


CyberCare

Combined Policy Wording and Product Disclosure Statement (PDS)

Issued by Agile Underwriting Services Pty Ltd
ABN 48 607 908 243 — AFSL 483374



Powered by  AGILE.

Coverholder at 

CYBERCARE POLICY WORDING & PRODUCT DISCLOSURE STATEMENT (PDS)

Prepared on 16th October 2020

Any general advice that may be contained within this Policy Wording and Product Disclosure Statement (PDS) or accompanying material doesn't take into account Your individual objectives, financial situation or needs. You need to decide if the limits, type and level of cover are appropriate for You.

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PART A: POLICY DISCLOSURE STATEMENT

1. WHO CAN I CONTACT IF I HAVE QUESTIONS?

We've simplified our contact points so you can easily get in touch with us.

FOR ENQUIRIES RELATING TO	PLEASE CONTACT
General enquiries, including policy questions and coverage, and policy amendments.	1300 705 031 help@agileunderwriting.com
Cancelling your policy You can cancel your policy at any time.	1300 705 031 cancel@agileunderwriting.com
Making a claim online You can claim directly through our online portal.	cybercare.poweredbyagile.com.au/how_to_claim
Making a claim Get in touch straight away and we can help.	1300 705 031 claims@agileunderwriting.com
Making a complaint If you're not happy...we want to know.	1300 705 031 complaints@agileunderwriting.com
Family/Domestic Violence For further information please visit https://www.agileunderwriting.com/claims-and-help/family-domestic-violence-policy/	1300 705 031 family@agileunderwriting.com In an emergency or you are not feeling safe, call 000

Support for customers experiencing vulnerability or financial hardship For further information please visit https://www.agileunderwriting.com/claims-and-help/supporting-customers-experiencing-vulnerability-policy/	1300 705 031 hardship@agileunderwriting.com
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2. ABOUT AGILE UNDERWRITING SERVICES

This insurance is issued by Agile Underwriting Services Pty Ltd (ABN 48 607 908 243, AFS Licence No. 483374) (AGILE). AGILE arranges policies for and on behalf of certain Underwriters at Lloyd's (the "Underwriters", the "Insurer").

In all aspects of this Policy, AGILE acts as agent for the Insurer and not for the Insured. In this PDS, "We", "Us", "Our" means Agile Underwriting Services Pty Ltd, and "You", "Your" means the **Insured**.

Head Office: Level 5, 63 York St, SYDNEY NSW 2000
Postal Address: Level 5, 63 York St, SYDNEY NSW 2000
Telephone: 1300 705 031
E-mail: service@agileunderwriting.com
Website: www.agileunderwriting.com

3. ABOUT LLOYD'S

Lloyd's is the world's specialist insurance and reinsurance market.

With expertise earned over centuries, Lloyd's is the foundation of the insurance industry and the future of it. Led by expert underwriters and brokers who cover more than 200 territories, the Lloyd's market develops the essential, complex and critical insurance needed to underwrite human progress.

Backed by diverse global capital and excellent financial ratings, Lloyd's works with a global network to grow the insured world – building resilience for businesses and local communities and strengthening economic growth around the world.

4. ABOUT THIS POLICY

We agree to provide You with insurance in accordance with the terms, Conditions of Cover and exclusions of the Policy based on the information You have provided or was provided on Your behalf to Us subject to payment of the Premium required. The Policy consists of this document, the Schedule and any endorsements affixed (or intended to be affixed) to it and the Application. All of them should be read as if they were one document. This Policy is subject to Australian law and practice.

Your schedule of insurance

Your **schedule** of insurance contains important details about your policy such as the period of insurance, your premium, what cover options and excesses will apply, and any changes to the policy wording.

What makes up Your premium

Your premium is determined by a number of factors and of course, the higher the risk is, the higher the premium. Your premium also includes amounts that we are required to pay, such as government charges, taxes or levies (e.g. stamp duty and GST) that apply to your policy. You will find these amounts on your **schedule** of insurance.

5. IMPORTANT INFORMATION ABOUT THIS POLICY WORDING AND PRODUCT DISCLOSURE STATEMENT

This document is a PDS and is also Our insurance Policy. This document contains important information required under the *Corporations Act 2001 (Cth)* (the Act) and has been prepared to assist You in understanding your policy and making an informed choice about Your insurance requirements. It is up to You to choose the cover You need.

It is important that You carefully read and understand this document before making a decision. Other documents may form part of Our Policy Wording and PDS and if they do, we will tell You in the relevant document.

In return for You paying Us a premium, as set out in Section 7, We insure You for the Events described in the Policy Wording and PDS, subject to the terms, conditions and exclusions of Your Policy. Please keep this document, Your Policy Schedule and any other documents that We tell You form part of Your Policy in a safe place in case You need to refer to them in the future. Please check these documents to make sure all the information in them is correct.

Please let Us know straight away if any alterations are needed or if You change Your address or payment details. For certain types of cover under the Policy, we will require You to provide receipts and other documentary evidence to Us before We pay a claim.

Claims Made Basis

This Policy operates on a claim made and notified basis. This means that the Policy provides cover for Claims first made and notified during the policy period, subject to the terms and conditions of the Policy.

The Policy does not provide cover in relation to Known Facts (as set out in the relevant exclusion) nor in relation to any actual or alleged act, error, omission or event before the retroactive date (if any) specified in the schedule.

Where you give notice in writing to us of any facts that might give rise to a Claim against you as soon as reasonably practicable after you become aware of those facts but before the expiry of the policy period, you may have rights under Section 40(3) of the *Insurance Contracts Act 1984* to be indemnified in respect of any claim subsequently made against you arising from those facts notwithstanding that the Claim is made after the expiry of the policy period. Those rights are in addition to any rights that you may have under the Policy.

Check Your documents

It's important that you check all the details on the documents we send you. If you notice an error or if you have a question, please contact us at www.agileunderwriting.com/contact. If you find you need to change the cover for whatever reason, get in contact with us.

General Insurance Code of Practice

Lloyd's is a signatory to the General Insurance Code of Practice (the Code), and AGILE supports the Code. The Code sets out minimum standards that We will uphold in respect of products and services covered by the Code. Further information about the Code is available at www.codeofpractice.com.au and on request.

6. YOUR DUTY OF DISCLOSURE

What You must tell Us

We will ask You various questions when You apply for cover. When You answer those questions, you must be honest and You have a duty under law to tell Us anything known to You, and which a reasonable person in the circumstances, would include in answer to the question. We will use the answers in deciding whether to insure You, and anyone else to be insured under the Policy, and on what terms. You have this same duty to disclose those matters to Us before You renew, extend, vary or reinstate Your Policy.

If You do not tell Us

If You do not answer Our questions in this way, we may reduce Our liability under contract in respect of a claim or refuse to pay a claim, or cancel the Policy. If You answer Our questions fraudulently, we may refuse to pay a claim and treat the Policy as never having commenced.

