



Healthcare

Policy document

Republic of Ireland

PREAMBLE

IMPORTANT: COVERAGE TRIGGERS. It is important for **you** to review this Policy in its entirety carefully, including **CONDITION 1**, as the trigger for coverage, including when **you** must notify **us** of a claim, under each Section and Insuring Clause may differ.

Where **cyber events** or **technology errors** are not specifically excluded from a Section or Insuring Clause of this Policy, then a claim arising out of a **cyber event** or **technology error** which is otherwise covered under that Section or Insuring Clause will be payable, subject to all other terms, conditions and exclusions of this Policy.

This Policy is a contract of insurance between **you** and **us**. **Your** Policy contains all the details of the cover that **we** provide. This Policy consists of and must be read together with the Schedule and any Endorsements. This Policy is not complete unless it is signed and a Schedule is attached.

The sections of this Policy are identified by the blue lines across the page with white upper case print, these are for information purposes only and do not form part of the cover given by this Policy. Terms in bold upper case print are references to specific Insuring Clauses, Sections or Conditions. Other terms in bold lower case print are defined terms and have a special meaning as set forth in the Definitions section and elsewhere. Words stated in the singular will include the plural and vice versa.

In consideration of the **premium** and in reliance upon the information that **you** have provided to **us** prior to the commencement of this insurance, **we** agree to provide the cover as set out below:

INSURING CLAUSES

INSURING CLAUSE 1: PROFESSIONAL LIABILITY

SECTION A: PROFESSIONAL LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** during the **period of the policy** or any applicable optional extended reporting period arising out of **bodily injury** in the provision of, or financial loss caused by, **healthcare services** as a result of any:

- a. negligent act, error or omission;
- b. breach of any contractual term implied by law concerning necessary quality, safety or fitness, or **your** duty to use reasonable care and skill;
- c. loss or damage to any documents in paper format in **your** care, custody or control; or
- d. other act, error or omission giving rise to civil liability but not any breach of contract other than as specified above.

We will also pay **costs and expenses** on **your** behalf.

SECTION B: SEXUAL MISCONDUCT AND PHYSICAL ABUSE

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** during the **period of the policy** or any applicable optional extended reporting period arising out of any actual or alleged **sexual misconduct** or **physical abuse** during the provision of **healthcare services**.

We will also pay **costs and expenses** on **your** behalf.

SECTION C: BREACH OF CONTRACT

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** during the **period of the policy** or any applicable optional extended reporting period as a direct result of any unintentional breach of a written contract with a **client** for the provision of **healthcare services**.

We will also pay **costs and expenses** on **your** behalf.

SECTION D: REGULATORY COSTS AND FINES

We agree to pay on **your** behalf **costs and expenses** and any fines or penalties as a result of any **regulatory investigation** first initiated against **you** during the **period of the policy** or any applicable optional extended reporting period arising directly out of the provision of **healthcare services**.

However, **we** will not pay **costs and expenses**, fines or penalties in respect of any **regulatory investigation** affecting the wider environment in which **you** conduct **healthcare services**, as opposed to any **regulatory investigation** solely affecting **you**.

SECTION E: DISHONESTY OF EMPLOYEES

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** during the **period of the policy** or any applicable optional extended reporting period arising out of the theft of property or **money** by any **employee** from a patient to whom **you** are providing **healthcare services**.

INSURING CLAUSE 2: CYBER AND PRIVACY

SECTION A: NETWORK SECURITY AND PRIVACY LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including the establishment of any consumer redress fund and associated expenses) as a result of any **claim** as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** that results in:

- a. the transmission of malware to a **third party's computer system**;

- b. **your computer systems** being used to carry out a denial of service attack;
- c. **your** failure to prevent unauthorized access to information stored or applications hosted on **your computer systems**; and
- d. identity theft, experienced by **your employees** or any **third party**.

We also agree to pay on **your** behalf any fines, penalties and card brand assessments including fraud recoveries, operational reimbursements, non-cooperation costs and case management fees which **you** become legally obliged to pay as a direct result of a **payment card breach** first discovered by **you** during the **period of the policy**.

We will also pay **costs and expenses** on **your** behalf.

SECTION B: REGULATORY COSTS AND FINES

We agree to pay on **your** behalf **costs and expenses** and any fines or penalties resulting from a **regulatory investigation**, including any **regulatory investigation** in accordance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 or the Health Information Technology for Economic and Clinical Health Act (HITECH) of 2009, arising as a direct result of a **cyber event** first discovered by **you** during the **period of the policy**.

SECTION C: INCIDENT RESPONSE COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

- a. gain access to **our 24/7 cyber incident response hotline**;
- b. engage with **our cyber incident response team** who will coordinate the initial response;
- c. obtain initial advice and consultancy from **our cyber incident response team**, including threat intelligence in relation to the **cyber event**; and
- d. obtain initial remote support and assistance from **our cyber incident response team** to respond to the **cyber event**.

SECTION D: LEGAL, FORENSIC AND BREACH MANAGEMENT COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** which is first discovered by **you** during the **period of the policy** to:

- a. obtain initial legal advice to determine **your privacy breach** notification obligations;
- b. notify any appropriate regulatory body, respond to and defend any **regulatory investigation** and pay any fines and penalties imposed on **you** as a direct result of the **regulatory investigation**;
- c. engage with an external IT security consultant to identify the source and scope of the **cyber event**, contain and remove any malware discovered on **your computer systems** and conduct a forensic investigation of **your computer systems** where reasonable and

- necessary or as required by law or a regulatory body (including a requirement for a PCI Forensic Investigator);
- d. engage with a crisis communications consultant to obtain specific advice in direct relation to the **cyber event**;
 - e. print and post appropriate notices for any individual affected by the **cyber event** or to send e-mail notices or issue substitute notices; and
 - f. provide credit monitoring services, identity monitoring services, identity restoration services or identity theft insurance as appropriate to affected individuals including setting up a call centre to manage inbound and outbound calls in direct relation to the **cyber event**.

SECTION E: EXTORTION

We agree to reimburse **you** for any ransom paid by **you**, or on **your** behalf, in response to an extortion demand first discovered by **you** during the **period of the policy** as a direct result of any threat to:

- a. introduce malware, or the actual introduction of malware, including ransomware, into **your computer systems**;
- b. prevent access to **your computer systems** or data or any **third party** systems hosting **your** applications or data;
- c. reveal **your** confidential information or confidential information entrusted to **you**; or
- d. damage **your** brand or reputation by posting false or misleading comments about **you** on social media sites.

SECTION F: SYSTEM DAMAGE AND RECTIFICATION COSTS

We agree to reimburse **you** for the additional cost of employing:

- a. contract staff or overtime costs for **employees** to rebuild **your** data, including the cost of data re-entry or data re-creation;
- b. specialist consultants, including IT forensic consultants, to recover **your** data or applications; and
- c. specialist consultants or overtime costs for **employees** working within **your** IT department to reconstitute **your computer systems** to the position they were in immediately prior to the **cyber event**;

reasonably and necessarily incurred as a direct result of a **cyber event** first discovered by **you** during the **period of the policy**, including costs incurred in retrieving, restoring or replacing electronic health records (EHR), patient therapy plans and all other healthcare data.

SECTION G: SYSTEM BUSINESS INTERRUPTION AND REPUTATIONAL HARM

We agree to reimburse **you** for **your actual loss sustained** and **increased cost of working** sustained during the **indemnity period** as a direct result of an interruption to **your business activities** caused by **computer systems** downtime arising directly out of a **cyber event** which is

first discovered by **you** during the **period of the policy**, provided that the **computer systems** downtime lasts longer than the **waiting period**.

We also agree to reimburse **you** for **your actual loss sustained** during the **reputational harm period** as a direct result of the loss of current or future customers caused by damage to **your** reputation as a result of a **cyber event** first discovered by **you** during the **period of the policy**.

