

 **PRORISK**

## Cyber & Privacy Liability Insurance Policy

 Policy Wording

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# Cyber & Privacy Liability Insurance Policy

In consideration of the payment of **premium** and in reliance on the contents of the **proposal** and any other information submitted by **you** or on **your** behalf, **we** will indemnify **you** in accordance with the terms of this **policy**. The **policy** includes this document and the **General Terms & Conditions** Section attached to this **policy** and the **policy** should be interpreted with the **General Terms and Conditions**. **Our** total aggregate liability under each insuring clause will not exceed the sub-limit specified in the **schedule**. Each insuring clause is subject to the **excess** specified in the **schedule**.

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## SECTION 1: INSURING CLAUSES

### 1.1 Cyber Incident Response

**We** will pay on behalf of the **insured** any **incident response costs** incurred as a direct result of a **cyber incident**, which is first **discovered** during the **insurance period**.

### 1.2 Cyber Extortion

**We** will reimburse the **insured** for a **ransom payment** made as a direct result of a **cyber extortion**, which is first **discovered** during the **insurance period**.

### 1.3 Data and Application Restoration Costs

**We** will pay on behalf of the **insured** any **restoration costs** incurred as a direct result of a **cyber incident**, which is first **discovered** during the **insurance period**.

### 1.4 Cyber Crime

**We** will indemnify the **insured** for any **direct financial loss** as a direct result of a **cyber crime** committed by a **third party**, which is first **discovered** during the **insurance period**.

### 1.5 Business Interruption

**We** will indemnify the **insured** for any **business interruption loss** incurred during the **indemnity period** as a direct result of a **business interruption outage** caused by a **security failure**, which is first **discovered** during the **insurance period**.

### 1.6 Data Breach Investigation

**We** will pay on behalf of the **insured** or **insured person** any **investigation costs** arising from any **investigation** commenced during the **insurance period** by an **official body** into the affairs of the **insured** in respect of a **cyber incident**.

### 1.7 Privacy Statutory Liability

**We** will pay on behalf of the **insured** or **insured person** any **loss** in respect of a **claim** made against the **insured** during the **insurance period** by an **official body** for a **statutory liability** arising from a **cyber incident**.

### 1.8 Privacy Liability

**We** will pay on behalf of the **insured** or **insured person** any **loss** in respect of any **claim** made for any actual or alleged **civil liability** against the **insured** during the **insurance period** in respect of a **cyber incident**.

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## SECTION 2: EXTENSIONS OF COVER

Our total aggregate liability under each Extension of Cover will not exceed the sub-limit specified in the **schedule**.

Each Extension of Cover is subject to the **excess** and sub-limit specified in the **schedule**.

### Extensions Applicable to All Insuring Clauses

#### 2.1 Automatic Acquisition or Creation Of Subsidiaries

If during the **insurance period** the **insured** incorporates or acquires a new **subsidiary**, then such new **subsidiary** will be automatically covered under this **policy** unless:

- (a) that new **subsidiary** is incorporated or domiciled in the **USA**;
- (b) the revenue of the new **subsidiary** in the past 12 months at the date of acquisition or formation is more than 15% of the total revenue of the **policyholder** at the **inception** of the **policy**;
- (c) the business activities of the new **subsidiary** are different to those of the **policyholder**;
- (d) the new **subsidiary** does not hold the same cyber risk management processes as the **insured** and as identified at the time of the commencement of the **insurance period**; and
- (e) the new **subsidiary** has experienced a **cyber incident** during the three (3) year period immediately prior to the acquisition or formation of the new **subsidiary**.

If any new **subsidiary** is not eligible for automatic coverage under this Extension, then the **policyholder** may provide **us** with sufficient details in respect of the new **subsidiary** for **us** to assess and evaluate any increase in risk. **We** may then with reasonable consideration, agree, to extend cover in return for the payment of additional premium and any amendments to the terms of this **policy**.

Cover for any new **subsidiary** will apply solely in respect of a **cyber incident** or any other event for which coverage may be afforded under this **policy** that actually or allegedly occurred on or after the effective date of incorporation or acquisition of such new **subsidiary**.

#### 2.2 Discovery Period Following a Change in Exposure

If there is a **change in exposure**, **we** will only pay **loss** arising from any **cyber incident** or any other event for which coverage may be afforded under this **policy** occurring prior to the **change in exposure** and which is otherwise covered by this **policy**.