7. WHO CAN PURCHASE THIS POLICY

Certain eligibility criteria apply. This policy can only be purchased by customers domiciled in Australia.

8. GENERAL CONDITIONS

Commencement and Period of Your Policy

Your Policy begins on the Commencement Date or on the latest Renewal Date, whichever is the later, and continues for one (1) calendar year (being the Period of Insurance) after which time it expires, or until it is cancelled.

Renewal of Your Policy

This insurance may be renewed for further consecutive yearly periods upon payment of the premium. Payment of Your premium is deemed to be acceptance of an offer of renewal for a further yearly period.

Expiry of Your Policy

Your Policy expires at the end of the Period of Insurance. We may decide not to renew Your Policy. If We decide not to renew Your Policy, We will send You an expiry notice at least fourteen (14) days before the expiry of Your Policy. If Your Policy is cancelled or otherwise terminated, the Period of Insurance will be from the Commencement Date or Renewal Date, whichever is the later, up to and including the date of cancellation or termination.

Significant tax implications

Generally, Your premiums are not tax deductible and claims payments are not assessable income for tax purposes unless You purchase Your policy for business purposes. This tax information is a general statement only. See Your tax adviser for information about Your personal circumstances.

Australian Law and Service of Suit

This Policy is subject to the laws of Australia. Any dispute relating to the Policy shall be submitted to the exclusive jurisdiction of a Court within the State or Territory of Australia in which the Policy was issued.

The Insurers hereon agree that:

- (i) In the event of a dispute arising under this Insurance, the Underwriters at the request of the Assured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- (ii) Any summons notice or process to be served upon the Underwriters may be served upon:
Lloyd's Underwriters' General Representative in Australia
Level 9, 1 O'Connell Street
Sydney NSW 2000
Australia

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

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

Australian Currency

All payments by You to Us and Us to You or someone else under Your Policy must be in Australian currency.

Cooling off period

You have fourteen (14) days from the date We confirmed, electronically or in writing, that You are covered under Your Policy to decide if the Policy meets Your needs. You may cancel Your Policy simply by calling Us on 1300 705 031 or advising Us in writing within those fourteen (14) days to cancel it. If You do this, We will refund any premiums You have paid during this period. These cooling off rights do not apply if You have made or You are entitled to make a claim during this period.

9. CANCELLATION OF YOUR POLICY

Your Policy may be cancelled in one of two (2) ways:

When You can cancel

You can cancel Your Policy at any time by emailing Us at cancel@agileunderwriting.com or calling 1300 705 031.

If You:

- (a) pay Your premium by instalments and wish to cancel, We will cancel on the date to which You have paid Your premium in advance.

- (b) do not pay Your premium by instalments, the cancellation will take effect at 4pm Australian Eastern Standard Time on the day We receive Your notice of cancellation. We will refund the premium for Your Policy, less an amount which covers the period for which You were insured. However, we will not refund any premium if We have paid or are obliged to pay a benefit under Your Policy.

When We can cancel

We can cancel Your Policy by giving You written notice to the address on file and in accordance with the *Insurance Contracts Act 1984 (Cth)*, including where You have:

- (a) breached the Duty of Disclosure;
- (b) breached a provision of Your Policy (including one requiring payment of premium);
- (c) made a fraudulent claim under any policy of insurance. If We cancel, We will refund the premium for Your Policy less an amount to cover the period for which You Were insured.
- (d) Undertaken Deception, Fraud and Illegal Use, We may be entitled to avoid this policy or withdraw from it in the event of intentional misrepresentation or deception. as Well as in the event that the Equipment is wholly or partly used in the course of, or to facilitate a criminal activity. If a fraudulent Claim is made, entitlements and benefits will be forfeited and information may be forwarded to the police and the prosecuting authorities.

10. COMPLAINTS AND DISPUTE RESOLUTION

AGILE takes the concerns of its customers very seriously. AGILE has detailed complaint handling and dispute resolution procedures that You may access, at no cost to You. To obtain a copy of Our procedures, please contact Us on 1300 705 031 or complaints@agileunderwriting.com.

To assist AGILE with Your enquiries, please provide Us with Your claim or policy number (if applicable) and as much information You can about the reason for Your complaint or dispute. AGILE's complaints and dispute procedures are as follows:

Stage 1 - Complaint Handling Procedure

If You are dissatisfied with any of AGILE's products or services and You wish to lodge a complaint, please contact Us at:

Postal address: The Complaints Officer
AGILE Underwriting Services Pty Ltd
Level 5, 63 York St, Sydney NSW 2001

Telephone: 1800 705 031

Email: complaints@agileunderwriting.com

We will respond to Your complaint within fifteen (15) business days, or if further investigation or information is required, We will work with You to agree on reasonable alternative timeframes.

Stage 2 – Dispute Resolution Procedure

If You are dissatisfied with Our response to Your complaint, You may ask that Your complaint be referred to:

Postal address: Lloyd's Australia Limited
Level 9, 1 O'Connell Street Sydney NSW 2000

Telephone: +61 (0) 2 8298 0783

Email: ldraustralia@lloyds.com

Following receipt of your complaint, you will be advised whether your matter will be handled by Lloyd's Australia or the Lloyd's Complaint team in London, or what other avenues are available to you. Your complaint will be acknowledged within 5 business days of receipt, and you will be kept informed of the progress of the review of your complaint at least every 10 business days.

Where your complaint is eligible for referral to the Australian Financial Complaint Authority (AFCA), your complaint will be reviewed by a person at Lloyd's Australia with appropriate authority to deal with your dispute.

If Your complaint or dispute is not resolved to Your satisfaction or a final response has not been provided within 45 days, You may refer the matter to the Australian Financial Complaints Authority (AFCA) for review. AFCA can be contacted at:

Postal address: Australian Financial Complaints Authority
GPO Box 3, Melbourne VIC 3001
Telephone: 1800 931 678
email: info@afca.org.au

AFCA provides fair and independent financial services complaint resolution that is free to consumers. Your dispute must be referred within 2 years of the date of Lloyd's final decision. Determinations made by AFCA are binding.

Customers not eligible for referral to AFCA may be eligible for referral to the UK Financial Ombudsman Service. Such referral must occur within 6 months of the final decision by the Complaints team at Lloyd's. Further details will be provided with their final decision to you.

11. UPDATING OUR PDS

We may update the information contained in Our PDS when necessary. A paper copy of any updated information is available to You at no cost by calling Us on 1300 705 031.

We will issue You with a new PDS or a supplementary PDS where the update is to rectify a misleading or deceptive statement or when an omission is materially adverse from the point of view of a reasonable person deciding whether to buy this product.

12. PRIVACY STATEMENT

At AGILE, we are committed to protecting your privacy in accordance with the *Privacy Act 1988* (Cth). We use your personal information to assess the risk of and provide insurance and other insurance services to service your account. We may use your contact details to send you information and offers about products and services that we believe will be of interest to you.