SECTION H: CLAIM PREPARATION COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred to determine the amount of **your actual loss sustained** following an interruption to **your business activities** covered under **INSURING CLAUSE 2 (SECTION G only)**. We will only pay these costs where they are incurred with an independent expert agreed by the **claims managers**.

INSURING CLAUSE 3: CYBER CRIME

SECTION A: FUNDS TRANSFER FRAUD

We agree to reimburse **you** for **loss** first discovered by **you** during the **period of the policy** as a direct result of any **third party** committing:

- a. any unauthorised electronic transfer of funds from **your** bank;
- b. theft of money or other financial assets from **your** bank by electronic means;
- c. theft of money or other financial assets from **your** corporate credit cards by electronic means; or
- d. any phishing, vishing or other social engineering attack against any **employee** that results in the transfer of **your** funds to an unintended **third party**.

SECTION B: CUSTOMER PAYMENT FRAUD

We agree to reimburse **you** in the event of fraudulent electronic communications or websites designed to impersonate **you** or any of **your** products first discovered by **you** during the **period of the policy**, for **loss** directly attributable to:

- a. reimbursing **your** existing customers for their financial loss arising directly from the fraudulent communications, including fraudulent invoices manipulated to impersonate **you**, where goods or services have not been provided to the customers by **you** or on **your** behalf; or
- b. **your** existing customers paying fraudulent invoices manipulated to impersonate **you**, where goods or services have been provided to the customers by **you** or on **your** behalf, provided that the fraudulent electronic communications are as a direct result of a **third party** compromising **your** network security.

We also agree to reimburse **you** for:

- a. costs of creating and issuing a specific press release or establishing a specific website to advise **your** current and prospective customers of these fraudulent communications; and

- b. external costs associated with the removal of those websites designed to impersonate you.

SECTION C: TELEPHONE HACKING

We agree to reimburse you for loss associated with the cost of unauthorised calls or unauthorised use of your bandwidth first discovered by you during the period of the policy as a direct result of your telephone system being hacked by a third party.

INSURING CLAUSE 4: GENERAL LIABILITY

SECTION A: PUBLIC LIABILITY

We agree to pay on your behalf all sums which you become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any claim arising out of bodily injury or property damage first occurring during the period of the policy, except when it is caused directly by healthcare services.

We will also pay costs and expenses on your behalf.

SECTION B: PRODUCTS LIABILITY

We agree to pay on your behalf all sums which you become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any claim arising out of bodily injury or property damage first occurring during the period of the policy caused directly by any healthcare product or product.

We will also pay costs and expenses on your behalf.

SECTION C: PERSONAL AND ADVERTISING INJURY

We agree to pay on your behalf all sums which you become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any claim arising out of personal injury or advertising injury first occurring during the period of the policy.

We will also pay costs and expenses on your behalf.

SECTION D: POLLUTION LIABILITY

We agree to pay on your behalf all sums which you become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any claim arising out of bodily injury or property damage caused directly by pollution first occurring during the period of the policy, on condition that the pollution was the direct result of a sudden, identifiable, unintended and unexpected incident.

We will also pay costs and expenses on your behalf.

INSURING CLAUSE 5: EMPLOYERS' LIABILITY

We agree to pay on your behalf all sums which you become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any claim arising out of bodily injury first

occurring during the **period of the policy** to **senior executive officers** or **employees** that are domiciled in the Republic of Ireland. **We** will also pay **costs and expenses** on **your** behalf.

INSURING CLAUSE 6: LOSS MITIGATION

In respect of **INSURING CLAUSE 1**, **we** agree to reimburse **you** for any reasonable costs necessarily incurred by **you** with **our** prior written agreement (which will not be unreasonably withheld) in respect of measures taken by **you** to rectify any act, error or omission that resulted in a **claim** or may result in a **claim** for which **you** would be entitled to indemnity under this Policy had these measures not been taken, provided that:

- a. these rectification measures are taken for the sole purpose of mitigating the **claim** or avoiding a **claim**; and
- b. the costs in respect of these rectification measures taken by **you** are less than the expected value of the **claim**.

We will not make any payment under this Insuring Clause in respect of any costs that include any provision for:

- a. salaries or other remuneration of **employees**;
- b. **your** loss of profit;
- c. **your** normal operating expenses; or
- d. goodwill payments or other amounts that **you** are not contractually or legally obliged to pay.

INSURING CLAUSE 7: REPUTATION AND BRAND PROTECTION

We agree to reimburse **you** for any reasonable sums necessarily incurred with **our** prior written agreement (which will not be unreasonably withheld) for the services of a public relations consultancy to avert or mitigate damage to **your** reputation or brand as a direct result of any media report that names **you** and publicises an act or event that is the subject of a claim for which **you** are entitled to indemnity under this Policy.

INSURING CLAUSE 8: COURT ATTENDANCE COSTS

We agree to reimburse **you** for any reasonable sums necessarily incurred by **you** with **our** prior written agreement (which will not be unreasonably withheld) to attend court or any tribunal, arbitration, adjudication, mediation or other hearing in connection with any claim for which **you** are entitled to indemnity under this Policy.

HOW MUCH WE WILL PAY

The maximum amount payable by **us** in respect of each Section and each Insuring Clause will not exceed the **limit of liability**.

Where any claim is covered under multiple Sections, each Section will cover its part of the claim to the extent of the available **limit of liability**. In the event any Section covering the claim is exhausted, no other Section of this Policy covering the claim will provide additional cover. Regardless of how many Sections cover any claim, only one overall **limit of liability** will be available and this will be the highest **limit of liability** of the Sections covering the claim. The **limits of liability** available, other than the highest **limit of liability**, under the Sections covering the claim will always be a part of and not in addition to the highest **limit of liability**. For the purposes of this paragraph, **INSURING CLAUSES 6, 7 and 8** will each be considered a Section.

Where more than one claim under this Policy arises from the same original cause or single source or event, all of those claims will be deemed to be one claim and only one **limit of liability** will be payable.

We may at any time pay to **you** in connection with any **claim** the amount of the **limit of liability** (after deduction of any amounts already paid). Upon that payment being made **we** will relinquish the conduct and control of the **claim** and be under no further liability in connection with that **claim** except for the payment of **costs and expenses** incurred prior to the date of such payment (unless the **limit of liability** is stated to be inclusive of **costs and expenses**).

If **costs and expenses** are stated in the Schedule to be in addition to the **limit of liability**, or if the operation of local laws require **costs and expenses** to be paid in addition to the **limit of liability**, and if a damages payment in excess of the **limit of liability** has to be made to dispose of any **claim**, **our** liability for **costs and expenses** will be in the same proportion as the **limit of liability** bears to the total amount of the damages payment.

Notwithstanding the **limit of liability**, for any **claim** made against **you** within the United States of America or territories which come under the jurisdiction of the United States of America, the **limit of liability** will be an annual aggregate limit for all **claims** under this Policy and inclusive of **costs and expenses**.

YOUR DEDUCTIBLE

We will only be liable for that part of each and every claim which exceeds the amount of the **deductible**. If any expenditure is incurred by **us** which falls within the amount of the **deductible**, then **you** will reimburse that amount to **us** upon **our** request.

Where more than one claim under this Policy arises from the same original cause or single source or event all of those claims will be deemed to be one claim and only one **deductible** will apply.

In respect of **INSURING CLAUSE 2 (SECTION G only)**, a single **waiting period**, **deductible** and **indemnity period** will apply to each claim. Where the same original cause or single source or

event causes more than one period of computer systems downtime these will be considered one period of computer systems downtime whose total duration is equal to the cumulative duration of each individual period of computer systems downtime

Where cover is provided under multiple Sections or multiple Insuring Clauses only one **deductible** will apply to that claim and this will be the highest **deductible** of the Sections under which cover is provided.