**You** may, up to 30 days after any **change in exposure**, request an offer from **us** for a **discovery period** of up to 12 months to notify **us** of any **claim** arising from a **cyber incident** that actually or allegedly occurred before the **change in exposure**. Upon such request and following the receipt by **us** of any requested information, **we** will offer to extend the cover under this **policy** for a **discovery period** of up to 12 months on such terms and conditions and at such **premium** as **you** and **us** may agree. Any additional **premium** will be non-refundable. Any extended cover will only apply to **claims** arising from **cyber incidents** which actually or allegedly occurred before the **change in exposure** and which is notified to **us** before the expiry of the **discovery period**.

In relation to any **subsidiary** that is sold, dissolved or otherwise disposed of prior to the expiration of the **insurance period**, this **policy** does provide cover in respect of any **claim** or **cyber incident** occurring prior to the sale, disposal or dissolution of such **subsidiary**.

#### 2.3 Continuity of Cover

Notwithstanding Exclusions 3.11 (Prior Policy) and 3.12 (Prior or Pending Proceedings), coverage is provided for **claims** or circumstances which were required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth) under any policy of insurance of which this **policy** is a renewal or replacement of, provided always that:

- (a) the **claim** or circumstance which was required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth) occurred after the **continuous cover date** specified in the **schedule**; and
- (b) there has been no fraudulent non-disclosure or misrepresentation to **us** in respect of the **claim** or circumstance; and
- (c) the **insured** has maintained without interruption cyber and privacy liability insurance with an insurer from the **continuous cover date** stated in the **schedule**; and
- (d) the **insured** has notified such a **claim** or circumstance under the prior cyber and privacy liability insurance or similar insurance and is unable to obtain cover as it has been notified after such policy expired.

The cover provided by this Extension will be in accordance with all the terms and conditions (including, for the avoidance of doubt, the **limit of liability** and **excess** amounts, or any sub-limit, including the impairment of such limit of liability arising from any other claims under that policy) of the policy under which the **claim** or circumstance was required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth), provided such earlier policy affords no broader cover in respect of the **claim** or circumstance than the provisions of this **policy**.

#### 2.4 Public Relations Expenses

At the election of the **insured**, **we** will pay the **public relations expenses** of an **insured** to mitigate any adverse effect on such **insured's** reputation in connection with a **claim** that is covered under this **policy**. For the avoidance of doubt, this includes a public announcement relating to a **claim** in relation to a **cyber incident**.

#### 2.5 System and Software Betterment

Notwithstanding Exclusion 3.3 (Betterment), **restoration costs** will include the reasonable costs to replace, with functionally equivalent software, any software on the **computer system** that was damaged or destroyed as a direct result of a **cyber incident**, provided that it is determined by an independent forensic expert or IT expert engaged in respect of the **cyber incident** that it is not possible to replace the damaged or destroyed software with identical software. Cover under this Extension is subject to the sub-limit specified in the **schedule**. For the avoidance of doubt, no cover is available under this Extension for bespoke software that has been designed specifically for an **insured** or any hardware.

#### 2.6 Payment Card Industry Extension

Notwithstanding Exclusion 3.2 (Assumed Liability), **we** will indemnify the **insured** for **loss** arising from an appeal or notification of an assessment or a monetary amount owed by the **insured** under a **merchant services agreement** to a financial institution first brought against the **Insured** during the **insurance period** as a direct result of a **cyber incident**. However, this coverage extension will only apply provided that the **insured** was Payment Card Industry Data Security Standard compliant at the time of the **cyber incident**. Cover afforded under this Extension is available up to the sub-limit for the relevant Insuring Clause.

#### 2.7 Court Attendance Costs

**We** will pay on behalf of an **insured person** any **court attendance costs** incurred in connection with a covered **claim**.

### Extensions Applicable to Insuring Clause 1.4 (Cyber Crime) Only

#### 2.8 Direct Financial Loss Investigator Costs – Policyholder

**We** agree to reimburse the **policyholder** for their costs of hiring a **loss investigator**, which they incur in order to provide a **proof of loss** to **us**, following the **discovery** of a **direct financial loss** during the **insurance period**.

#### 2.9 Direct Financial Loss Investigator Costs – ProRisk

If the **policyholder** elects not to use their own **loss investigator**, **we** agree to pay the costs of a **loss investigator** selected by **us**, in order to assist the **policyholder** to provide **us** with their **proof of loss**, following the **discovery** of a **direct financial loss** during the **insurance period**.