If you don't provide us with full information, we may not be able to provide insurance or assess a claim to service your account. If you provide us with information about someone else you must obtain their consent to do so. We provide your information to the insurer we represent when we issue and administer your insurance (who may be overseas). We are part of the Agent Zero Group and may provide your information to the entity that provides us with business support services.

We may also provide your information to your broker and contracted third party service providers (e.g. Loss adjuster companies), but will take all reasonable steps to ensure that they comply with

the Privacy Act. Our Privacy Policy contains information about how you can access the information we hold about you, ask us to correct it, or make a privacy related complaint.

You can obtain a copy from Our Privacy Officer by telephone 1300 705 031 email (privacy@agileunderwriting.com) or by visiting Our Website (www.agileunderwriting.com). By providing Us with Your personal information, You consent to its collection and use as outlined above and in Our Privacy Policy.

13. WORDS WITH SPECIAL MEANINGS

Throughout this document, certain words begin with capital letters or appear in bold type. These words have special meaning and are included in the Definitions, in Section 7 of PART B of this Policy Wording and PDS. Please refer to the Definitions for their meaning. Any reference to an Act, legislation or legislative instrument in this document also refers to that Act, legislation or legislative instrument as amended and may be in force from time to time.

SEVERAL LIABILITY NOTICE

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations. LSW 1001 (Insurance) 08/94

PART B - POLICY WORDING

Subject to the terms, conditions, limitations and exclusions in this Policy:

1. INSURING CLAUSES

1.1 Electronic Business Interruption and Increased Cost of Working

Underwriters shall reimburse the Insured for Loss of Business Income caused by a Business Interruption Loss Event, during the period from the expiration of the applicable Waiting Period to the end of the Period of Restoration, directly arising from an actual Cyber Event which occurs on the Insured's Computer Network after the Retroactive Date which is first discovered by the Insured during the Policy Period and Notified to us in accordance with Clause 5.2 of this Policy.

1.2 Cyber Liability

Underwriters shall pay on the Insured's behalf Damages arising out of any Claim directly arising from an actual or suspected Cyber Event which occurs on the Insured's Computer Network after the Retroactive Date and for Defence Costs and Expenses incurred in the defence, investigation and/or settlement of such Claims Notified to us in accordance with Clause 5.2 of this Policy.

1.3 Privacy Regulatory Defence and Penalties

Underwriters shall pay on the Insured's behalf amounts which the Insured becomes legally obligated to pay, including Defence Costs and Expenses, as a direct result of a civil regulatory action, including Regulatory Penalties, directly arising from an actual or suspected Breach of Security, Breach of Privacy or breach of Privacy Regulations Notified to us in accordance with Clause 5.2 of this Policy.

1.4 Breach and Recovery Costs

- A. Underwriters shall pay on the Insured's behalf Breach Response Costs; and
- B. Underwriters shall reimburse the Insured for Data Recovery Expenses,

when such costs and expenses are incurred as a direct result of an actual or suspected Breach of Security, Breach of Privacy, breach of Privacy Regulations or Cyber Event Notified to us in accordance with Clause 5.2 of this Policy.

1.5 Cyber Extortion

Underwriters shall reimburse the **Insured**, to the extent insurable by law, for **Cyber Extortion Monies** that are paid by the **Insured** as a direct result of an actual or suspected **Cyber Extortion Threat Notified** to us in accordance with Clause 5.2 of this Policy.

1.6 Cyber Deception

Underwriters shall reimburse the **Insured** for direct monetary loss sustained from **Social Engineering Fraud Notified** to us in accordance with Clause 5.2 of this Policy.

As a condition precedent to coverage under this Insuring Clause, all instructions purportedly received by the **Insured** for the transfer of **Money**, credit, **Securities**, **Other Assets** or other property of value, must be authenticated by a call back to the telephone number held on file for the individual or entity requesting the transfer, and the **Insured** must receive oral confirmation from the individual at that telephone number to proceed with the transfer.

2. LIMIT OF INDEMNITY AND EXCESS

2.1 Limit of Indemnity (Any One Claim and in the Aggregate Basis)

In respect of all Insuring Clauses the **Limit of Indemnity** shall be the amount stated in item 4A of the **Schedule** and includes **Defence Costs and Expenses**.

The maximum amount payable under Insuring Clauses 1.1 – 1.6 is specified in Item 4B. Subject to **Underwriters'** maximum liability for all coverage under this Policy.

The total liability of **Underwriters** during the **Policy Period** shall not exceed in the aggregate the **Limit of Indemnity** specified in Item 4A of the **Schedule**.

All **Claims** or losses that are covered under a single Insuring Clause arising out of or attributable to the same originating cause or source or the same act, error or omission, event or transaction or in any way related to such cause or source, act, error or omission, event or transaction shall be considered a single **Claim** or loss, under this Policy without regard to the number of **Insureds**, **Claims**, claimants or losses, and only one Limit of Indemnity, as set forth in Item 4A of the **Schedule**, will apply.

All such **Claims** or losses shall be deemed to have been made at the time of the earliest of the following: The date the first such **Claim** is made or the date the loss is first discovered, or in regard to Insuring Clause 5 **Cyber Extortion**, the date a **Cyber Extortion Threat** is first made.

Should a **Claim** and/or loss attach to more than one Insuring Clause (“an event”), only one **Limit of Indemnity** as set forth above shall apply. With regard to such event, at most, only the highest of the applicable Limits of Indemnity shall apply. **Underwriters** have the sole discretion to allocate amounts paid, if any, against the appropriate applicable **Limit of Indemnity**. However, the amount paid by **Underwriters** under any Insuring Clause shall not be greater than the **Limit of Indemnity** set forth above for that Insuring Clause. Such event shall be deemed to have been made at the time of the earliest of the following:

- (a) the date the first **Claim** is made; or
- (b) the date the loss is first discovered; or
- (c) in regard to Insuring Clause 1.5 (**Cyber Extortion**), the date a **Cyber Extortion Threat** is first made.

2.2 Excess and Waiting Period

In respect of all Insuring Clauses the **Excess** and **Waiting Period** shall be the amounts stated in Item 5 of the **Schedule**.

If **Underwriters** at their election make any payment which is the responsibility of the **Insured** under this Clause 2.2, then the **Insured** shall forthwith repay such sum to **Underwriters** and, if the **Insured** fails to repay such sum, **Underwriters** shall have the right to set off such sum against any other monies due from **Underwriters** to the **Insured** under this Policy.

A separate **Excess** and/or **Waiting Period** shall apply to each and every **Claim** and to each and every **Cyber Event**. However, where there is more than one **Claim** and/or **Cyber Event** arising out of or attributable to the same originating cause or source or the same act, error or omission, event or transaction or in any way related to such cause or source, act, error or omission, event or transaction, the **Excess** and/or **Waiting Period** shall only be applied once.

3. AUTOMATIC EXTENSIONS

Each Extension hereunder will apply automatically and is subject to the terms, conditions, limitations and exclusions in this policy. None of the Extensions shall increase the **Limit of Indemnity**.

