, riot, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition of or damage to property by or under the power of any government or public local authority; or



- (b) any actual or threatened act of terrorism including but not limited to the use of force or violence or the threat thereof, of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear or any action taken to control, prevent or suppress any act of terrorism.

### 6.3 **Commercial and Financial Risks**

- (a) insolvency, bankruptcy, liquidation or official administration of the **Insured** or any trading debt incurred or guaranteed by the **Insured**;
- (b) breach of intellectual property;
- (c) the refund of professional fees;
- (d) guarantees, warranties or bonds; or
- (e) any liability which the **Insured** has assumed under contract or agreement except to the extent such liability would have attached to the **Insured** in the absence of such contract or agreement.

### 6.4 **Anti-Competitive Practices**

any actual or alleged anti-competitive trade practices and market conduct including but not limited to monopolisation, price fixing and restraint of trade.

### 6.5 **Fraud or Dishonesty**

any **Fraud or Dishonesty**.

### 6.6 **Management Liability**

*Competition and Consumer Act 2010 (Cth)*, or any equivalent state or territory provisions act, error or omission or series of acts, errors or omissions of the **Insured** made or allegedly made in connection with the **Insureds** duties as a director, officer or trustee of any entity, company or trust.

### 6.7 **Disclosure of Information**

any actual or alleged loss or disclosure of information, including but not limited to client or **Employee** records and personal information, whether such information is stored electronically or otherwise, and irrespective of whether retained by the **Insured** or any other party.

### 6.8 **Warranty**

the failure of the **Technology Product** to attain or perform at a standard, capacity, durability, purpose or any other quality or characteristic represented or warranted expressly or impliedly by the **Insured**.

6.9 **Infrastructure Failure**

any:

- (a) satellite failure;
- (b) electrical or mechanical failure not under the control of the **Insured**, including any electrical power interruption, surge, brownout, or blackout; or
- (c) failure of telephone lines, data transmission lines, or other telecommunications or network infrastructure not under the control of the **Insured**.

6.10 **Nuclear**

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

6.11 **Asbestos**

asbestos, asbestos fibres or any derivatives of asbestos in any form or quantity.

6.12 **Fines and Penalties**

finer or penalties unless provided under an Extension.

6.13 **Computers, Internet and Privacy**

- (a) **Property Damage** to computer data or programs and their storage media;
- (b) the **Internet Operations** of the **Insured**; or
- (c) a breach of the *Privacy Act 1998 (Cth)*.

This Exclusion does not apply to **Personal Injury** or **Property Damage** arising out of any material which is already in print by manufacturers in support of its products, including but not limited to product use and safety instructions or warnings, and which is also reproduced on site.

6.14 **Delay and Overrun**

- (a) delay in or lack of performance by the **Insured** including not meeting the milestones, timeframes, phases or any other time dependent obligation, irrespective of the cause; or
- (b) cost overrun or any error in estimation of the cost by the **Insured**, irrespective of the cause.

6.15 **Property in Physical or Legal Control**

**Property Damage** to property owned, leased by; or in the **Insured's** physical or legal control unless provided under an Extension.

6.16 **Tobacco**

**Personal Injury** directly or indirectly due to the inhalation or ingestion of or exposure to tobacco or tobacco smoke or any tobacco products (or ingredients thereof) or any tobacco substitute products, including e-cigarettes.

**SECTION 7: CLAIMS CONDITIONS APPLICABLE TO ALL SECTIONS**

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7.1 **Multiple Claims**

All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under the **Policy**. All such acts, errors or omissions shall be treated as having occurred at the time of the first of such acts, errors or omissions occurred.

For any **Related Claims and Related Inquiries**, only one **Retention** and one **Limit of Liability** shall be applicable.

7.2 **Reporting and Notice**

As soon as reasonably practicable the **Insured** shall give written notice to the **Insurer** of any **Claim, Inquiry** or claim for any other matter covered under the **Policy**. Such notice shall be provided irrespective of whether or not any potential or actual amount payable under the **Policy** may fall within the **Retention**.