DEFINITIONS

1. **"Actual loss sustained"** means

your income that, had the incident which gave rise to the claim not occurred, would have been generated directly from **your business activities** (less sales tax) during the **indemnity period**, less:

- a. actual income (less sales tax) generated directly from **your business activities** during the **indemnity period**; and
- b. any cost savings achieved as a direct result of the reduction in income.

2. **"Advertising injury"** means

- a. oral or written publication of defamatory content;
- b. oral or written publication of content that violates a person's right of privacy; or
- c. infringement of copyright, trade dress, slogan or a **third party's** advertising idea;

in **your** advertising or promotional material.

3. **"Approved claims panel providers"** means

the approved claims panel providers stated in the Schedule.

4. **"Bodily injury"** means

death, bodily injury, mental injury, illness or disease.

5. **"Business activities"** means

the business activities stated in the Schedule.

6. **"Claim"** means

- a. a written demand for compensation;
- b. a written request for a retraction or a correction;
- c. a threat or initiation of a lawsuit; or
- d. in respect of **INSURING CLAUSES 1 (SECTION D only)** and **2 (SECTION B only)**, a **regulatory investigation**;

made against **you**.

7. **"Claim services"** means
submitting, handling, investigating, paying and adjusting claims for benefits and coverages under any health care or workers' compensation plans.
8. **"Claims managers"** means
the claims managers stated in the Schedule.
9. **"Client"** means
any **third party** with whom **you** have a contract in place for the supply of **your business activities** in return for a fee, or where a fee would normally be expected to be paid
10. **"Computer systems"** means
all electronic computers including operating systems, software, hardware, microcontrollers and all communication and open system networks and any data or websites wheresoever hosted, off-line media libraries and data back-ups and mobile devices including but not limited to smartphones, iPhones, tablets or personal digital assistants.
11. **"Continuity date"** means
the **inception date** or if **you** have maintained uninterrupted insurance of the same type with **us**, the date this insurance was first incepted with **us**.
12. **"Costs and expenses"** means
- a. **third party** legal and professional expenses (including disbursements) reasonably incurred in the defense of **claims** or circumstances which could reasonably be expected to give rise to a **claim** or in quashing or challenging the scope of any injunction, subpoena or witness summons;
 - b. any post judgment interest; and
 - c. the cost of appeal, attachment and similar bonds including bail and penal bonds.

Subject to all costs and expenses being incurred with the **claims managers'** prior written agreement (which will not be unreasonably withheld).

13. **"Cyber event"** means
any actual or suspected:
- a. unauthorised access to or electronic attack designed to damage, destroy, corrupt, overload, circumvent or otherwise impair the functionality of:
 - i. in respect of **INSURING CLAUSE 2, computer systems** used directly by **you**; and
 - ii. in respect of all other **INSURING CLAUSES**, any **computer systems**;
- including a denial of service attack, cyber terrorism, hacking attack, Trojan horse, phishing attack, man-in-the-middle attack, application-layer attack, compromised key attack, malware infection (including spyware or ransomware) or computer virus; or

b. **privacy breach**.

"Cyber event" does not mean **technology error**.

14. "**Cyber incident response hotline**" means
the cyber incident response hotline stated in the Schedule.
15. "**Cyber incident response team**" means
the cyber incident response team accessible on the **cyber incident response hotline**.
16. "**Cyber war**" means
any unauthorised access to or electronic attack on **computer systems**, carried out by or on behalf of a **state**, that directly results in another **state** becoming an **impacted state**.
17. "**Deductible**" means
the amount stated as the deductible in the Schedule.
18. "**Employee**" means
any **medical practitioner** and any employee, volunteer or contract employee of the **insured**.
19. "**Expiry date**" means
the expiry date stated in the Schedule.
20. "**Government body**" means
any:
 - a. department, agency, task force or other organisation created by any U.S. federal or state law, regulation, rule or executive order;
 - b. department, agency, task force or other organisation operated, funded or staffed, in whole or in part, by the U.S. federal government or any state government; or
 - c. any organisation operating as a Medicare Integrity Program Contractor.
21. "**Healthcare product**" means
 - a. in respect of **INSURING CLAUSE 1**, any drugs or other pharmaceuticals, nutraceuticals or any type of **product** or equipment used only for the provision of healthcare or to aid mobility of any patient; or
 - b. in respect of **INSURING CLAUSE 4 (SECTION B only)**, any drugs or other pharmaceuticals, nutraceuticals or any type of **product** or equipment used only for the provision of healthcare or to aid mobility of any patient after it has left **your** care, custody or control which has been manufactured by **you**.

"**Healthcare product**" does not mean **product**.

22. "Healthcare services" means

the provision by **you** or on **your** behalf of;

- a. medical, clinical, mental or other similar healthcare professional services or treatments, including the examination, diagnosis, prognosis, treatment to treat any patient under **your** care;
- b. **healthcare products** which have been prescribed, dispensed, administered, supplied, recommended or fitted by a suitably qualified and licenced healthcare professional of **yours** to treat any patient under **your** care; or
- c. professional services to a **client**;

in the course of **your business activities**.

23. "Impacted state" means

any **state** that suffers a major detrimental impact on its:

- a. ability to function; or
- b. defence and security capabilities;

as a direct result of any unauthorised access to or electronic attack on **computer systems**, carried out by or on behalf of another **state**.

24. "Inception date" means

the inception date stated in the Schedule.

25. "Increased cost of working" means

your reasonable sums necessarily incurred in addition to **your** normal operating expenses to mitigate an interruption to and continue **your business activities**, provided that the costs are less than **your** expected **actual loss sustained** had these measures not been taken.

26. "Indemnity period" means

the period starting from the first occurrence of the **computer systems** downtime and lasting for the indemnity period stated in the Schedule.

27. "Independent expert" means

a suitably qualified lawyer or accountant with a minimum of 5 years' experience in the subject matter of the claim.

28. "Insured" means

- a. the individual named as the insured in the Schedule; or
- b. the entity named as the insured in the Schedule and any **subsidiary**.

29. **"Intellectual property rights"** means

any intellectual property right including, but not limited to, copyright, trademark, trade dilution, trade dress, design rights, domain name rights, moral rights, service mark or service name, but not including patent.

30. **"Limit of liability"** means

if expressed in the Schedule as:

- a. "limit of liability" or "amount insured", the maximum amount payable by **us** in respect of each claim; or
- b. "aggregate limit of liability" or "aggregate amount insured", the maximum amount payable by **us** in respect of all claims under this Policy.

31. **"Loss"** means

direct financial loss sustained by the **insured**.

32. **"Medical practitioner"** means

any registered medical or healthcare practitioner, but only in respect of **healthcare services** performed on behalf of the **insured**.

33. **"Money"** means

any cash, coin, cheques, bankers drafts or share or bond certificates.

"Money" does not mean any cryptoassets (including cryptocurrencies, utility tokens, securities tokens, ecosystem tokens or any other type of digital currency).

34. **"Official authority"** means

any governmental, regulatory, law enforcement, professional or statutory body or other similar body.

35. **"Payment card breach"** means

an actual or suspected unauthorised disclosure of payment card data stored or processed by **you** arising out of an electronic attack, accidental disclosure or the deliberate actions of a rogue **employee**.

"Payment card breach" does not mean a situation where payment card data is deliberately shared with or sold to a **third party** with the knowledge and consent of a **senior executive officer**.

36. **"Period of the policy"** means

the period between the **inception date** and the **expiry date** or until the Policy is cancelled in accordance with **CONDITION 5**.

37. "Personal injury" means

- a. false arrest, detention or imprisonment;
- b. malicious prosecution; or
- c. wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies.