3.1 Continuity of Cover – A Renewal Benefit

Notwithstanding Exclusion 4.4 (**Known Facts**), if the **Insured** was aware of any facts that might give rise to a **Claim** prior to the **Policy Period**, and **Underwriters** have not been **Notified** by the **Insured** of such facts prior to the commencement of the **Policy Period**, then Exclusion 4.4 will not apply to a **Claim** resulting from the notification of such facts, provided that:

- (a) the failure to notify such facts by the **Insured** was not a result of fraudulent misrepresentation or fraudulent non-disclosure; and
- (b) such facts had not previously been **Notified** to any other cyber risks insurer; and
- (c) **Underwriters** were the cyber risks insurers of the **Insured** at the time the **Insured** became aware of such facts and have continued without interruption to be the **Insured's** cyber risk insurer; but
- (d) the **Limit of Indemnity**, sub-limits of indemnity and excesses under the policy in force when the **Insured** first became aware of such facts shall apply; and
- (e) no indemnity shall be available for any **Claim** that is **Notified** after the **Policy Period**; and
- (f) **Underwriters** will reduce their liability to the extent of any prejudice suffered as a result of the **Insured's** failure to notify such facts giving rise to a **Claim** prior to the **Policy Period**.

3.2 Run-Off Cover

Underwriters agree that in the event that an **Insured** entity ceases to exist or is merged into or acquired by another entity then the coverage provided under Insuring Clauses 1.2 and 1.3 shall continue until the expiry of the **Policy Period**, provided that this cover will only apply to any actual or alleged act, error, omission, and/or event committed or occurring prior to the date that the **Insured** entity ceased to exist or was merged into or acquired by another entity.

3.3 Severability and Non-imputation

If **Underwriters** agree to insure more than one party under the Policy, then any nondisclosure, misrepresentation or other failure to comply with any terms or conditions of the Policy by one party shall not prejudice the rights of the remaining parties to indemnity, provided that the remaining parties had no prior knowledge (or should not reasonably have had prior knowledge) of such non-disclosure, misrepresentation or other failure to comply. The onus of proving that this Extension should apply shall be upon the **Insured**.

4. EXCLUSIONS

Underwriters shall not have any liability under this Policy for, or directly or indirectly arising out of, or in any way involving:

4.1 Bodily Injury & Property Damage

Any **Bodily Injury** or **Property Damage**, except that this Exclusion shall not apply to wrongful infliction of emotional distress or mental anguish arising out of actual or alleged, **Breach of Privacy**, **Breach of Security**, or breach of **Privacy Regulations**.

4.2 Dishonesty

Any **Dishonesty** committed, condoned or contributed to by any partner, director or principal of the **Insured**. Furthermore, no person or persons committing, condoning or contributing to any **Dishonesty** shall be entitled to any indemnity under this Policy. In the event of a **Claim** as a result of any **Dishonesty**, the indemnity under this Policy shall be reduced by an amount equal to the sum of:

- (a) any monies owed by the **Insured** to any person committing, condoning or contributing to the **Dishonesty**;
- (b) any monies held by the **Insured** and belonging to such person; and
- (c) any monies recovered in accordance with Condition 5.3 of this Policy.

4.3 Jurisdiction Limits

Any:

- (a) legal proceedings, wherever brought, under the laws of the United States of America (**USA**) or brought under the laws outside the USA to enforce a judgment or order made under the laws of the USA;
- (b) coronial inquests, disciplinary hearings, or occupational health and safety proceedings brought outside Australia or New Zealand.

4.4 Known and/or Prior Facts and/or Acts

Any:

- (a) facts which could give rise to a **Claim** against the **Insured** and which facts were known or ought reasonably to have been known by the **Insured** at any time prior to the **Policy Period**; or
- (b) any matter disclosed or **Notified** to **Underwriters** or any other insurer to the **Policy Period** as being either a **Claim** or **Claims**, or circumstance which might result in a **Claim** or **Claims**; or
- (c) any litigation or inquiry that was in progress or pending prior to the **Policy Period**; or
- (d) acts, facts, incidents or circumstances or the same, related or continuing acts, facts, incidents or circumstances that were first committed or first occurred prior to the **Retroactive Date**.

4.5 Nuclear, War & Terrorism

Any of the following:

- (a) war (whether declared or not), invasion, acts of a foreign enemy, hostilities, or any similar act, condition or warlike operation, warlike action by a regular or irregular military force or other authority to hinder or defend against an actual or expected attack;
- (b) insurrection, rebellion, revolution, riot, attempt to usurp power, popular uprising, or any action taken by any governmental or martial authority in hindering or defending against any of these;

- (c) discharge, explosion, or use of a weapon of mass destruction, whether or not employing nuclear fission or fusion, or chemical, biological, radioactive or similar agents, by any party at any time for any reason; or
- (d) a terrorist act. For the purposes of this Exclusion, a "terrorist act" means an act or series of acts including the use of force or violence of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s), committed for political, religious, or ideological purposes, including the intention to influence any government and/or to put the public in fear for such purposes, provided however that this Exclusion shall not apply to **Cyber Terrorism**.

4.6 Other Insurance

Any matter in respect of which the **Insured** is (or but for the existence of this Policy would be) entitled to indemnity under any other contract of insurance, except where such other insurance is written as specific excess insurance to provide an indemnity in excess of the amount payable under this Policy.

4.7 Wear and Tear

Any wear and tear, drop in performance, progressive or gradual deterioration or ageing of electronic equipment and other property or **Hardware** used by the **Insured** or the failure of the **Insured** or those acting on the behalf of the **Insured** to adequately maintain any computer, computer software, **Computer Network** or other equipment or **hardware** associated with such **Computer Network**.

4.8 Sanctions

No **Underwriters** shall be deemed to provide cover and no **Underwriters** shall be liable to indemnify the **Insured** in respect of any **Claim** or provide any benefit to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose **Underwriters** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Australia, New Zealand, the United Kingdom or the USA.

4.9 Natural Perils

Any fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, or any other natural weather or seismic event.

4.10 Anti-competition

Any actual or alleged breach of unfair competition or anti-trust laws, deceptive trade practices, or restraint of trade or antitrust statute, legislation or regulation.

4.11 Trading losses and/or liabilities

- (a) Any trading losses or trading liabilities (including commissions or fees) resulting from the fluctuation of any stock, share, security or currency on any financial markets or exchanges; or
- (b) The monetary value of any electronic fund transfers, transactions by or on behalf of the **Insured** which are lost, diminished, or damaged during transfer from, into or between accounts (other than where coverage is provided under Insuring Clause 1.6 (**Cyber Deception**)); or
- (c) The theft of any **Money, Securities** or any equivalents thereof (including certificates, coupons, gift cards and vouchers) (other than where coverage is provided under Insuring Clause 1.6 (**Cyber Deception**)); or
- (d) The face value of coupons, price discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount.

4.12 PCI Fines & Assessments

Any fines and/or penalties and/or assessments issued in relation to the Payment Card Industry Data Security Standard (**PCI DSS**).