All such notices shall include, but not be limited to, the following:

- (a) a detailed description of the subject matter of the **Claim, Inquiry** or claim for any other matter covered under the **Policy**;
- (b) details of all the parties involved;
- (c) the nature of the alleged or potential loss;
- (d) the manner and date upon which the **Insured** first became aware of the matters giving rise to the notification;
- (e) a copy of the **Claim** or **Inquiry**; and
- (f) a copy of any other insurance policy that may be applicable.

Notice and all information shall be sent in writing to:

The Claims Manager  
Swiss Re International SE Australia Branch  
Tower Two International Towers  
Level 36, 200 Barangaroo Avenue,  
Sydney, NSW 2000, Australia  
Email: [ClaimsANZ\\_CorporateSolutions@swissre.com](mailto:ClaimsANZ_CorporateSolutions@swissre.com)

The **Insured** shall keep the **Insurer** fully informed as regards all developments relating to such **Claim, Inquiry** or claim for any other matter covered under the **Policy** as soon as reasonably practicable.

### 7.3 **Defence and Settlement**

The **Insured** agrees not to settle any **Claim**, incur any **Costs and Expenses**, make any admission, offer or pay or otherwise assume any contractual obligation with respect to any **Claim** or **Inquiry** without the **Insurer's** prior written consent, such consent not to be unreasonably withheld or delayed. The **Insurer** will not be liable for any **Claim**, settlement, **Costs and Expenses**, admission, offer or payment, assumed obligation, **Inquiry Costs** or claim for any other matter covered under the **Policy** to which it has not consented. The **Insurer** shall be entitled to associate with any **Insured** in the defence and negotiation of any settlement of any **Claim** or **Inquiry**.

The **Insured** shall have the obligation to defend and contest any **Claim** made against them.

The **Insurer** agrees to the appointment of any solicitor or firm of solicitors that is a member of the **Insurer's Legal Panel** to act on behalf of the **Insured**.

Each **Insured** shall render all reasonable assistance to and fully co-operate with the **Insurer** in the investigation, defence, settlement, or appeal of any **Claim** or **Inquiry** and provide the **Insurer** with all relevant information as the **Insurer** may require. In the event of any **Claim**, each **Insured** shall take reasonable steps to minimise or reduce any **Loss**.

### 7.4 **Insurer's Right to Assume Conduct**

The **Insurer** shall, in its discretion, be entitled to conduct in the name of the **Insured**, the defence or settlement of any **Claim** or management and conduct of any **Inquiry**.

### 7.5 **Consent to Payments**

The **Insured** shall obtain the written consent of the **Insurer**, which shall not be unreasonably withheld or delayed, before any amounts payable under the **Policy** are incurred.

The **Insurer** shall only be liable under the **Policy** for payment of any **Costs and Expenses** or any other amounts which are reasonable and necessary.

### 7.6 **Right to Contest**

If the **Insured** or **Insurer** wishes to settle the **Claim** or **Inquiry** and the other wishes to contest the **Claim** or **Inquiry**, then the **Insured** may elect to have a **Senior Counsel** appointed to advise the parties as to whether such **Claim** or **Inquiry** should be settled or contested. In formulating such advice, **Senior Counsel** shall take into consideration the economics of the matter, including the damages and costs that may be payable, the likely **Costs and Expenses** or **Inquiry Costs** and the prospects of the **Insured** successfully challenging the **Claim** or being exonerated in the **Inquiry**. The cost of such **Senior Counsel's** opinion shall be part of the **Limit of Liability**.

In the event that the **Insurer** recommends settlement and, if elected, the appointed **Senior Counsel** has advised the parties to settle, in respect of any **Claim** or **Inquiry** and the **Insured** does not agree that such **Claim** or **Inquiry** should be settled, then the **Insured** may elect to contest such **Claim** or **Inquiry**. The **Insurer's** liability in connection with such **Claim** or **Inquiry** shall not exceed the amount for which such **Claim** or **Inquiry** could have been so settled or could reasonably have been expected to be settled plus the **Costs and Expenses** incurred with the **Insurer's** prior written consent up to the date of such election.

#### 7.7 Allocation

If a **Claim** or **Inquiry** or any other matter is partially covered under the **Policy**, the **Insured** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation between such covered matters and not-covered matters based upon the relative legal and financial exposures and the relative benefits obtained by the parties.