## Extensions Applicable to Insuring Clause 1.5 (Business Interruption) Only

### 2.10 Business Interruption Loss Investigator Costs

**We** agree to pay the costs of a **loss investigator** selected by **us**, in order to assist the **policyholder** to provide **us** with their **proof of loss** and **business interruption loss** calculation, following the **discovery** of a **business interruption outage** during the **insurance period**.

## Extensions Applicable to Insuring Clauses 1.6 (Data Breach Investigation), 1.7 (Privacy Statutory Liability) and 1.8 (Privacy) Only

### 2.11 Advancement of Defence Costs and Investigation Costs

**We** will advance **costs** as incurred prior to a final determination or adjudication of a **claim** or up until the time that a **claim** is withdrawn. If such a **claim** is finally determined not to be covered or is excluded under this **policy** then all **costs** already advanced must be repaid to **us**.

### 2.12 Emergency Costs

If written consent from **us** cannot reasonably be obtained prior to **costs** being incurred by an **insured**, **we** automatically grant retrospective approval for such **costs** of up to sub limit in the **schedule** in the aggregate for all **claims** commenced during the **insurance period** provided consent is obtained from **us** within 30 days of such **costs** being incurred. Any amounts paid under this Extension are part of and not in addition to the **limit of liability**.

### 2.13 Panel Counsel

The **insured** is entitled to one (1) hour of free advice from any one firm listed on our panel of solicitors relating to a matter which **we** have accepted as notification of circumstances which may give rise to a **claim**. **We** consent to that firm listed on **our** panel of solicitors being retained to act for an **insured** in respect of any **claim** covered by this **policy**.

### 2.14 Civil Penalties

**We** will pay any civil penalty on behalf of any **insured** for a civil offence, provided that it arises out of a **claim** otherwise covered under the **policy** and **we** are not legally prohibited from paying such a penalty and the conduct giving rise to the penalty is not established by admission, court judgment or other final adjudication as reckless, grossly negligent or a knowing violation of any law or regulation.

## Value Added Benefits

### 2.15 Privacy Policy Update Service

The **policyholder** is hereby entitled to access and use the ProRisk **privacy policy update service** throughout the **insurance period** for a fixed fee of \$300 plus GST per update. The cost of this review is payable by the **policyholder** directly to Wotton + Kearney.

### 2.16 Contract Review

The **policyholder** is entitled to use the ProRisk Contract Review Service for four (4) contract reviews for the **insurance period**. The Contract Reviews relate only to the provisions of the Contract that might affect the **insured's** insurance.

## 2.17 Whistleblower Hotline

The **policyholder** and their internal and external stakeholders are entitled to access and use the ProRisk Whistleblower Hotline throughout the **insurance period**.

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## SECTION 3: EXCLUSIONS

### Exclusions relating to all Insuring Clauses

We will not be liable under this **policy** to make any payment for **loss** or any other amount directly or indirectly based upon, arising from or in consequence of:

#### 3.1 Anti-competitive behaviour

any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive advertising.

#### 3.2 Assumed Liability

any actual or alleged contractual liability, contractual obligation or breach of contract, including any liability of others assumed by an **insured**. However, this Exclusion does not apply to any liability obligation which is, or would have been, implied by law in such contract or agreement or would have separately arisen.

#### 3.3 Betterment

any updating, enhancing or replacing of the **computer system**, including but not limited to, any of the **insured's** operating systems, software, hardware, equipment (including any mobile or smart devices) or any other tangible property affected by a **cyber incident** to a level beyond that which existed prior to the occurrence of the **cyber incident**; or any removal of software program errors or vulnerabilities, except as otherwise provided under Extension 2.5 (System and Software Betterment).

#### 3.4 Bodily Injury

any actual or alleged bodily injury, sickness, disease, death, emotional distress or mental anguish.

This exclusion will not apply to any **claim** for emotional distress or mental anguish arising from a **cyber incident**.

#### 3.5 Insured versus Insured

a **claim** brought or maintained by or on behalf of any **insured** except:

- (a) any **claim** brought by any past **insured person**; or
- (b) any **claim** brought or maintained by a liquidator, receiver or administrator, or trustee in bankruptcy, either directly or derivatively on behalf of the **insured**.