38. "Physical abuse" means

- a. **bodily injury** deliberately caused by **you**;
- b. the negligent employment, supervision, hiring, training or retention of a person for whom **you** are or were at any time responsible and who deliberately causes **bodily injury**; or
- c. **your** negligent reporting, or **your** failure to report, to the proper authorities the conduct of a person for whom **you** are or were at any time responsible and who deliberately causes **bodily injury**.

39. "Pollutants" means

any solid, liquid, gaseous, radiological or thermal irritant, toxic or hazardous substance, or contaminant including, but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste materials, including recycled, reconditioned or reclaimed materials.

40. "Pollution" means

the discharge, dispersal, release, migration, seepage or escape of **pollutants**.

41. "Premium" means

the amount stated as the premium in the Schedule and any subsequent adjustments.

42. "Privacy breach" means

an actual or suspected unauthorised disclosure of information arising out of an electronic attack, accidental disclosure or the deliberate actions of a rogue **employee**, including Personally Identifiable Information (PII), Protected Health Information (PHI) and payment card information.

"**Privacy breach**" does not mean a situation where information is deliberately shared with or sold to a **third party** with the knowledge and consent of a **senior executive officer**.

43. "Product" means

any product, other than any **healthcare product**, that has been manufactured altered, distributed or installed by **you** or on **your** behalf.

44. "Property damage" means

direct physical damage to, destruction of, loss of possession or loss of use of tangible property.

45. **"Regulatory investigation"** means

a formal hearing, official investigation, examination, enquiry, legal action or any other similar proceeding initiated by a governmental, regulatory, law enforcement, professional or statutory body against **you**.

"Regulatory investigation" does not mean any investigation into medical billing practices.

46. **"Reputational harm period"** means

the period starting from when the **cyber event** is first discovered and lasting for the period stated as the reputational harm period in the Schedule.

47. **"Retroactive date"** means

the retroactive date stated in the Schedule.

48. **"Senior executive officer"** means

board members, C-level executives, officers, medical directors, in-house lawyers and risk managers of the **insured**.

49. **"Sexual misconduct"** means

- a. any welcome or unwelcome conduct, physical acts, gestures or spoken or written words of sexual nature, including, but not limited to, consensual or non consensual sexual intimacy, sexual molestation, sexual assault, sexual battery, sexual abuse, sexual harassment, sexual exploitation or any sexual act;
- b. the negligent employment, supervision, hiring, training or retention of a person for whom **you** are or were at any time responsible and who commits sexual misconduct as defined by a. above; or
- c. **your** negligent reporting, or **your** failure to report, to the proper authorities the conduct of a person for whom **you** are or were at any time responsible and who commits sexual misconduct as defined by a. above.

50. **"State"** means

sovereign state.

51. **"Subsidiary"** means

any entity which the entity named as the **insured** in the Schedule has majority ownership of, meaning more than 50% ownership, on or before the **inception date**.

52. **"Technology error"** means

any:

- a. unintentional human error in entering, processing or amending electronic data within any **computer systems** or in the upgrading, maintenance or configuration of any **computer systems**; or

- b. application bug, internal network failure, external network failure or hardware failure directly impacting any **computer systems** which renders them incapable of supporting their normal business function;

that does not arise directly or indirectly out of any **cyber event**.

53. **"Third party"** means

any individual or entity other than **you**.

54. **"Tracking and targeted advertising technologies"** means

website tracking tools, HTTP cookies, or any other type of targeted tracking or targeted advertising technologies.

55. **"Utilisation review"** means

evaluating the appropriateness of or necessity for any **healthcare services** for the purposes of determining whether any payment or coverage for those **healthcare services** will be authorised or paid for under any health care plan.

"Utilisation review" includes any prospective review of any proposed payment or coverage for **healthcare services**, reviewing ongoing **healthcare services**, reviewing completed **healthcare services**, reviewing incurred costs, disease management and case management.

56. **"Waiting period"** means

the number of hours stated as the waiting period in the Schedule.

57. **"War"** means

any physical:

- a. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- b. action taken in controlling, preventing, suppressing or in any way relating to a. above.

58. **"We/our/us"** means

the Underwriters stated in the Schedule.

59. **"You/Your"** means

the **insured** and **employees** solely acting in the normal course of **your business activities**.

EXCLUSIONS

We will not make any payment under this Policy:

EXCLUSIONS RELATING TO PROFESSIONAL LIABILITY

In respect of **INSURING CLAUSE 1** only:

1. Unauthorised funds transfer

arising directly or indirectly out of any transfer of funds or financial assets to an unintended **third party** as a result of any phishing, vishing or other social engineering attack.

2. Workmanship

arising directly out of any physical workmanship in the manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection therewith) by **you** or on **your** behalf.

In respect of **INSURING CLAUSE 1, SECTION B**:

3. Criminal proceedings

arising directly or indirectly out of any criminal proceedings relating to sexual misconduct or physical abuse.

EXCLUSIONS RELATING TO CYBER AND PRIVACY

In respect of **INSURING CLAUSE 2** only:

4. Betterment

which results in **you** being in a better financial position or **you** benefitting from upgraded versions of **your computer systems** as a direct result of the event which gave rise to the claim under this policy.

However, in the event of a hacking attack, malware infection or computer virus, when rebuilding **your computer systems** **we** will pay the additional costs and expenses incurred to install a more secure and efficient version of the affected **computer system**, provided that the maximum amount **we** will pay is 25% more than the cost that would have been incurred to repair or replace the original model or license. Under no circumstances will **we** pay the cost of acquiring or installing **computer systems** which did not form a part of **your computer systems** immediately prior to the incident which gave rise to the claim.

5. Property and hardware costs

for any tangible property repair or replacement including the cost of repairing any hardware or replacing any tangible property or equipment that forms part of **your computer systems**.

However, where repairing or replacing hardware or tangible property or equipment is a more practical and cost effective solution than installing new firmware or software onto **your** existing components, **we** will pay the costs required to do so.

6. Theft of financial assets

for theft of money or financial assets in any format, including but not limited to cash, bank notes, electronic currency, customer account balances, and stock or bond certificates.

7. Unlawful surveillance

arising directly or indirectly out of any actual or alleged eavesdropping, wiretapping, or unauthorised audio or video recording committed by **you** or by a **third party** on **your** behalf with the knowledge and consent of **your senior executive officers**.

In respect of **INSURING CLAUSE 2, SECTIONS F and G**:

8. Business interruption liability

for that part of any **claim** that constitutes actual or alleged liability to a **third party**, or legal costs in the defence of any **claim**, including customer compensation.

EXCLUSIONS RELATING TO CYBER CRIME

In respect of **INSURING CLAUSE 3** only:

9. Theft of funds held in escrow

for theft of money or other financial assets belonging to a **client** from a bank account held in **your** name on behalf of that **client**.

EXCLUSIONS RELATING TO GENERAL LIABILITY

In respect of **INSURING CLAUSE 4** only:

10. Communicable diseases

arising directly or indirectly out of, or in any way relating to any actual, threat or fear of any pathogen or disease, including any virus, bacterium, parasite or variation of these, which can be transmitted by any means directly or indirectly from any organism to another organism and can cause, or have the potential to cause:

- a. damage to human health or welfare; or
- b. physical damage or destruction to tangible property, including the deterioration, loss of use or reduction in value or marketability of the tangible property.

11. Faulty workmanship

for the cost to repair or replace, including any ensuing financial loss:

- a. that part of any property that has been damaged by **you**, or a **third party** operating on **your** behalf, during its construction, distribution or installation;
- b. that part of any property as a direct result of faulty workmanship by **you**, or a **third party** operating on **your** behalf, during its construction or installation; or
- c. any undamaged property that contains any **product**, unless the **product** which the property contains has been damaged as a direct result of a sudden, unintended and unexpected incident after it has left **your** care, custody or control.