If the **Insurer** and the **Insured** cannot agree on allocation within thirty (30) days of any allocation issue first notified in writing to the **Insured** by the **Insurer**, they agree to refer the determination to a **Senior Counsel**. The **Senior Counsel** is to determine the fair and proper allocation as an expert not an arbitrator. The **Insured** and the **Insurer** shall be entitled to make written submissions to **Senior Counsel**. The **Senior Counsel** is to take account of the parties' submissions, but the **Senior Counsel** is not to be confined by such submissions and is to determine the fair and proper allocation in accordance with their own judgement and opinion. The **Senior Counsel's** expenses in providing such determination will be paid by the **Insurer** and any such payments will not erode the **Limit of Liability**.

Whilst a dispute as to allocation of any matter claimed under the **Policy** remains unresolved, the **Insurer** shall advance such amounts it considers to be a fair and proper allocation. The allocation finally agreed or determined shall be applied retrospectively to any amounts incurred or paid.

#### 7.8 Advancement of Cost and Expenses and Inquiry Costs

Once the **Insurer** has received written notice of a **Claim** or **Inquiry** under the **Policy**, it shall advance **Costs and Expenses** or **Inquiry Costs** as and when incurred, but no later than thirty (30) days after the **Insurer** has received itemised bills for those **Costs and Expenses** or **Inquiry Costs**.

Such payments by the **Insurer** shall be repaid to the **Insurer** by the **Insured** in the event and to the extent that any such **Insured** is subsequently determined not to be entitled to cover under the **Policy**.

## SECTION 8: GENERAL CONDITIONS APPLICABLE TO ALL SECTIONS

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### 8.1 Limit of Liability

The **Insurer's** maximum liability under the **Policy** shall not exceed the **Limit of Liability** in the **Schedule** with respect to each Section of the **Policy**. Further, **Costs and Expenses** and any cover granted under any Insuring Clause, Extension or Optional Extension shall form part of and do not increase the **Limit of Liability** unless otherwise specifically stated in the **Policy**.

The **Insurer's** maximum liability under Section 2 and Section 3 of the Policy shall not exceed the higher of either applicable **Limits of Liability** in the **Schedule** with respect to any one **Occurrence**; and with respect Section 3 the aggregate **Limit of Liability** in any one **Policy Period**.

If provided, cover under Section 4 – Extensions Applicable To All Sections and Section 5 - Optional Extensions Applicable To All Sections shall be part of, and not in addition to, the most applicable of Section 1, 2 or 3 **Limit of Liability**.

### 8.2 Retentions

The **Insurer** shall only be liable for any amount covered under the **Policy** in excess of the applicable **Retention**. The **Retention** shall remain uninsured.

If different parts of a single **Claim** or **Inquiry** are subject to different **Retentions**, the applicable **Retentions** will be applied separately to each part of such **Claim** or **Inquiry**, but the sum of such **Retentions** shall not exceed the highest applicable **Retention**.

In the case of any **Related Claim** and **Related Inquiry**, the highest **Retention** applicable to any **Claim** or **Inquiry** constituting a **Related Claim** and **Related Inquiry** shall be deemed the **Retention** applicable to all **Loss** arising from such **Related Claim** and **Related Inquiry** unless the **Policy** expressly provides otherwise.

If provided, cover under Section 4 – Extensions Applicable To All Sections and Section 5 - Optional Extensions Applicable To All Sections shall be subject to the most applicable **Retention** of Section 1, 2 or 3.

### 8.3 Other Insurance

The insurance provided by the **Policy** is excess over any other valid and collectible insurance, including any Professional Indemnity or General Liability insurance, unless such other insurance is specifically written as excess insurance over the **Limit of Liability** provided by the **Policy**. The **Policy** shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer may be obligated to pay.

#### 8.4 **Subrogation**

In the event of any payment under the **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery, and the **Insured** shall do everything necessary to secure and preserve such rights, including but not limited to the execution of documents necessary to enable the **Insurer** to effectively commence any action in the name of the **Insured**.

The **Insured** must not do anything to prejudice the position of the **Insurer** in its actual or potential rights of recovery against another party.