#### 3.6 Property Damage

any actual or alleged damage to or loss of use of any tangible property including the cost of repairing any hardware or replacing any tangible property or equipment that forms part of, or is used in connection with, **your computer system**.

### 3.7 Chargeback

a credit card company or bank, recovering, reversing or preventing a payment transaction.

### 3.8 Dishonest or wilful acts

any:

- (a) dishonest, fraudulent or criminal acts, errors or failures to act;
- (b) wilful breach of any statute, contract, agreement or duty; or
- (c) any wilfully reckless act, error or failure to act;

by any **insured person**.

**We** will not rely on this exclusion for any **claim** until the conduct in question is established by a final judgment, or any other final adjudication, including a written admission or formal verbal admission under oath by any **insured person** that the relevant conduct did in fact occur.

### 3.9 Infrastructure failure

any actual or alleged failure or outage in, or disruption of any power supply, utility services or satellites due to natural catastrophe, fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of god or any other physical event however caused, or any cloud services, **internet** services or telecommunications services externally provided and not under the direct control of the **insured**.

### 3.10 Bankruptcy or Insolvency

any actual or alleged bankruptcy, insolvency, administration or receivership of an **insured**.

### 3.11 Prior Policy

any **claim, investigation, cyber incident, cyber crime** or circumstances of which notice has been given or was required to be given in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth), under any policy of insurance which this **policy** renews, replaces or follows in whole or in part, or for which notice could have been given if such a policy had been in force.

### 3.12 Prior or Pending Proceedings

any **claim** or **investigation** relating to, based upon or attributable to any writ, demand, suit or other proceeding pending, or order, decree or judgment entered, for or against the **insured** which existed prior to or were pending at the earlier of:

- (a) the inception date of this **policy**;
- (b) the original date upon which insurance providing like coverage to this **policy** was affected with **us** and continually maintained with **us** up to the inception date of this **policy**; or
- (c) any prior policy of insurance providing like coverage to this **policy** continually maintained up to the inception date of this **policy**;

where such **claim** or **investigation** arises from any matter, fact, situation or circumstance substantially the same as those underlying or alleged in any such claim form, writ, demand, suit or other proceeding pending, or order, decree or judgment.

### 3.13 Intellectual Property

theft, infringement, violation, misappropriation (including loss of potential future sales) or loss of or the reduction in economic or market value of any of **your** intellectual property rights, assets or data including, but not limited to, patent, copyright, trademark, registered design and trade secret.



### 3.14 Management liability

- (a) any **claim** brought against an **insured person** where such **claim** is made solely by reason of the person holding the position, or having acted in the position, of **director** or **officer**; or
- (b) any actual or alleged violation of the responsibilities, obligations or duties imposed by Sections 182, 183, 601FD, 601FE, 601JD, or the *Corporations Act 2001 (Cth)* or any similar law anywhere in the World and any amendments to that Act, including duties of directors, officers and employees to not misuse their position or information, duties of a member of a scheme's compliance committee and the duties of officers and employees of a responsible entity.

### 3.15 Professional Services

any actual or alleged:

- (a) provision of (or failure to provide) professional services or professional advice to a **third party**;
- (b) conduct of the **insured's** business activities; or
- (c) the work provided to a **third party** by the **insured**.

### 3.16 Theft

any loss or theft of money, property, or securities, except that provided under Insuring Clause 1.4 (Cyber Crime).

### 3.17 Vehicles

any actual or alleged violation of the responsibilities, obligations or duties imposed by any law, regulation or bylaw relating to vehicular, air or marine traffic and any amendments to that law, regulation or bylaw.