12. **Financial loss**

arising directly or indirectly out of **third party** financial loss, other than **third party** financial loss directly resulting from **bodily injury, personal injury, advertising injury** or **property damage**.

13. **Healthcare services**

arising directly or indirectly out of any **healthcare services**.

14. **Land or water**

arising directly or indirectly from damage by any description to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by **you** or otherwise in **your** care, custody or control.

15. **Marine and aviation**

arising directly or indirectly from the ownership, possession or use by **you**, or on **your** behalf, of any:

- a. watercraft, other than any hovercraft, in excess of 10 metres in length; or
- b. aircraft, drone, hovercraft, offshore installation, offshore rig or offshore platform.

16. **Property in your care, custody or control**

arising directly or indirectly out of **property damage** to **third party** property which is in **your** care, custody or control.

In respect of **INSURING CLAUSE 4, SECTION C**:

17. **Content advertised prior to the continuity date**

arising directly or indirectly out of any advertisement that was first published prior to the **continuity date**.

EXCLUSIONS RELATING TO ALL INSURING CLAUSES

18. **Advertising injury**

directly or indirectly out of **advertising injury**.

However, this Exclusion will not apply to **INSURING CLAUSE 4 (SECTION C only)**.

19. **Antitrust**

for or arising out of 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 other than any covered portion of any **claim** based on **your** alleged unauthorised use of a **third party's** trademark.

20. Asbestos

arising directly or indirectly out of the manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos or asbestos fibres or dust.

21. Associated companies

- a. in respect of any **claim** made by any company, firm or partnership in which the **insured** has greater than a 15% executive or financial interest, unless the **claim** emanates from an independent **third party**;
- b. in respect of any **claim** made by any company, firm, partnership or individual which has greater than a 15% executive or financial interest in the **insured**, unless the **claim** emanates from an independent **third party**;
- c. arising out of or resulting from any of **your** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organisation, corporation, company or business other than that of the **insured**; or
- d. in respect of any **claim** made by or on behalf of the **insured** against a **third party**.

22. Biometric privacy

arising directly or indirectly out of any actual or alleged violation of any law or regulation relating to the collection, use, safeguarding, handling, storage, retention or destruction of biometric information, including the retina or iris scan, fingerprint, voiceprint, or scan of the hand or face geometry.

23. Bodily injury

in respect of **INSURING CLAUSES 1 and 2**, arising directly or indirectly out of **bodily injury**.

However, this Exclusion will not apply to:

- a. **INSURING CLAUSE 1 (SECTIONS A and B only)**; and
- b. **INSURING CLAUSE 2 (SECTION A only)** for any **claim** as a direct result of mental injury or emotional distress.

24. Breach of contract

arising directly out of any breach of contract.

However, this Exclusion will not apply to:

- a. **INSURING CLAUSES 1 (SECTIONS A and C only) and 2 (SECTION A only)**; or
- b. **INSURING CLAUSE 4 (SECTION C only)** if liability would have attached in the absence of that contract.

25. Chargebacks

for any credit card company or bank, wholly or partially, reversing or preventing a payment transaction.

However, this Exclusion will not apply to **INSURING CLAUSE 2 (SECTION A only)**.

26. Collection, use or dissemination of private data without consent

arising directly or indirectly out of any actual or alleged failure to obtain consent or agreement from any private individual before using any means (including **tracking and targeted advertising technologies**) to collect, store, process, use, transfer, share, disseminate or allow access to, any of their personal information, including personally identifiable information (PII), personal health information (PHI), biometric information, internet search history and internet browsing habits.

27. Core internet infrastructure failure

in respect of **INSURING CLAUSES 2 and 3**, arising directly from a failure, material degradation or termination of any core element of the internet, telecommunications or GPS infrastructure that results in a regional, countrywide or global outage of the internet or core telecommunications network, including a failure of the core DNS root servers, satellite network or the IP addressing system or an individual state or non-state actor turning off all or part of the internet.

28. Criminal acts

arising out of any wilful, criminal or fraudulent act or omission committed by **you**, acting alone or in collusion with any other person.

However, this Exclusion shall not apply to **INSURING CLAUSE 1 (SECTIONS B and E only)**.

29. Cyber events

arising directly or indirectly out of any **cyber event**.

However, this Exclusion will not apply to **INSURING CLAUSES 2 and 3**.

30. Directors and officers liability

arising out of any personal liability incurred by **your senior executive officers** when they are acting in that capacity or managing **you**, or arising from any statement, representation or information regarding **your** business contained within any accounts, reports or financial statements.

31. Domain name suspension or revocation

in respect of **INSURING CLAUSES 2 and 3**, arising directly or indirectly from the suspension, cancellation, revocation or failure to renew any of **your** domain names or uniform resource locators.

32. Employers' liability

arising directly or indirectly out of **bodily injury to your employees**.

However, this Exclusion will not apply to **INSURING CLAUSE 5**.

33. Employment disputes

arising directly or indirectly out of any:

- a. employer-employee relations, policies or practices;
- b. actual or alleged refusal to employ any person;
- c. actual or alleged breach by any **employee** of any term or condition of any express or implied contract between them and any past employer of theirs, including breaching any restrictive covenant, covenant not to compete, non-disparagement agreement, confidentiality agreement or non-solicitation agreement; or
- d. actual or alleged conduct by **you** that defames, libels, slanders, disparages or harasses any past employer of any **employee** or interferes with any past, present or prospective employment or contractual relationship between any **employee** and any past employer of theirs.

34. ERISA

based upon the Employment Retirement Income Security Act of 1974, and any amendment thereto, or any rules or regulations promulgated thereunder.

35. Extended warranty

arising directly or indirectly out of any extended warranty agreement, unless liability would have attached in the absence of that agreement.

36. Failure to register

if **you** were not registered or licenced by the appropriate **official authority** to provide **healthcare services** at the time the incident which gave rise to the claim took place.

However, this Exclusion will not apply to any **costs and expenses** incurred by **you** in the course of a **regulatory investigation** initiated against **you** which alleges **you** were not registered or licenced by the appropriate **official authority** to provide **healthcare services** at the time the incident which gave rise to the claim took place.

37. Insolvency

arising out of or relating directly or indirectly to **your** insolvency or bankruptcy, or the insolvency or bankruptcy of any **third party**. However, **your** insolvency will not relieve **us** of any of **our** legal obligations under this contract of insurance where this insolvency does not give rise to a claim under this Policy.

38. Intellectual property rights and defamation

arising directly or indirectly out of defamation or any infringement of **intellectual property rights**.

However, this Exclusion will not apply to **INSURING CLAUSE 4 (SECTION C only)**.

39. Known claims and circumstances

arising out of any actual or suspected **cyber event, claim** or circumstance which might give rise to a **claim** which a **senior executive officer** was aware of, or ought reasonably to have been aware of, prior to the **continuity date**, including any claim or circumstance notified to any other insurer.

40. Legal action

where any legal action is brought outside the legal action territories stated in the Schedule, or where an action is brought within those territories to enforce a judgment outside of those territories whether by way of reciprocal agreement or otherwise.

41. Liquidated damages, service credits and penalty clauses

for liquidated damages or service credits, or arising out of penalty clauses unless **you** would have been liable in the absence of any contract stipulating the liquidated damages or service credits or penalty clauses.

42. Loss of economic value

for the reduction in economic or market value (including loss of potential future sales) of any of **your** intellectual property assets.

43. Managed care activities

arising directly or indirectly out of the provision of the following managed care activities by **you** or on **your** behalf:

- a. **utilisation review;**
- b. **claim services;**
- c. designing or implementing any financial incentive plans;
- d. triaging any **healthcare services** payments; and
- e. any administration or management services relating to any health care or workers' compensation plans, including any other services relating to these plans.