#### 8.5 **Alteration to Risk**

The **Insured** shall give to the **Insurer** written notice as soon as practicable of any material alteration to the risk during the **Policy Period**. This shall include, but not be limited to:

- (a) any **Insured** engaging in activities that are materially different from those in the **Proposal**;
- (b) the **Policyholder** or any **Subsidiary** being unable to pay its debts as and when they fall due; or
- (c) the **Policyholder** being acquired by another company.

In the event of material alteration to the risk during the **Policy Period** the **Insurer** reserves the right to impose additional terms and conditions and to charge an additional premium.

#### 8.6 **Cancellation**

The **Policy** is non-cancellable, non-avoidable and non-rescindable by the **Insurer** except for non-payment of **Premium**, misrepresentation, or fraud. In the event that any **Premium** due under the **Policy** is not received by the **Insurer** within ninety (90) days of the **Inception Date** the **Policy** may be cancelled or avoided by the **Insurer**.

The **Policyholder** may cancel the **Policy** at any time by giving thirty (30) days written notice to the **Insurer**.

#### 8.7 **Third Party Interests**

No right or interest with respect to the **Policy** can be assigned without the **Insurer's** prior written consent. The **Policy** is not intended to confer rights to any person or entity not a party to the **Policy**.

#### 8.8 **Authorisation**

By acceptance of the **Policy**, the **Policyholder** agrees to act on behalf of each and every **Insured** with respect to any matters pertaining to the **Policy**, including but not limited to the giving of notice of a **Claim** or **Inquiry**, the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under the **Policy**, and the negotiation, agreement to and acceptance of any endorsements issued to form part of the **Policy** and the exercising or declining of any rights to an or any applicable **Extended Reporting Period** and each of the other **Insured** agree that the **Policyholder** shall so act on their behalf.

This Condition shall not limit the ability of any other **Insured** to provide notice of a **Claim** or **Inquiry**.

#### 8.9 **Premium**

The **Insured** agrees that twenty (20%) per cent of the **Premium** and any adjusted **Premium** shall be fully earned on inception and that the balance of the **Premium** shall be prorated in the event that the **Policy** is cancelled by the **Policyholder**. Further, the **Premium** shall be fully earned in the event of any notification that may give rise to any payment under the **Policy**.

#### 8.10 **Inspection and Audit**

The **Insurer** may inspect the property and operations of the **Insured** on reasonable notice. The right of the **Insurer** to make, and report on, inspections will not constitute a warranty that the property or operations are safe or compliant with any law. The **Insurer** may audit the records of the **Insured** during or after the **Policy Period** should any liability arising out of the **Policy** remain outstanding.

#### 8.11 **Joint Insureds**

Where the **Insured** comprises more than one party, information supplied to the **Insurer** shall be deemed to have been furnished by and on behalf of all such parties and any information supplied to the **Insurer** or any omission or non-disclosure in relation to any renewal or extension hereof, shall likewise be deemed to have been furnished, omitted or withheld on behalf of all such parties.

#### 8.12 **Jurisdictional Cover**

The coverage provided under the **Policy** shall extend to any **Claim** or **Inquiry** brought in a court of law in the countries stated under **Jurisdictional Cover** and **Claims** or **Inquiries** arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to the laws of the countries stated under **Jurisdictional Cover**.

Notwithstanding anything to the contrary in this **Policy**, no cover shall be provided where to do so would constitute a breach by the **Insurer** of any economic, trade or other sanction or law applicable to the **Insurer** including pursuant to the laws or regulations of Australia, the European Union, United Kingdom, Singapore or the United States of America or a resolution of the United Nations and the **Insurer** shall have no liability to the **Insured** to the extent that to do so would be in breach of the foregoing.



8.13 **Governing Law**

The construction, interpretation and meaning of the provisions of the **Policy** shall be determined in accordance with the law in force in the Australian State or Territory in which the **Policy** is issued. All matters relating to the construction or operation of the **Policy** shall be submitted to the exclusive jurisdiction of the courts exercising jurisdiction under the law of that State or Territory.

8.14 **Policy Construction and Interpretation**

The headings in the **Policy** are included for descriptive purposes only and do not form part of the **Policy** for the purpose of its construction or interpretation.