## Additional Exclusions specific to Insuring Clause 1.4 (Cyber Crime) only

### 3.18 Additional Exclusions specific to Insuring Clause 1.4 (Cyber Crime)

**We** will not be liable under Insuring Clause 1.4 (Cyber Crime) of the **policy** for any **direct financial loss**:

- (a) which can only be proved by:
  - (i) a profit and loss computation or comparison; or
  - (ii) a comparison of inventory records with an actual physical count;
- (b) arising from the accessing and dissemination of any confidential information, including but not limited to patents, trademarks, copyrights, customer information, computer programs and trade secrets;
- (c) arising from any **cyber crime** committed after any **insured person** has become aware of a previous **cyber crime**;
- (d) arising from any **cyber crime** committed by a person who owns or controls more than 5% equity in the **insured**;
- (e) not directly associated with the incident that caused **you** to claim including but not limited to loss of income, interest or dividends not realised or received by the **insured** or by any other person(s) or company because of a **direct financial loss**;
- (f) arising from any credit arrangement, false accounting, trading in securities, commodities, futures, options, currencies, foreign exchange or the like;
- (g) arising from any extortion or kidnap and ransom;
- (h) arising from a failure of an **insured person** to independently verify a request by a payee (or an alleged payee) to change or redirect payment to a different bank account (or similar account held with an Authorised Deposit Taking Institution); or
- (i) arising from a failure of an **insured person** to independently verify that transfer instructions received are genuine.

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## SECTION 4: DEFINITIONS

Please refer to the General Terms and Conditions for any definitions not listed below.

**4.1 Act** means any Act of any parliament or legislative assembly of the Commonwealth of Australia, and/or of any State or Territory of Australia, including any:

- (a) subordinate or delegated legislation or code, rules, regulations, or bylaws made under those Acts; and
- (b) any amendment, enactments, or consolidation of any of the above Acts or legislation.

**4.2 Business interruption loss** means:

- (a) the net profit that would have been earned (after all tax deductions);
- (b) the net loss (less any tax imputation) that would not have been incurred as a direct result of a **business interruption outage**; or
- (c) the continuing normal operating expenses of the business, including payroll.

**Business interruption loss** will also include any reasonable additional expenses incurred by the **insured** to avoid or mitigate any **business interruption loss**, provided however, such additional expenses do not exceed the amount of loss that otherwise would have been payable as **business interruption loss**.

**4.3 Business interruption outage** means an outage or the degradation in the performance of **your computer system** which renders it unable to support the **insured's** normal business function.

**4.4 Civil liability** means the actual or alleged liability of the **insured** other than a criminal liability.

**4.5 Claim** means:

- (a) any written demand for compensation, monetary damages or other relief, including non-monetary relief, made against the **insured**;
- (b) any formal written notice of an alternative dispute resolution proceeding against the **insured**, including but not limited to a conciliation, mediation or arbitration;
- (c) any civil proceedings commenced against the **insured**;
- (d) any formal notice of criminal, civil or arbitration proceedings against the **insured**; or
- (e) an **investigation**.

**4.6 Computer system** means all electronic computers owned or operated by the **insured** including operating systems, software, electronic communication systems and software or websites owned or operated by the **insured** and data storage computers or software. For the avoidance of doubt, **computer system** does not include hardware.

**4.7 Costs** means **investigation costs** and all reasonable fees, costs and expenses in the defence, investigation, adjustment, challenging, resisting or appeal of any **claim**, provided that **we** have consented in writing prior to such costs being incurred (except as provided for in Extensions 2.11 (Advancement of Defence Costs and Investigation Costs) and 2.12 (Emergency Costs)). **We** will not unreasonably withhold that consent.

**Costs** does not mean any overheads of the **insured** or any salaries, commissions, expenses or other **employment related benefits** associated with the remuneration of any **insured persons**.

**4.8 Court attendance costs** means:

- (a) the reasonable out of pocket expenses; and
- (b) the equivalent daily salary;

incurred by an **insured person** in attending Court when legally compelled to do so, or at the reasonable request of solicitors acting for an **insured** in relation to a covered **claim** under this **policy**.

**4.9 Credit monitoring costs** means reasonable fees, costs and expenses for the service of identity or credit theft monitoring for a period of 12 months from the date of any **cyber incident** or as required by any law.

**4.10 Cryptojacking** means the unauthorised use of **your computer system** by a **third party** without the knowledge or consent of any **insured person** to mine cryptocurrency.

**4.11 Cyber crime** means:

- (a) **social engineering fraud;**
- (b) **cyber theft;**
- (c) **phishing;**
- (d) **telephone hacking;** or
- (e) **cryptojacking;**

which results in a **direct financial loss**.

**4.12 Cyber incident** means any actual or suspected:

- (a) **data breach;** or
- (b) **security failure;**

including but not limited to any **data breach** or **security failure** resulting from the following methods:

- (i) ransomware attack;
- (ii) **cyber extortion;**
- (iii) hacking attack;
- (iv) malware infection;
- (v) **phishing** attack;
- (vi) **telephone hacking;**
- (vii) denial of service attack;
- (viii) computer virus;
- (ix) **cryptojacking;** or
- (x) a credential compromise of software used by the **insured**.