44. Metabolic or diet drugs

arising directly or indirectly out of metabolic or diet drugs.

45. Miscellaneous healthcare services exclusions

arising directly or indirectly out of any actual or alleged:

- a. error, omission, misstatement or misrepresentation relating to any request for payment or reimbursement for healthcare services made to any **government body** or private health insurance entity;
- b. violation of any federal, state or local Anti-Kickback Statute or any laws, rules or regulations relating to self- referral; or

- c. violation of the Emergency Medical Treatment and Labour Act (EMTALA), including any subsequent amendments to that Act.

46. Misleading advertising

arising directly or indirectly from any advertisement, promotion or product description that is actually or alleged to be false or misleading.

However, this Exclusion will not apply to **INSURING CLAUSES 2 (SECTION A only) and 4 (SECTION C only)**.

47. Motor

arising directly or indirectly from the ownership, possession or use of any motor vehicle or trailer other than **bodily injury** or **property damage**:

- a. caused by the use of any tool or equipment forming part of or attached to or used in connection with any motor vehicle or trailer;
- b. occurring beyond the limits of any carriageway or thoroughfare and caused by the loading or unloading of any motor vehicle or trailer;
- c. arising out of the use of any motor vehicle or trailer temporarily in **your** custody or control for the purpose of parking; or
- d. occurring beyond the limits of any carriageway or thoroughfare and caused by the use of any unlicensed vehicle, including but not limited to snowmobiles and all-terrain vehicles, in the course of **your** business activities;

provided always that **we** will not make any payment in respect of any legal liability for which compulsory insurance or security is required by legislation or for which a government or other authority has accepted responsibility.

48. Nuclear

arising directly or indirectly from or contributed to by:

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

49. Opioids

arising directly or indirectly out of any opioid substance or medication, including but not limited to fentanyl, oxycodone, hydrocodone, codeine and morphine.

50. Other insurance

for which **you** are entitled to indemnity under any other insurance except for:

- a. any additional sum which is payable over and above the other insurance where that insurance has been declared to **us**; or
- b. any contribution that **we** are obliged to make by law and that contribution will be in proportion to the indemnity available under the policies.

51. Patent infringement

arising directly or indirectly out of the actual or alleged infringement or inducement of infringement of any patent, including any application for a patent that has not yet been granted.

52. Payment card industry related fines, penalties and assessments

for fines, penalties and card brand assessments, including fraud recoveries, operational reimbursements, non-cooperation costs and case management fees which **you** become legally obliged to pay **your** acquiring bank or payment processor as a direct result of a **payment card breach**.

However, this Exclusion will not apply to **INSURING CLAUSE 2 (SECTION A only)**.

53. Personal injury

arising directly or indirectly out of **personal injury**.

However, this Exclusion will not apply to **INSURING CLAUSE 4 (SECTION C only)**.

54. PFAS

arising directly or indirectly out of the manufacturing, mining, use, sale, installation, removal, distribution of or exposure to any per- and polyfluoroalkyl substances (PFAS) by whatever name designated, including any materials or products containing these substances.

55. Pollution

arising directly or indirectly out of **pollution**.

However, this Exclusion will not apply to **INSURING CLAUSE 1** for the provision of **healthcare services** by **you** to a patient who has suffered **bodily injury** as a result of **pollution**.

56. Power and utility failure

in respect of **INSURING CLAUSES 2 and 3**, arising directly or indirectly from any:

- a. failure in the power supply, including that caused by any surge or spike in voltage, electrical current or transferred energy; or
- b. failure, disruption or reduction in the supply of utilities, including but not limited to gas and water infrastructure or services.

57. Product recall

for the costs to withdraw, recall, dispose, remove, repair, adjust, alter, recondition, replace, reinstate any **product** or **healthcare product**, or part of any **product** or **healthcare product**.

However, this Exclusion will not apply to **INSURING CLAUSE 1** where **you** are legally liable for those costs as the direct result of any act, error or omission committed by **you**.

58. Products liability

arising directly out of any **bodily injury** or **property damage** caused directly by any **product** or **healthcare product**.

However, this Exclusion will not apply to:

- a. **INSURING CLAUSE 1 (SECTION A only)** in respect of any **healthcare product**; and
- b. **INSURING CLAUSE 4 (SECTION B only)**.

59. Property damage

in respect of **INSURING CLAUSES 1, 2 and 3**, arising directly or indirectly out of **property damage**.

60. Property perils

in respect of **INSURING CLAUSES 2 and 3**, arising directly or indirectly out of any fire, earthquake or earth movement of any kind, flood, hail, hurricane, lightning strike, solar storm, tornado, tsunami, volcano, wildfire or windstorm.

61. Regular hours staff costs

in respect of **INSURING CLAUSES 2 and 3**, for contracted salary and bonus costs paid to **employees**.

62. Related or associated company confidential business information

arising directly or indirectly out of any actual or alleged misappropriation, unauthorised use or disclosure by any **employee** of any idea, trade secret or other confidential business information which they were a party to or which they otherwise had possession of prior to being employed by the entity named as the **insured** in the **Schedule**.

However, this Exclusion will not apply to **INSURING CLAUSE 2 (SECTION A only)** solely in respect of any **claim** arising out of any actual or suspected electronic attack or unauthorised system access by any **third party**.

63. Retroactive date

in respect of **INSURING CLAUSE 1**, arising out of any act, error or omission committed or alleged to have been committed on or before the **retroactive date**, or any related or continuing acts, errors or omissions where the act, error or omission was first committed or alleged to have been first committed on or before the **retroactive date**.

64. RICO

for any actual or alleged violations of the Racketeer Influenced and Corrupt Organisation Act and any subsequent amendments to this Act.

65. Securities violations

for any actual or alleged violation of any laws or regulations relating to the offer or sale of securities.

66. Seizure of illegal property

arising from an order by a public or government authority which deprives **you** of the use or value of **your** property or arising from acts of contraband or illegal transportation or illegal trade.

67. Sexual misconduct and physical abuse

arising directly or indirectly out of **sexual misconduct** or **physical abuse**.

However, this Exclusion will not apply to **INSURING CLAUSE 1 (SECTION B only)**.

68. Terrorism

arising directly or indirectly out of:

- a. any act or threat of force or violence by an individual or group, whether acting alone or on behalf of or in connection with any organisation or government, committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear; or
- b. any action taken in controlling, preventing, suppressing or in any way relating to a. above.

However, this Exclusion does not apply to a **cyber event** affecting **your computer systems**.

69. Toxic mould

arising directly or indirectly from the toxic properties of any fungus, mould, mildew or yeast.

70. Uninsurable fines

for fines, penalties, civil or criminal sanctions or multiple, punitive or exemplary damages, unless insurable by law.

71. Unjust enrichment

for that part of any **claim** that results in **you** being in a better financial position as a direct result of **your** act, error or omission than **you** would have been if **you** had not committed the act, error or omission.

However, this Exclusion will not apply to any refund of any fee, other than the part of the fee that represents **your** profit or mark-up or liability for taxes.

72. Unsolicited communications

arising directly or indirectly from any actual or alleged violation of:

- a. the CAN-SPAM Act of 2003 or any subsequent amendments to that Act;
- b. the Telephone Consumer Protection Act (TCPA) of 1991 or any subsequent amendments to that Act; or
- c. any other law, regulation or statute relating to unsolicited communication, distribution, sending or transmitting of any communication via telephone or any other electronic or telecommunications device.

However, this Exclusion will not apply to **INSURING CLAUSE 2 (SECTION A only)**.

73. War and cyber war

arising directly or indirectly out of:

- a. **war**; or
- b. **cyber war**.

However, part b. above will not apply to:

- a. **INSURING CLAUSE 2 (SECTION C only)**; and
- b. that part of any claim relating to any **computer systems** which are physically located outside of an **impacted state**.