4.13 Contractual Liability or Obligation

Any liability assumed by the **Insured** under the terms of any contract or agreement or any breach of any express, implied, actual or constructive contract, warranty, guarantee or promise, except this Exclusion shall not apply:

- (a) in respect of liability which would have existed even in the absence of such contract or agreement; or
- (b) in respect of a breach of the **Insured's** own privacy policy or the **Insured's** network security policy; or
- (c) in respect of indemnity provisions regarding the protection of **Personal Information** or non-public confidential corporate or other business information.

4.14 Betterment (*in respect of Insuring Clause 1.1 only*)

Any costs or expenses that result in an **Insured's Computer Network** having a higher level of functionality that it had before the **Cyber Event**.

4.15 Fines and Penalties

Any:

- (a) criminal fines or penalties;
- (b) civil fines or penalties unless insurable by the law of an applicable jurisdiction that would be most favourable to the **Insured**; or
- (c) any amount which **Underwriters** are prohibited from covering as a result of applicable law or regulation.

4.16 Power/Utilities/Telecoms failure

Any:

- (a) satellite failures;
- (b) electrical or mechanical failures and/or interruption including, but not limited to, electrical disturbance, spike, brownout, or blackout;
- (c) outages to electricity, gas, water, telephone, cable, telecommunications;
- (d) gradual deterioration of overhead transmission, distribution lines or subterranean insulation or cabling or other infrastructure, unless such infrastructure is under the **Insured's** operational control and unless such **Claim** forms part of an otherwise covered loss or **Claim**.

4.17 Government Actions

Any action of, or restrictions or requirements imposed by, a government authority, including government enforcement or investigation of any state or federal regulation, including but not limited to regulations of the Australian Competition and Consumer Commission, Australian Communications & Media Authority or the Australian Securities and Investments Commission except to the extent specifically and expressly covered by Insuring Clause 1.3 (**Privacy Regulatory Defence and Penalties**).

4.18 Intellectual Property

The actual or alleged breach or infringement of a third party's intellectual property right by an **Insured**, including but not limited to any patent or the misappropriation, theft, copying, display or any publication of any trade secret. However, this Exclusion shall not apply to the theft of a third party's trade secrets arising from an actual or suspected **Cyber Event, Breach of Security or Breach of Privacy** unless such **Claim** forms part of an otherwise covered loss or **Claim**.

4.19 Employment Claim and Insured against Insured

An **Employment Claim** or any **Claim** made by an **Insured** against another **Insured**, however, this Exclusion shall not apply in respect of any **Claim** brought by an **Employee** under Insuring Clause 1.2 (**Cyber Liability**) of this Policy.

5. CLAIMS CONDITIONS

5.1 Duty to Co-operate

The **Insured** must (at the **Insured's** own expense):

- (a) promptly provide to **Underwriters** full details concerning any **Claim** and/or any matter(s) relating to cover under any of the Insuring Clauses;

- (b) promptly provide such co-operation and assistance as **Underwriters** and their representatives, legal advisers and/or agents may reasonably require;
- (c) exercise due diligence and do all things reasonably practicable to reduce or mitigate any loss actually or potentially covered under any of the Insuring Clauses.

5.2 Notification

The **Insured** must ensure that **Underwriters** are **Notified** as soon as practicable and during the **Policy Period**:

- (a) of any actual or suspected **Claim** or **Cyber Event**;
- (b) of any actual or suspected **Cyber Extortion Threat**;
- (c) of any actual or suspected **Breach of Security, Breach of Privacy, or breach of Privacy Regulations**.

Such notification shall include full details of the act, error or omission, transaction or event giving rise to the actual or suspected **Claim, Cyber Event, Cyber Extortion Threat, Breach of Security, Breach of Privacy** or breach of **Privacy Regulations** and/or loss including:

- (a) the date of such act, error or omission, transaction or event;
- (b) the name(s) of the person(s) responsible for such act, error or omission, transaction or event; and
- (c) the name(s) of the likely claimant(s) or instigating party and the amount of the likely cost and/or loss.

5.3 Subrogation

Underwriters shall be subrogated to all the rights of recovery of the **Insured** against any third party before or after any indemnity is given under this Policy. The **Insured** shall, promptly and without charge, provide such assistance as **Underwriters** may reasonably require in any subrogation.

5.4 Underwriters Entitled to Defend & No Admission of Liability

- (a) **Underwriters** shall be entitled, but not obliged, to take over the investigation, defence and settlement of any **Claim** and any matter(s) where the **Insured** has requested to be indemnified under this Policy. If the **Insured** does not agree with any proposals by **Underwriters** to settle any **Claim**, then **Underwriters'** liability for such **Claim** shall be limited (subject always to the **Limit of Indemnity**) to the amount for which in **Underwriters'** reasonable opinion the **Claim** could have been settled at the date at which **Underwriters** proposed it should be settled, and **Underwriters'** liability for **Defence Costs and Expenses** shall be limited to **Defence Costs and Expenses** incurred up to that date.

- (b) The **Insured** (or any person, firm or company acting for or on behalf of the **Insured**) shall not, without the prior written approval of **Underwriters**, admit liability for, compromise, settle, or make any offer or payment in respect of any **Claim** or facts which could give rise to a **Claim** against the **Insured**.
- (c) The **Insured** shall not be obliged to defend any legal proceedings unless a Queen's Counsel / Senior Counsel or Counsel of not less than 15 years' standing at the bar (to be mutually decided upon by **Underwriters** and the **Insured**) shall advise that such proceedings can be contested with a reasonable prospect of success.

6. GENERAL CONDITIONS

6.1 Alteration of Risk

- (a) In the event of a material change in the **Insured's Business**, or any act of insolvency or bankruptcy of the **Insured** or any proposed or actual sale of the business or merger with another entity, or any other material change in the potential exposure of the risk to the **Insured**, the **Insured** must give **Underwriters** written notice as soon as is practicable after becoming aware of such alteration which may affect **Underwriters** risk under this Policy.
- (b) In the event of such change in material risk, **Underwriters** shall be entitled at its sole discretion to charge an additional premium, the amount of which shall also be at **Underwriters'** sole discretion.
- (c) **Underwriters** may also be entitled to cancel this Policy in accordance with the provisions of the *Insurance Contracts Act 1984* (Cth) upon receipt of such notice or where there is a material alteration to the risk covered by this Policy.

6.2 Avoidance by Underwriters

Subject to the operation of the *Insurance Contracts Act 1984* (Cth), if **Underwriters** are entitled, for any reason, to avoid this Policy *ab initio*, **Underwriters** may at their absolute discretion elect instead to give notice to the **Insured** that it regards this Policy as being in full force and effect, except that no indemnity will be given under this Policy that arises from or is related to the ground(s) that entitled **Underwriters** to avoid this Policy.

6.3 Cancellation

- (a) **Underwriters** may cancel this Policy in accordance with the relevant provisions of the *Insurance Contracts Act 1984* (Cth).