**4.13 Cyber extortion** means any threat made by an individual or organisation against **you** expressing the intent to:

- (a) transfer, pay, or deliver any funds or property belonging to **you**, or held by **you** on behalf of others, using **your computer system** without **your** permission, authorisation, or consent;
- (b) access, acquire, sell or disclose non-public information in **your** care, custody or control, provided such information is stored in an electronic medium in **your computer system** and is retrievable in a perceivable form;
- (c) alter, damage or destroy any computer program, software, or other electronic data that is stored within **your computer system;**
- (d) maliciously or fraudulently introduce malicious code or ransomware into **your computer system;** or initiate a denial of service attack on **your computer system** demanding payment by the **insured** in consideration for the elimination, mitigation or removal of the threat.

**4.14 Cyber theft** means an unauthorised and fraudulent instruction to a financial institution transmitted by electronic means where the **insured** maintains an account (from which the **insured** or a person or organisation authorised by the **insured**) may request the transfer, payment or delivery of funds to debit, pay or transfer money to a third party without the knowledge or consent of the **insured**.

**4.15 Data breach** means an actual or suspected unauthorised disclosure of information retained by the **insured**:

- (a) arising from unauthorised access to a **computer system;** or
- (b) unauthorised or accidental disclosure by an **employee**.

**4.16 Direct financial loss** means financial loss sustained by the **insured** as a direct result of any **cyber crime**.

It does not include:

- (a) salary, wages, commissions, fees, bonuses, promotions, awards, profit sharing, superannuation or any other remuneration;
- (b) costs, fees or other expenses in establishing the existence or amount of any **direct financial loss;**
- (c) physical destruction to any premises, or to any property situated on the premises;
- (d) complete or partial non-payment under any credit arrangement;
- (e) costs, fees or expenses of prosecuting or defending any demand, claim or legal proceeding resulting from a **direct financial loss** covered by this **policy;**
- (f) recovery costs;
- (g) indirect or other loss that is not directly associated with the incident that caused **you** to claim;

- (h) the personal assets or property of an **insured person** (for the avoidance of doubt, this includes an **insured person's** property that would otherwise be covered under a home and contents policy); or
- (i) loss of **property** or other consideration surrendered or intended to be surrendered as payment for on behalf of an **insured person**.

**4.17 Director or officer** means any natural person who was prior to, is or becomes during the **insurance period**:

- (a) a director, officer, partner, manager or trustee of the **insured**;
- (b) a shadow director of the **insured** but only where such shadow director is also a person described in sub-paragraph (a) above;
- (d) an **employee** of the **insured** who:
  - (i) carries out a managerial or supervisory function for the **insured**;
  - (ii) is joined as a party to any **claim** against any person defined above;
- (e) the lawful spouse or domestic partner of a person defined above, where recovery is sought solely because joint property is held or owned by or on behalf of the spouse or domestic partner and not in respect of any conduct by that person in his or her own right; or
- (f) the legal representatives, heirs, assigns or estates of a person defined above in the event of that person's death, incapacity, insolvency or bankruptcy.

This definition does not include external auditors of the **insured** and does not include any liquidator, trustee, receiver and manager, administrative receiver, supervisor, mortgagee in possession or other insolvency office-holder of the **insured** or the assets of the **insured**.

**4.18 Discovery period** means the additional period in which **you** are able to notify **us** of any **claim** arising from a **cyber incident** that actually or allegedly occurred before the **change in exposure**. The additional period is specified in Extension 2.2 (Discovery period following a change in exposure). The **discovery period** will be applied to the **policy** by way of Endorsement and will commence from the date of expiry of the **insurance period**.

**4.19 Employee** means:

- (a) any natural person full-time, part-time, casual, seasonal or temporary worker of the **insured** who is employed under a contract of service with the **insured** and is compensated by way of salary, wages and/or commissions;
  - (b) any work experience staff member, intern or volunteer of the **insured**; or
  - (c) students, who are doing work for the **insured**, at the **insured's** direction, regardless of whether they are paid, or not;
- under the direction and control of the **insured**.

**Employee** does not include independent contractors or labour hire personnel.

**4.20 Employment related benefits** means any:

- (a) salary, wages and/or commissions;
- (b) special right, privilege, or fringe benefit;
- (c) payments due under any employee benefit plan, pension plan or superannuation scheme;
- (d) bonus/es;
- (e) equitable interest/s; or
- (f) incentive or deferred compensation;

payable to an **employee**.