74. Website content accessibility

arising directly or indirectly out of the actual or alleged violation of any laws, regulations or guidelines relating to the accessibility of **your** website content.

75. Willful or dishonest acts of senior executive officers

arising directly or indirectly out of any wilful, criminal, malicious or dishonest act, error or omission by a **senior executive officer** as determined by final adjudication, arbitral tribunal or written admission.

CONDITIONS

1. What you must do in the event of a claim or cyber incident

If any **senior executive officer** becomes aware of any incident which may reasonably be expected to give rise to a claim under this Policy **you** must:

- a. notify the **claims managers** as soon as is reasonably practicable (in respect of cyber incidents, a telephone call to **our cyber incident response hotline** will constitute

notification). However, this notification must be made no later than the end of any applicable extended reporting period;

- b. in respect of **INSURING CLAUSES 1 (SECTIONS B and E only), 2 (SECTION E only) and 3**, report the theft or incident as soon as is reasonably practicable to the appropriate law enforcement authorities and provide **us** with a copy of this report on **our** request; and
- c. not admit liability for or settle or make or promise any payment or incur any **costs and expenses** without **our** prior written agreement (which will not be unreasonably withheld).

In respect of **INSURING CLAUSE 1**, if **you** notify an incident that **we** agree is reasonably expected to give rise to a **claim**, **we** will accept any **claim** that arises out of the incident as being notified under this Policy.

We require **you** to provide full details of the incident, including but not limited to:

- a. the time, place and nature of the incident;
- b. the manner in which **you** first became aware of this incident;
- c. the reasons why **you** believe that this incident could give rise to a claim under this Policy;
- d. the identity of the potential claimant; and
- e. an indication as to the size of the claim that could result from this incident.

In respect of **INSURING CLAUSES 2 and 3**, if **you** discover a **cyber event** **you** may only incur costs without **our** prior written consent within the first 72 hours following the discovery and any **third party** costs incurred must be with a company forming part of the **approved claims panel providers**. All other costs may only be incurred with the prior written consent of the **claims managers** (which will not be unreasonably withheld).

2. Agreement to pay claims

We have the right and duty to take control of and conduct in **your** name the investigation, settlement or defence of any **claim**. **We** will not have any duty to pay **costs and expenses** for any part of a **claim** that is not covered by this Policy.

You may ask the **claims managers** to consider appointing **your** own lawyer to defend the **claim** on **your** behalf and the **claims managers** may grant **your** request if they consider **your** lawyer is suitably qualified by experience, taking into account the subject matter of the **claim**, and the cost to provide a defence.

We will endeavour to settle any **claim** through negotiation, mediation or some other form of alternative dispute resolution and will pay on **your** behalf the amount **we** agree with the claimant. If **we** cannot settle using these means, **we** will pay the amount which **you** are found liable to pay either in court or through arbitration proceedings, subject to the **limit of liability**.

We will not settle any **claim** without **your** consent. If **you** refuse to provide **your** consent to a settlement recommended by **us** and elect to continue legal proceedings in connection with the **claim**, any further **costs and expenses** incurred will be paid by **you** and **us** on a proportional basis, with 50% payable by **us** and 50% payable by **you**. As a consequence of **your** refusal, **our** liability for the **claim**, excluding **costs and expenses**, will not be more than the amount for which the **claim** could have been settled.

3. Allocation

In the event a claim includes both allegations, persons or matters that are covered under this Policy and allegations, persons or matters that are not covered under this Policy, then **you** and **we** will need to agree a fair and reasonable allocation of this claim, including any **costs and expenses**, judgment or settlement amount.

If **you** and **we** cannot agree a fair and reasonable allocation an **independent expert** will be appointed to determine the allocation. The cost of the **independent expert** will be paid for by **us**. Their determination will be based upon written submissions only and will be final and binding. The **independent expert** will be mutually agreed between **you** and **us** but if **you** and **we** cannot agree on the **independent expert** then the matter will be referred to mediation or arbitration in accordance with **CONDITION 8**.

4. Calculation of business interruption losses

Following an interruption to **your** business activities covered under **INSURING CLAUSE 2 (SECTION G only)**, **you** must provide **us** with **your** calculation of the loss including:

- a. how the loss has been calculated and what assumptions have been made; and
- b. supporting documents including account statements, sales projections and invoices.

5. Cancellation

This Policy may be cancelled with 30 days written notice by either **you** or **us**.

If **you** give **us** notice of cancellation, the return **premium** will be in proportion to the number of days that the Policy is in effect. However, if **you** have made a claim under this Policy there will be no return **premium**.

If **we** give **you** notice of cancellation, the return **premium** will be in proportion to the number of days that the Policy is in effect.

We also reserve the right of cancellation in the event that any amount due to **us** by **you** remains unpaid more than 60 days beyond the **inception date**. If **we** exercise this right of cancellation it will take effect from 14 days after the date the written notice of cancellation is issued.

The Policy Administration Fee will be deemed fully earned upon inception of the Policy.

6. Continuous cover

In respect of **INSURING CLAUSE 1**, if during the period of a previous renewal of this Policy **you** neglected, through error or oversight only, to report to **us** an incident that might give rise to a **claim**, then provided **you** have maintained uninterrupted insurance of the same type with **us** since expiry of the previous renewal of this Policy, **we** will permit the incident to be reported to **us** under this Policy and **we** will indemnify **you** under this Policy in respect of any **claim** that arises out of the incident, provided:

- a. the indemnity will be subject to the applicable limit of liability of the previous renewal of this Policy under which the incident should have been reported to **us** or the applicable **limit of liability**, whichever is the lower;
- b. **we** may reduce the indemnity entitlement by the monetary equivalent of any prejudice which has been suffered as a result of the delayed notification; and
- c. the indemnity will be subject to all other terms and conditions of this Policy.

We require **you** to provide full details of the incident, including but not limited to:

- a. the time, place and nature of the incident;
- b. the manner in which **you** first became aware of this incident;
- c. reasons why **you** believe that this incident could give rise to a **claim**;
- d. the identity of the potential claimant; and
- e. an indication as to the size of the **claim** that could result from this incident.

For the avoidance of doubt, this Condition only applies to incidents that might give rise to a **claim**.

7. Cross liability and severability

In respect of **INSURING CLAUSE 4** only, where there is more than one entity insured under this Policy, and subject to the **limit of liability**, any **claim** made by one insured entity against another insured entity will be treated as if they are a **third party** and knowledge possessed by one insured entity will not be imputed to any other insured entity.

8. Dispute resolution

All disputes or differences between **you** and **us** will be referred to mediation or arbitration and will take place in the country of registration of the company named as the insured in the Schedule.

In respect of any arbitration proceeding **we** will follow the applicable rules of the arbitration association in the country where the company stated as the insured in the Schedule is registered, the rules of which are deemed incorporated into this Policy by reference to this Condition. Unless the applicable arbitration association rules state otherwise, a single arbitrator will be appointed who will be mutually agreed between **you** and **us**. If **you** and **we**

cannot agree on a suitable appointment then **we** will refer the appointment to the applicable arbitration association.

Each party will bear its own fees and costs in connection with any mediation or arbitration proceeding but the fees and expenses of the arbitrator will be shared equally between **you** and **us** unless the arbitration award provides otherwise.

Nothing in this Condition is intended to remove **your** rights under **CONDITION 19**. However, if a determination is made in any mediation or arbitration proceeding, **CONDITION 19** is intended only as an aid to enforce this determination.