- (b) If **Underwriters** elect to cancel the Policy as described in Clause 6.3(a), a pro-rata refund of **Premium** may be made at **Underwriters** discretion for the unexpired part of the **Policy Period** (less any non-refundable duties).

6.4 Disclosure of Information by Insured

The **Insured** agrees to waive any claim for legal professional privilege in respect of any information provided to **Underwriters** from any legal representatives appointed by **Underwriters** to act on the **Insured's** behalf.

6.5 Governing Law and Disputes

This Policy shall be governed by and construed in accordance with the laws of Australia. The courts of Australia will have the jurisdiction in any dispute about or under this Policy.

6.6 GST

Any payment made by **Underwriters** under this Policy will be reduced by the amount of any Input Tax Credit to which the **Insured** is entitled to for any GST in accordance with the provisions of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

6.7 Interpretation

In this Policy:

- (a) reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this Policy;
- (b) if any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable the remainder shall remain in full force and effect;
- (c) the headings herein are for reference only and shall not be considered when determining the meaning of this Policy.

6.8 Several Liability

The obligations of each insurance company and Lloyd's syndicate (including the underwriters thereof) that comprise the **Underwriters** of this Policy shall be severally liable and not jointly liable and shall be solely liable to the extent of that company's or syndicate's individual subscription. No such company or syndicate shall be responsible for the subscription of any other such company or syndicate who for any reason does not satisfy all or part of its obligations hereunder.

6.9 Premium Payment

- (a) As a condition precedent to the right to be indemnified under this Policy the **Insured** undertakes that the **Premium** will be paid in full to Agile

Underwriting Services Pty Ltd within sixty (60) days of inception of this Policy (or, in respect of instalment premiums, when due).

- (b) If the **Premium** has not been so paid by the sixtieth (60th) day from the inception of this Policy (and, in respect of instalment premiums, by the date they are due) Agile Underwriting Services Pty Ltd shall have the right to cancel this Policy *ab initio* by notifying the **Insured** via its insurance agent in writing. In the event of cancellation, **Premium** is due to **Underwriters** on a pro rata basis for the period that **Underwriters** are on risk but the full Policy **Premium** shall be payable to **Underwriters** in the event that any **Claim(s)** or loss(es) are **Notified** prior to the date of termination.

6.10 Statements of Facts Clause

It is a condition precedent to liability under this Policy that throughout the **Policy Period** the following statements that the **Insured** provided to **Underwriters** as part of the online application process remain true. In the event that the **Insured** becomes aware that any of the statements of facts listed in paragraphs 1 to 10 below are no longer accurate the **Insured** must notify **Underwriters** in writing as soon as practicable and **Underwriters** reserve the right to amend the terms, conditions or **Premium** of the Policy.

1. Your last completed financial years annual turnover including that of your **Subsidiaries** did not exceed the amount stated in Item 8 of the **Schedule**; and
2. Your business activities including that of your **Subsidiaries** do not include the following: financial/credit services, health/medical services, mobile app development, online dating services, gambling, social media, power utilities, over 30% online retail; and
3. You have a privacy policy in place governing your collection of private data and/or **Personal Information** in accordance with the Australian Privacy Principles (APP's) under the *Privacy Act 1988* (Cth); and
4. You have an IT security policy in place, only if you collect sensitive **Personal Information**, including financial information, health information or information about religion, race or union membership, that governs the handling of such information; and
5. You have anti-malware software installed and enabled on all endpoint devices such as desktops, laptops and servers (excluding database servers) and it is updated at least daily; and
6. You have a firewall installed on all external gateways, automatic system updates switched on and active OR regular patch management undertaken at least weekly; and
7. You make at least weekly backups of all critical data and store the same off-site or in a fireproof safe or you have an outsourced provider that meets these minimum requirements; and

8. If you process or store credit card information (where this is not outsourced to a third party that accepts full responsibility for compliance with the PCI DSS), you have been certified as being compliant with the PCI DSS within the last 12 months or have successfully completed a self-assessment audit; and
9. You have not suffered any claim, loss or penalties/fines levied against you in the last five (5) years, in relation to the insurance that this Policy relates to; and
10. You are not aware of any circumstances or complaints against you in relation to data protection or security, or any actual security violations or security breaches either currently or in the past five (5) years.

6.11 Insuring Clause 1.6 (Cyber Deception) condition

As a condition precedent to coverage under Insuring Clause 1.6 (**Cyber Deception**), all instructions purportedly received by the **Insured** for the transfer of **Money**, credit, **Securities**, **Other Assets** or other property of value, must be authenticated by a call back to the telephone number held on file for the individual or entity requesting the transfer, and the **Insured** must receive oral confirmation from the individual at that telephone number to proceed with the transfer.

6.12 Newly Created or Acquired Subsidiary

The definition of **Subsidiary** under this Policy is extended to include any entity which becomes a **Subsidiary** during the **Policy Period**, provided that the new **Subsidiary**:

- (a) does not increase the **Insured's** total revenue by more than twenty percent (20%) based on the **Insured's** latest audited consolidated financial statements or annual report; and
- (b) is not domiciled in the USA; and
- (c) the new **Subsidiary's** business activities are not materially different in their nature to those of the **Insured**.

In respect of any new **Subsidiary** falling outside the terms of (a) to (c) above, cover will be automatically provided for a period of ninety (90) days from the date of acquisition, incorporation or creation.

This automatic cover may be extended beyond the ninety (90) days with **Underwriters'** written agreement and on such terms and conditions that **Underwriters** may apply.

The new **Subsidiary** of the **Insured** is only covered under this Policy from the date in which the **Insured** first had control of that subsidiary.

7. DEFINITIONS

- 7.1 **"BODILY INJURY"** means physical injury, sickness, disease, or death sustained by any person and, where resulting from such physical injuries only, mental anguish, mental injury, shock, humiliation, or emotional distress.
- 7.2 **"BREACH OF PRIVACY"** means a breach, infringement, or violation of confidentiality or of any right to privacy including, but not limited to, a breach of the **Insured's** privacy policy and public disclosure of **Personal Information**.
- 7.3 **"BREACH OF SECURITY"** means an intentional, malicious or wilful act that results in the misuse of the **Insured's Computer Network** to modify, delete, corrupt, or destroy **Data** or a **Denial of Service**.
- 7.4 **"BREACH RESPONSE COSTS"** means the reasonable and necessary amounts incurred by the **Insured** with **Underwriters'** prior approval for **Legal Services, Crisis Management Costs** and **Customer Notification Expenses**.
- 7.5 **"BREACH RESPONSE LAWYER"** means the law firm stated in Item 10 of the **Schedule** and comprising of **Underwriters'** Breach Response Panel or such other law firm retained by the **Insured** with **Underwriters'** prior written consent."
- 7.6 **"BUSINESS INTERRUPTION LOSS EVENT"** means the total or partial interruption, degradation in service or failure of the **Insured's Computer Network**.
- 7.7 **"CLAIM(S)"** means any financial demand, or assertion of a financial right against, the **Insured**, which is communicated in writing to the **Insured**.
- 7.8 **"COMPUTER NETWORK"** means interconnected electronic, wireless, web or similar systems (including all hardware and software) used to process **Data** or information in an analogue, digital, electronic or wireless format including, but not limited to, computer programs, electronic data, operating systems, servers, media libraries, associated input and output devices, mobile devices, networking equipment, websites, extranets, off line storage facilities (to the extent that they hold electronic data), and electronic backup equipment. **COMPUTER NETWORK** also includes a **COMPUTER NETWORK** that is under the operational control of a **Service Provider**.