**4.21 Forensic costs** means reasonable fees, costs and expenses incurred to forensically investigate the cause, scope and extent of a **cyber incident**.

**4.22 Incident response costs** means:

- (a) **incident response manager costs**;
- (b) **forensic costs**;
- (c) **legal representation costs**;
- (d) **notification administration costs**; or
- (f) **credit monitoring costs**.



However, **incident response costs** will not include any **loss** for any **claim** brought by an **official body** for a **statutory liability** or any **loss** for any actual or alleged **civil liability**.

**4.23 Incident response manager** means the company or individual that **we** appoint to manage a **cyber incident**.

**4.24 Incident response manager costs** means the reasonable costs incurred by the **incident response manager** to assist an **insured** with responding to and managing a **cyber incident**.

**4.25 Indemnity period** means the continuous period of time beginning from the end of the **waiting period** after the date of the **business interruption outage** commenced and ending on the date the **computer system** is or could have been repaired or restored with reasonable speed to the same functionality and level of service that existed prior to the **business interruption outage**. However, in no event will the **indemnity period** exceed four (4) months.

**4.26 Insured, you and your** means:

- (a) the **policyholder**; or
- (b) any **subsidiaries** of the **policyholder**.

**4.27 Insured person** means:

- (a) any **director**;
- (b) **officer**;
- (c) **partner**;
- (d) **proprietor**; or
- (e) **employee**.

**4.28 Internet** means a network of interconnected electronic networks that enables any computer connected to the network to communicate with any other computer connected to the network, using internationally recognised standards and protocols.

**4.29 Investigation** means any formal investigation, inquiry or examination by an **official body** into a **cyber incident**, which the **insured** is legally compelled to comply with and is commenced by written notice. For the avoidance of doubt, an **investigation** does not include a risk management visit (or equivalent) by a regulator of the **insured** or where there has been an allegation of a **statutory liability**.

**4.30 Investigation costs** means reasonable legal fees, costs and expenses incurred by the **insured** in their representation (or in preparation for their representation) at an **investigation**.

**Investigation costs** does not include wages, salaries or other remuneration, internal costs or overheads of any **insured**.

**4.31 Legal representation costs** means reasonable fees, costs and expenses incurred to obtain legal advice or representation to protect the **insured**.

**4.32 Loss** means the amount, including **costs**, damages, judgments, settlements or reasonable fees incurred on account of a **claim** made during the **insurance period**.

**Loss** includes:

- (a) civil fines and penalties as provided in Extension 2.14 (Civil Penalties);
- (b) for the purposes of Insuring Clause 1.1 (Cyber Incident Response) only, **incident response costs**;
- (c) for the purposes of Insuring Clause 1.2 (Cyber Extortion) only, **ransom payment**;
- (d) for the purposes of Insuring Clause 1.3 (Data and Application Restoration Costs) only, **restoration costs**;
- (e) for the purposes of Insuring Clause 1.4 (Cyber Crime) only, **direct financial loss**;
- (f) for the purposes of Insuring Clause 1.5 (Business Interruption) only, **business interruption loss**;
- (g) for the purposes of Insuring Clause 1.6 (Data Breach Investigation) only, **investigation costs**; and
- (h) any other amount covered under the terms and conditions of this **policy**.

**Loss** does not include:

- (a) matters uninsurable under the law applicable to this **policy**;
- (b) punitive, exemplary or aggravated damages, or the multiple portion of any multiplied damages award;

- (c) taxes or the loss of tax benefits, rates, duties, levies, charges, fees or any other state or government revenue or impost;
- (d) criminal fines or criminal penalties;
- (e) **employment related benefits**;
- (f) liquidated damages or any sums payable pursuant to a penalty clause or similar;
- (g) any refund of fees, including but not limited to chargebacks, interchange fees or discount fees;
- (h) internal or overhead expenses of any **insured**;
- (i) other than as covered elsewhere in the **policy**, the cost of complying with any non-monetary order or non-monetary relief; or
- (j) contractual penalties or any other sums payable under contract, other than as expressly covered under Extension 2.6 (Payment Card Industry Extension).