Under the **Policy**, where appropriate, the masculine includes the feminine, and the singular includes the plural and vice versa. For the meaning of any words in bold refer to the **Schedule** or Section 8 – Definitions.

8.15 **Electronic Communications**

The **Insurer** may issue notices to the **Insured** which are required to be given pursuant to the *Insurance Contracts Act 1984 (Cth)* by electronic mail or post.

8.16 **Confidentiality**

The existence and terms of the **Policy** are confidential as between the **Insured** and the **Insurer** and shall not be disclosed by the **Insured** to any person except:

- (a) to professional advisers including legal advisers and accountants;
- (b) as required by law or in accordance with an order of a court; or
- (c) with the written consent of the **Insurer**.

8.17 **Currency**

All **Premiums**, limits, **Retentions**, **Loss** or other matters under the **Policy** are expressed and payable in the **Currency**. If a payment under the **Policy** is to be made in a currency other than that **Currency**, such payment shall be made at a rate of exchange as published in the Australian Financial Review on the date the obligation to pay **Loss** is established or, if not published on that date, on the date of the next publication of the Australian Financial Review.

## SECTION 9: DEFINITIONS APPLICABLE TO ALL SECTIONS

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9.1 **Advertising Liability** means civil liability in respect of:

- (a) libel, slander or defamation;
- (b) infringement of copyright or of titles or slogans;
- (c) misrepresentation by the **Insured** of its **Technology Products**; or
- (d) invasion of rights of privacy,

committed or alleged to have been committed during the **Policy Period** in any advertisement, publicity article, broadcast or telecast arising out of any advertising activities conducted by or on behalf of the **Insured**.

9.2 **Claim** means the receipt by the **Insured** of any written demand or legal proceedings.

9.3 **Complimentary Legal Advice** means legal advice regarding Australian law provided by a member of the **Legal Panel** at no charge for up to a maximum of one (1) hour per enquiry to any **Insured** during the **Policy Period** with respect to any factual or legal matter arising from or in connection with the subject matter of the **Policy**.

9.4 **Costs and Expenses** means the costs and expenses incurred by or on behalf of the **Insured** in the investigation or defence of a **Claim** or preparation for, and representation at, an **Inquiry** and shall include legal costs and disbursements.

**Costs and Expenses** does not include salaries, wages, allowances, fees, commissions, awards, bonuses, and travel or accommodation expenses.

9.5 **Court and Inquiry Attendance Costs** means an allowance of \$500 per day for any **Insured** whose attendance is required as a witness, or is otherwise necessary, at any legal proceeding, including an **Inquiry** which is the subject of cover under the **Policy**.

9.6 **Employee** means any past, present or future:

- (e) employee, partner, director, contractor, seconded or agency staff under the direction and control of the **Insured**;
- (f) any student undergoing training, under the supervision of an **Insured**;
- (g) volunteer workers under the supervision of an **Insured**; or
- (h) member of a professional board of the **Policyholder** or any **Subsidiary**.

but only in their capacity as such.

9.7 **Extended Reporting Period** means the period provided by Extension 1.10 – Extended Reporting Period during which the **Insured** may give notice of a **Claim**, circumstance or **Inquiry** after the **Expiry Date**, provided that such **Claim**, or **Inquiry** was first made against, or notified to, the **Insured** before the **Expiry Date**, or the **Insured** first became aware of such fact or circumstance that may give rise to a such **Claim** or **Inquiry** before the **Expiry Date**.