- 7.9 “**COMPUTER VIRUS**” means a program that possesses the ability to create replicas of itself (commonly known as ‘auto-reproduction’ program) within other programs or operating system areas, or which is capable of spreading copies of itself wholly or partly to other computer systems or networks and which were not written or created by the **Insured**.
- 7.10 “**CRISIS MANAGEMENT COSTS**” means any fees reasonably and necessarily incurred by the **Insured** with **Underwriters’** prior approval for the engagement of a public relations consultant, advertising consultant, specialists, investigators, forensic auditors or solicitors, if the **Insured** reasonably considers (and **Underwriters** agree) that such appointment is needed in order to avert or mitigate any material damage to any of their brands.
- 7.11 “**CUSTOMER NOTIFICATION EXPENSES**” means reasonable and necessary expenses incurred by specialists, investigators or forensic auditors, legal expenses, public relations expenses, postage expenses and related advertising expenses directly incurred by the **Insured** for the purpose of notifying or for the purpose of assessing whether to notify an individual, entity or regulatory authority following an actual or suspected **Breach of Security, Breach of Privacy, or breach of Privacy Regulations** that results in the compromise or potential compromise of **Personal Information** maintained by the **Insured** or otherwise residing on the **Insured’s Computer Network**.
- 7.12 “**CYBER EVENT**” means one of the following:
- (a) a **Breach of Security**; or
 - (b) the introduction of a **Computer Virus**; or
 - (c) damage or destruction of **Hardware**, so that the **Data** stored is not machine readable; or
 - (d) **Breach of Privacy**, disclosure of **Personal Information** or non-public corporate information in your care, custody or control by a person or entity (including a rogue employee) that is unauthorised by the **Insured**.
- 7.13 “**CYBER EXTORTION THREAT**” means a credible threat or series of related threats, including a demand for funds, directed at the **Insured** to avoid a **Cyber Event** on the **Insured’s Computer Network** at the **Insured’s** premises.
- 7.14 “**CYBER EXTORTION MONIES**” means monies payable by the **Insured**, with the **Underwriters’** prior written consent, to a person(s) or entity(ies) reasonably believed to present a **Cyber Extortion Threat** for the purpose of terminating such a threat.

- 7.15 “**CYBER TERRORISM**” shall mean an act or series of acts of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisations(s) or committed for political, religious or ideological purposes including but not limited to the intention to influence any government and/or to put the public in fear for such purposes by using activities perpetrated electronically or otherwise that are directed towards the destruction, disruption or subversion of communication and information systems, infrastructure, computers, the internet, telecommunications or electronic networks and/or its content thereof or sabotage and/or threat there from.
- 7.16 “**DAMAGES**” means a monetary judgment, award (including pre- and post-judgment interest), or settlement. **Damages** does not include actual or alleged:
- (a) past or future royalties or past or future profits of the **Insured**, restitution, disgorgement of profits, or the costs of complying with orders granting injunctive relief or other non-monetary relief, including specific performance, or any agreement to provide such relief;
 - (b) return or offset of the **Insured’s** fees, charges, or commissions for goods or services already provided or contracted to be provided;
 - (c) punitive, multiple, or exemplary damages unless insurable by the law of an applicable venue that would most favour coverage for such punitive, multiple or exemplary damages;
 - (d) taxes, fines, civil penalties, or sanctions; [**Regulatory Penalties** are specifically covered by insuring clause 1.3.]
 - (e) criminal penalties;
 - (f) any amounts owed under any express or implied contract, subject to the application of Paragraphs (a), (b), (c), of Exclusion 4.14;
 - (g) any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**;
 - (h) unpaid license fees; or
 - (i) liquidated damages.
- 7.17 “**DATA**” means any machine readable information, including ready for use programs or electronic data, irrespective of the way it is used and rendered including, but not limited to, text or digital media.
- 7.18 “**DATA RECOVERY EXPENSES**” means the reasonable and necessary costs incurred by the **Insured** with **Underwriters’** prior written consent, for the **Insured’s** own costs to restore, re-collect, or replace the **Insured’s Data**, including expenses for materials, working time, and overhead cost allocation at the **Insured’s** affected business premises associated with restoring or replacing the **Insured’s Data** owned.

- 7.19 “**DEFENCE COSTS AND EXPENSES**” means reasonable and necessary legal costs and expenses incurred by or on behalf of the **Insured** with the prior written and continuing consent of **Underwriters**. It does not include the **Insured’s** own costs and expenses.
- 7.19 “**DENIAL OF SERVICE**” means unauthorised or unexpected interference with or malicious attack on the **Insured’s Computer Network** that restricts or prevents access to the **Insured’s Computer Network** by persons or entities authorised to gain access to it.
- 7.20 “**DISHONESTY**” means any actual or an alleged dishonest or fraudulent act, dishonest or fraudulent error or dishonest or fraudulent omission.
- 7.21 “**EMPLOYEE**” means any natural person, other than a partner or principal of the firm(s) or company/(companies) stated in item 1 of the **Schedule**, who is under a contract of service or apprenticeship with the firm(s) or company/(companies) stated in item 1 of the **Schedule**, or under any work experience or similar scheme, whilst such person(s) are employed or engaged by and under the control of the firm(s) or company/(companies) stated in item 1 of the **Schedule** in connection with the **Insured’s Business**.
- 7.22 “**EMPLOYMENT CLAIM**” means a **Claim** alleging breach of any employment contract, employer-employee relations policies, practices, or any employment related law or regulation or discrimination of any kind.
- 7.23 “**EXCESS**” means the amount payable by the **Insured** (**Underwriters** shall only be liable under this Policy to the extent that any liability exceeds the **Excess**). In respect of **Loss of Business Income**, the “**Excess**” shall be the **Waiting Period**.
- 7.24 “**HARDWARE**” means any and all physical components of a **Computer Network**.
- 7.25 “**INSURED**” means:
- (a) the person, partnership, company or other entity stated in item 1 of the **Schedule**;
 - (b) any **Subsidiary** of the partnership, company or other entity stated in item 1 of the **Schedule**, but only with respect to any **Breach of Privacy, Breach of Security, Cyber Event**, breach of **Privacy Regulations** or **Cyber Extortion Threat** as detailed under the relevant Insuring Clause, which occurs while it is a **Subsidiary** and otherwise covered by this;
 - (c) any person who is a current principal, partner or **Employee** of any person or entity named in item 1 of the **Schedule**;

- (d) any former principal, partner or **Employee** of any person or entity named in item 1 of the **Schedule**, but only in respect of work undertaken for and on behalf of the firm(s) or company/(companies) stated in item 1 of the **Schedule**; and/or
- (e) the estate, heirs, legal representatives or assigns of any of (c) or (d) above who is deceased or legally incapacitated but only in respect their status as the estates, heirs, legal representatives or assigns of such assignees.