**4.33 Loss investigator** means a suitably qualified forensic accountant or other consultant, who does not have a conflict of interest, retained to establish the nature and extent of any:

- (a) **direct financial loss** in connection with Insuring Clause 1.4 (Cyber Crime); or
- (b) **business interruption loss** in connection with Insuring Clause 1.5 (Business Interruption) and Extension 2.10 (Business Interruption Loss Investigator Costs).

**4.34 Merchant services agreement** means any agreement between an **insured** and a financial institution enabling an **insured** to accept credit, debit or payment cards.

**4.35 Notification administration costs** means reasonable and necessary expenses to notify any **third party** of a data breach.

**4.36 Official body** means any regulator, government or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the **insured** or the conduct of an **insured person** in their insured capacity.

**4.37 Partner** means the natural persons as the **policyholder** and any natural person who in the past, present or future trades in partnership with the **policyholder** as specified in the **schedule**, in his or her capacity as such.

**4.38 Phishing** means the impersonation via an electronic communication by a **third party** of an **insured** or **third party** that the **insured** has a commercial relationship with, which results in a **direct financial loss**.

**4.39 Proprietor** means the natural person as the **policyholder** as specified in the **schedule**, in his or her capacity as such.

**4.40 Privacy policy update service** means the engagement of law firm Wotton + Kearney to provide a compliant privacy policy for the **insured** to use following the **insured's** response to a privacy policy update request.

**4.41 Proof of loss** means documented evidence that the **policyholder** has sustained a **direct financial loss** or **business interruption loss**. A **proof of loss** should include the following (however these items should not be seen as limiting the information which could form part of the **proof of loss**):

- (a) the name of the entity claiming under the **policy**, and details of their relationship to the **policyholder**;
- (b) the policy number of the **policy**;
- (c) the name of the alleged perpetrator (if known and if applicable);
- (d) a description of the events which led to the **discovery** of the **direct financial loss** or **business interruption loss**;
- (e) a chronology of all relevant facts;
- (f) a description of the alleged perpetrator's modus operandi;
- (g) statutory declarations from witnesses;
- (h) complete documentary evidence to support that the **insured** has sustained a **direct financial loss**, or **business interruption loss**, including but not limited to receipts, bank statements, requisitions, invoices, cash receipts, cheques or cheque butts;
- (i) photographs, video or closed-circuit television footage as applicable;
- (j) any internal investigation reports;
- (k) police report/s and/or any statement/s made to the police;
- (l) a signed confession, if applicable; and/or

(m) any other document or other form of evidence which may be relevant to the quantification of a **direct financial loss** or **business interruption loss**.

**4.42 Public relations expenses** means any reasonable fees, costs and expenses of a public relations consultant retained up to the value of the sub-limit specified in the **schedule**.

**4.43 Ransom payment** means money, securities, bitcoin or other virtual currency paid to eliminate, terminate or remove any credible **cyber extortion**.

**4.44 Restoration costs** means reasonable fees, costs and expenses incurred for the restoration or replacement of data, data programs or applications or software programs or applications that have been damaged or destroyed as the direct result of a **cyber incident** to substantially the same form the data, data programs or applications or software programs or applications existed immediately prior to the applicable **cyber incident**. In the event that it is determined that the data, data programs or applications or software programs or applications cannot be restored, recreated, or replaced, **restoration costs** shall be limited to the reasonable costs incurred to reach such a determination.

**Restoration costs** do not include any expense incurred to research and develop any data, the economic or market value of any data, including but not limited to trade secrets, damages or any other loss that is not directly associated with restoration.

**4.45 Security failure** means any failure or breach of the security of the **computer system** that results in or fails to mitigate any unauthorised access, unauthorised use, denial of service attack or receipt or transmission of a malicious code.

**4.46 Social engineering fraud** means the impersonation by a **third party** of an **insured** or **third party** that the **insured** has a commercial relationship with, which results in a **direct financial loss**.

**4.47 Statutory liability** means an actual or alleged breach of any **Act** that regulates privacy law or controls the use of personally identifiable information.

**4.48 Telephone hacking** means the unauthorised use of the **insured's** telephone system by a **third party** without the knowledge or consent of an **insured** or **insured person**, which results in unauthorised charges or costs which the **insured** is legally liable to pay.

**4.49 Third party** means any person that is not an **insured** or an **insured person**.

**4.50 Waiting period** means the continuous period of time stated in the **schedule**, which begins at the earliest date of the applicable **business interruption outage**.



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