- 9.8 **Financial Interest** means the direct or indirect financial interest of the **Policyholder** in an **Insured**.
- 9.9 **Fraud or Dishonesty** means any actual or alleged:
- (a) fraudulent, criminal or malicious act, error or omission; or
  - (b) intentional or wilful breach of any statute, law or regulation, contract or duty; of any **Insured**.
- 9.10 **Insured** means:
- (a) the **Policyholder** and any **Subsidiary** that was a **Subsidiary** at the **Inception Date**;
  - (b) any **Employee**;
  - (c) any spouse or domestic partner whether or not the same sex, estate or legal representative of any **Employee** to the extent that such **Employee** would have been covered under the **Policy**; or
  - (d) the heirs, legal representatives or executor of a deceased or incompetent, insolvent or bankrupt **Employee's** estate to the extent that such **Employee** would have been covered under the **Policy**.
- 9.11 **Insurer** means:
- Swiss Re International SE Australia Branch,  
Registered Office: Tower Two International Towers,  
Level 36, 200 Barangaroo Avenue,  
Sydney, NSW 2000, Australia  
AFSL 355088 - ABN 38 138 873 211
- 9.12 **Inquiry** means any administrative or regulatory proceeding, official investigation, inquiry or hearing in respect of the **Insured's Provision of Technology Services** or an **Occurrence** where the findings of such proceeding, official investigation, inquiry or hearing could lead to a **Claim** covered under the **Policy** and includes responding to any lawful request which requires a response including to produce documents.
- Inquiry** does not include a proceeding, inquiry, hearing, investigation, audit or similar review into licensing, registration or accreditation, by or of the **Insured**.
- 9.13 **Inquiry Costs** means the **Costs and Expenses** incurred by or on behalf of the **Insured** in preparing for, and being represented at an **Inquiry** and shall include legal costs and disbursements. **Inquiry Costs** does not include salaries, wages, allowances, fees, commissions, awards, bonuses, and travel or accommodation expenses.
- 9.14 **Internet Operations** means the operation and maintenance of e-mail, the internet (including the **Insured's** website) or any intranet.

- 9.15 **Loss** means monetary damages, claimant's costs, and settlements. **Loss** shall not include:
- (a) non-compensatory damages, including punitive, multiple or exemplary damages;
  - (b) liquidated damages imposed by contract or agreement, except to the extent that the **Insured** would have been liable for that damage in the absence of any such contract or agreement;
  - (c) taxes, except GST for which the **Insured** is not entitled to an Input Tax Credit; or
  - (d) any matter which may be deemed uninsurable by law.
- 9.16 **Non-Admitted Jurisdiction** means any jurisdiction that does not permit the **Insured** to be covered by the **Policy** because the Insurer is not registered or authorised as an insurer to do so in that jurisdiction.
- 9.17 **Occurrence** means an event including continuous or repeated exposure to substantially the same general conditions which results in **Personal Injury, Property Damage** or **Advertising Liability** neither expected by the **Insured**.
- 9.18 **Personal Injury** means:
- (a) bodily injury, death, sickness, disease, illness, mental anguish or mental injury;
  - (b) false arrest, false detention, wrongful imprisonment or malicious prosecution;
  - (c) the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - (d) defamation, libel or slander; or
  - (e) assault and/or battery committed by any **Employee** of the **Insured** but excluding acts committed at the direction of the **Insured** unless so directed for the purpose of preventing or eliminating danger to persons or property.
- 9.19 **Policy Period** means the period between the **Inception Date** and the earlier of the **Expiry Date** or the effective date of any cancellation or avoidance of cover.
- 9.20 **Policy** means the **Schedule**, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions, Endorsements and any other terms contained or incorporated herein.
- Policy** does not include any Section, Optional Extension or any other part of the **Policy** that has not been purchased by the **Insured**.