9. Extended reporting period

An extended reporting period of 60 days following the **expiry date** will be automatically granted at no additional premium. This extended reporting period will cover, subject to all other terms, conditions and exclusions of this Policy:

- a. in respect of **INSURING CLAUSE 1**, any **claim** first made against **you** during the **period of the policy** and reported to **us** during this extended reporting period;
- b. in respect of **INSURING CLAUSES 2 and 3**, any **cyber event** or **loss** first discovered by **you** during the **period of the policy** and reported to **us** during this extended reporting period; and
- c. any circumstance that a **senior executive officer** became aware of during the **period of the policy** and reports to **us** during this extended reporting period.

No claim will be accepted by **us** in this 60 day extended reporting period if **you** are entitled to indemnity under any other insurance, or would be entitled to indemnity under such insurance if its limit of liability was not exhausted.

10. Optional extended reporting period

If **we** or **you** decline to renew or cancel this Policy then **you** will have the right to have issued an endorsement providing an optional extended reporting period for the duration stated in the Schedule which will be effective from the cancellation or non-renewal date.

This optional extended reporting period will cover, subject to all other terms, conditions and exclusions of this Policy:

- a. in respect of **INSURING CLAUSE 1**, any **claim** first made against **you** and reported to **us** during this optional extended reporting period, provided that the **claim** arises out of any act, error or omission committed prior to the date of cancellation or non-renewal; and
- b. in respect of **INSURING CLAUSES 2 and 3**, any **cyber event** or **loss** first discovered by **you** during this optional extended reporting period, provided that the **cyber event** or **loss** first occurred during the **period of the policy**.

If **you** would like to purchase the optional extended reporting period **you** must notify **us** and pay **us** the optional extended reporting period premium stated in the Schedule within 30 days of cancellation or non-renewal.

The right to the optional extended reporting period will not be available to **you** where cancellation or non-renewal by **us** is due to non-payment of the **premium** or **your** failure to pay any amounts in excess of the applicable **limit of liability** or within the amount of the applicable **deductible** as is required by this Policy in the payment of claims.

At the renewal of this Policy, **our** quotation of different **premium, deductible**, limits of liability or changes in policy language will not constitute non-renewal by **us**.

11. Fraudulent claims

If **you** notify **us** of any claim knowing it to be false or fraudulent in any way, **we** will have no responsibility to pay that claim, **we** may recover from **you** any sums paid in respect of that claim and **we** reserve the right to terminate this Policy from the date of the fraudulent act. If **we** exercise this right **we** will not be liable to return any **premium** to **you**. However, this will not affect any claim under this Policy which has been previously notified to **us**.

12. Mergers and acquisitions

If **you** acquire an entity during the **period of the policy** whose annual revenue does not exceed 20% of the **insured's** annual revenue, as stated in its most recent financial statements, cover is automatically extended under this Policy to include the acquired entity as a **subsidiary**.

If **you** acquire an entity during the **period of the policy** whose annual revenue exceeds 20% of the **insured's** annual revenue, as stated in its most recent financial statements, cover is automatically extended under this Policy to include the acquired entity as a **subsidiary** for a period of 45 days.

We will consider providing cover for the acquired entity after the period of 45 days if:

- a. **you** give **us** full details of the entity within 45 days of its acquisition; and
- b. **you** accept any amendment to the terms and conditions of this Policy or agree to pay any additional **premium** required by **us**.

In the event **you** do not comply with a. or b. above, cover will automatically terminate for the entity 45 days after the date of its acquisition.

Cover for any acquired entity is only provided under this Policy for any act, error or omission committed on or after the date of its acquisition.

No cover will be automatically provided under this Policy for any acquired entity:

- a. whose business activities are materially different from **your business activities**;

- b. that has been the subject of any lawsuit, disciplinary action or regulatory investigation in the 3 year period prior to its acquisition; or
- c. that has experienced a **cyber event** in the 3 year period prior to its acquisition, if the **cyber event** cost more than the highest **deductible** of this Policy.

If during the **period of the policy you** consolidate, merge with or are acquired by another entity then all coverage under this Policy will terminate at the date of the consolidation, merger or acquisition unless **we** have issued an endorsement extending coverage, and **you** have agreed to any additional **premium** and terms of coverage required by **us**.

13. Our rights of recovery

If **we** make any payment under this Policy and **you** have any right of recovery against a **third party** in respect of this payment, then **we** will maintain this right of recovery. **You** will do whatever is reasonably necessary to secure this right and will not do anything after the event which gave rise to the claim to prejudice this right.

We will not exercise any rights of recovery against any **employee**, unless this is in respect of any fraudulent or dishonest acts or omissions as proven by final adjudication, arbitral tribunal or written admission by the **employee**.

Any recoveries will be applied as follows:

- a. towards any recovery expenses incurred by **us**;
- b. then to **us** up to the amount of **our** payment under this Policy, including **costs and expenses**;
- c. then to **you** as recovery of **your deductible**.

14. Prior subsidiaries

Should an entity cease to be a **subsidiary** after the **inception date**, cover in respect of the entity will continue as if it was still a **subsidiary** during the **period of the policy**, but only in respect of an act, error, omission or event occurring prior to the date that it ceased to be a **subsidiary**.

15. Process for paying privacy breach notification costs

Any **privacy breach** notification transmitted by **you** or on **your** behalf must be done with **our** prior written consent. **We** will ensure that notification is compliant with any legal or regulatory requirements and contractual obligations. No offer must be made for financial incentives, gifts, coupons, credits or services unless with **our** prior written consent which will only be provided if the offer is commensurate with the risk of harm.

We will not be liable for any portion of the costs **you** incur under **INSURING CLAUSE 2 (SECTION D only)** that exceed the costs that **you** would have incurred had **you** gained **our** prior written consent. In the absence of **our** prior written consent **we** will only be liable to pay

you the equivalent cost of a notification made using the most cost effective means permissible under the governing law.

16. Sanctions suspension

It is a condition under this Policy that the provision of cover, the payment of any claim and the provision of any benefit will be suspended, to the extent that the provision of the cover, payment of the claim or provision of the benefit would expose **us** to any sanction, prohibition or restriction under the United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, Canada, the European Union, United Kingdom or United States of America. The suspension will continue until such time **we** would no longer be exposed to the sanction, prohibition or restriction.

17. Waiver of subrogation

Notwithstanding **CONDITION 13**, **we** agree to waive **our** rights of recovery against any **third party** if, prior to the claim or incident which **you** reasonably expected to give rise to a claim, **you** entered into a contract that contains a provision requiring **you** to do this.

18. Your duty of disclosure

It is **your** duty to provide **us** with all information which may be material to the cover provided to **you** under this Policy. Failing this, **you** must provide sufficient information to put **us** on notice that **we** should make further enquiries in order to reveal material matters. A matter is material if it would influence a prudent insurer as to whether to accept the risk, the terms of cover provided or the amount of the premium charged.

In the event of any non-disclosure or misrepresentation by **you** of the information **you** provided prior to commencement of this Policy, including representations made in any application document or other material submitted during the underwriting process, the following remedies will be available to **us** based upon what **we** would have done had the information been disclosed or not misrepresented:

- a. if **we** would have issued this Policy on different terms, **we** have the right to amend the terms and conditions of this Policy effective from the **inception date**;
- b. if **we** would have issued this Policy on the same terms but charged a higher premium, **we** have the right to reduce proportionately the amount to be paid on any claim under this Policy and if applicable, the amount already paid on prior claims under this Policy. The amount will be reduced by applying a percentage that has been calculated using the following formula: $(\text{premium actually charged} / \text{higher premium}) \times 100$; or
- c. if **we** would not have issued this Policy, treat this Policy as if it had not existed and return any paid premium.

19. Choice of law and jurisdiction

This Policy will be interpreted under, governed by and construed in all respects in accordance with the law of the jurisdiction of the place of registration of the company named as the

insured in the Schedule and for this purpose, **we** and **you** agree to submit to the exclusive jurisdiction of the courts within the territorial limits and jurisdiction of the place of registration of the company named as the insured in the Schedule.