7.26 “**INSURED’S BUSINESS**” means the business activities performed by the **Insured** declared to **Underwriters** for the purposes of obtaining insurance.

7.27 “**LEGAL SERVICES**” means advice and services provided by the **Breach Response Lawyer** in investigating and advising on the **Insured’s** obligations under data breach notification laws, drafting notifications to individuals and regulatory authorities, advising on other legal, regulatory or compliance obligations arising from a **Cyber Event** and coordinating service providers approved by **Underwriters** to provide computer forensics services, legal services, notification services, and public relations services.

7.28 “**LIMIT OF INDEMNITY**” means the maximum amount payable by **Underwriters** in respect of any one **Claim** (or **Claim(s)** arising out of or attributable to the same originating cause or source or the same act, error or omission, event or transaction or in any way related to such cause or source, act, error or omission, event or transaction) under this Policy irrespective of the number of claimants and/or the number of **Insureds** and/or the number of Insuring Clauses and/or Automatic Extensions applicable.

7.29 “**LOSS OF BUSINESS INCOME**” means:

- (a) the net income (net profit or loss before income taxes as determined by a member of the Institute of Chartered Accountants Australia to be appointed by agreement between the **Insured** and **Underwriters** or in default of agreement being reached within 21 days then on the appointment by the President of that Institute) which the **Insured** would have earned in the event that no **Cyber Event** occurred; and
- (b) the additional expenditure necessarily and reasonably incurred by the **Insured** to enable the resumption and maintenance of their normal business operations for the sole purpose of avoiding or diminishing the reduction in net income which but for that expenditure would have otherwise occurred as a result of the **Cyber Event**.

7.30 “**MONEY**” means a medium of exchange in current use and authorised or adopted by a domestic or foreign government and includes currency, coins, banknotes, bullions, or registered checks.

7.31 “**NOTIFIED**” means that notice is sent in writing by the **Insured** (or its insurance agent) as stated in item 7 of the **Schedule**, and received by, Agile Underwriting Services Pty Ltd, on behalf of **Underwriters**.

7.32 “**OTHER ASSET**” means a tangible and physical product that is owned by the **Insured** or is under the **Insured’s** trust or control and:

- (a) Has an economic value; or
- (b) Is held as inventory for sale; or
- (c) Is sold or exchanged in trade or commerce; or
- (d) Is shipped via land, sea or air.

Other Asset does not include **Money** or **Securities**.

7.33 “**PERIOD OF RESTORATION**” means the period of time starting when the total or partial interruption, degradation in service or failure to the **Insured’s Computer Network** began and ending on the earlier of:

- a) The date on which the **Insured’s Computer Network** is restored to the same or equivalent condition, functionality and level of service that existed prior to the loss (or could have been if the **Insured** had acted with reasonable speed); or
- b) 120 days after the start of such period.

7.34 “**PERSONAL INFORMATION**” means any information or an opinion about an identified individual or an individual who is reasonably identifiable whether the information is true or not and whether the information is recorded in a material form or not, including but not limited to an individual’s name, date of birth, residential address, email address, residential phone number, mobile phone number, gender, nationality, racial or ethnic origin, religious beliefs, political affiliations, sexual orientation, criminal record, tax file number, salary, Medicare number, healthcare information, drivers licence number, bank account number, credit card and debit card numbers, credit rating, signature, access codes or passwords and any other personal information as defined in the *Privacy Act 1988 (Cth)* and the *Privacy Amendment (Enhancing Protection) Act 2012 (Cth)* and other federal, state, territory or local privacy legislation (including health specific privacy legislation) and any rule or regulation promulgated thereunder.

7.35 “**POLICY PERIOD**” means the period stated in item 2 of the **Schedule**.

7.36 “**PREMIUM**” means the amount stated in item 3 of the **Schedule**.

- 7.37 “**PRIVACY REGULATIONS**” means the following, as well as similar statutes and regulations, as they currently exist and as amended, associated with the confidentiality, access, control, and use of **Personal Information**, but not limited to:
- (a) the *Privacy Act 1988* (Cth) and other federal, state, territory or local privacy legislation (including health specific privacy legislation) and any rule or regulation promulgated thereunder;
 - (b) privacy provisions of consumer protection laws, including laws in relation to the misleading or deceptive conduct or equivalent provisions to the extent they might apply to the handling of **Personal Information**; and
 - (c) similar privacy laws worldwide.
- 7.38 “**PROPERTY DAMAGE**” means physical injury to, impairment, destruction, or corruption of any tangible property, including the loss thereof. **Data** is not tangible property.
- 7.39 “**REGULATORY PENALTIES**” means civil penalties or fines to the extent insurable by law imposed by an Australian Commonwealth, State or Territory governmental regulatory body against the **Insured**.
- 7.40 “**RETROACTIVE DATE**” means the date stated in item 6 of the **Schedule**.
- 7.41 “**SECURITIES**” means written negotiable and non-negotiable instruments or contracts which represent **Money** or **Other Assets**. **Securities** does not include **Money** or **Other Asset**.
- 7.42 “**SCHEDULE**” means the document entitled “**Schedule**” that relates to this Policy.
- 7.43 “**SERVICE PROVIDER**” means any third party that is responsible for the processing, maintenance, protection or storage of the **Insured’s Data** pursuant to a written contract. A **Service Provider** does not include any provider of telecommunication services, including internet access.
- 7.44 “**SOCIAL ENGINEERING FRAUD**” means a misrepresentation of fact or an intentional, malicious, wilful or fraudulent act undertaken by a third party that misleads an **Employee** and directly results in any or all of the following;
- (a) **Money, Securities** or **Other Asset** owned by the **Insured** being transferred, disbursed, paid, delivered, altered, corrupted or lost;
 - (b) **Money, Securities** or **Other Asset** of the **Insureds’** customers or clients being disbursed, paid, delivered, altered, corrupted, or lost from an account that is in the **Insureds** trust or control.

7.45 **"SUBSIDIARY"** means any entity not domiciled in the USA that at the commencement of the **Policy Period** the **Insured**:

- (a) controls the composition of the Board of Directors;
- (b) controls the voting power at any general meeting; or
- (c) holds greater than fifty percent (50%) of the issued voting share capital.

7.46 **"UNDERWRITERS"** means certain **Underwriters** at Lloyd's referred to in the Policy.

7.47 **"WAITING PERIOD"** means the period stated in Item 5 of the **Schedule**.