- 9.21 **Pollutant** means any air emission, odour, waste, oil or oil product, infectious or medical waste, noise, fungus (including mould or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption), and electric or magnetic or electromagnetic field. Such matters shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminations or smoke, vapour, soot, fumes, acids, alkalis, chemicals, waste materials or materials to be recycled or reclaimed.
- 9.22 **Premium** means the amount of money that the **Policyholder** must pay the **Insurer** for the **Policy**. The **Premium** shall include any premium adjustments required to be paid to the **Insurer**.
- 9.23 **Principal** means a third party with whom the **Insured** has a written contract for the:
- (a) **Provision of Technology Services** so long as the written contract was entered into prior to the **Provision of Technology Services**; or
  - (b) provision **Technology Products**, so long as the written contract was entered into prior to the provision **Technology Products**.
- 9.24 **Property Damage** means:
- (a) physical damage to or loss of or destruction of tangible property including loss of use resulting therefrom; or
  - (b) loss of use of tangible property which has not been physically damaged or destroyed, provided such loss of use is caused by physical damage to other tangible property.
- All such **Loss** of use shall be deemed to happen at the time of the physical damage that caused it.
- 9.25 **Proportionate Liability Legislation** means the *Civil Liability Act 2002 (NSW) Pt 4, Wrongs Act 1958 (Vic) Pt IVA, Civil Liability Act 2002 (WA) Pt 1F, Civil Liability Act 2003 (Qld) Pt 2, Civil Law (Wrongs) Act 2002 (ACT) Ch 7A, Proportionate Liability Act 2005 (NT), Civil Liability Act 2002 (Tas) Part 9A, Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA) Pt 3, Trade Practices Act (Cth) s87C, Development Act 1993 (SA) s72, Building Act 2004 (ACT) s141 and Building Act 2000 (Tas) s252*, and similar legislation or any amendment or re-enactment thereof.
- 9.26 **Proposal** means any proposal form completed and signed for the **Policy** or for any other policy issued by the **Insurer** for which the **Policy** is a replacement or renewal (including any attachments thereto) and any information and statements or materials requested by the **Insurer** or supplied to the **Insurer** by or on behalf of the **Insured** included therewith or incorporated therein.

- 9.27 **Provision of Technology Services** means information technology services performed for others by or on behalf of the **Insured** for a fee pursuant to a contract including but not limited to:
- (a) analysis, design, integration and conversion of information technology systems, networks and electronic systems;
  - (b) designing, developing, programming, installing, servicing, supporting, maintaining and repairing software (including open-source software) and firmware including any code associated therewith and including if any of the proceedings under a licence from a third party;
  - (c) designing, installing, integrating, servicing, supporting, maintaining and repairing hardware;
  - (d) educating and training in the use of hardware or software;
  - (e) information services;
  - (f) data processing, management or warehousing;
  - (g) hosting, managing or administering the information technology systems or facilities of another party;
  - (h) project management related to (a) through (g) above or with respect to **Technology Products**; or
  - (i) consulting on any of (a) through (h) above or with respect to **Technology Products**.
- 9.28 **Public Relations Expenses** means the costs and expenses of a public relations firm or consultant, crisis management firm or law firm which an **Insured** may engage in order to prevent or limit adverse effects of any negative publicity which has arisen from any covered **Claim** or **Inquiry**.
- 9.29 **Related Claim and Related Inquiry** means any **Claims** or **Inquiries** or other matters covered under the **Policy** which are causally connected or which arise from interrelated acts, errors or omissions.
- 9.30 **Related Entity** means:
- (a) another **Insured**;
  - (b) a parent company or subsidiary of the **Insured**; or
  - (c) or any person or entity having a financial or executive interest in the operation of the **Insured**.

- 9.31 **Reputation Protection Expenses** means the costs and expenses of a public relations firm or consultant, crisis management or law firm which an **Insured** may engage in order to disseminate the findings of a final adjudication in favour of the **Insured**, arising from a covered **Claim** or **Inquiry** in which there has been negative publicity.
- 9.32 **Schedule** means the Schedule attached to the **Policy** and signed by two people authorised by the **Insurer**.
- 9.33 **Senior Counsel** means a senior lawyer to be mutually agreed upon by the parties, or in the absence of agreement, to be appointed by the Chair/President of the Bar Association, Law Society, or equivalent organisation in the jurisdiction in which the **Policy** is issued.
- 9.34 **Subsidiary** means any entity which the **Policyholder**, on or before the **Inception Date**, either directly or indirectly through one or more of its other **Subsidiaries**:
- (a) has control of the composition of the board of directors;
  - (b) has control of more than half of the shareholder or equity voting power;
  - (c) holds more than half of the issued share capital or equity; or
  - (d) exercises effective control of management, including of any joint venture.
- 9.35 **Technology Products** mean:
- (a) hardware products, components and peripherals;
  - (b) software, firmware and all related machine, object or source code; or
  - (c) wireless or wire line telecommunication equipment including satellite or broadcast network equipment,

which were created, designed or manufactured by the **Insured** and then sold, distributed, licenced or leased by or on behalf of the **Insured** to others pursuant to a contract as a completed and operational, generic or bespoke, product.