



Professional Indemnity Policy Wording

Issued by Agile Underwriting Services Pty Ltd
ABN 48 607 908 243 — AFSL 483374 Pol 05v3.2019



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Introduction

This document is a Personal Disclosure Statement and is also the Agile Underwriting Services Pty Ltd (Agile) Policy Wording.

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

It is important that you carefully read and understand this document before making a decision. Other documents may form part of Agile's Policy Wording and PDS and if they do, Agile will tell you in the relevant document. Please keep this document and any other documents that Agile tell you form part of your policy and keep in a safe place in case you need to refer to them in the future.

This Policy is a legal contract between the Insured and the Insurer. The Insured has paid, or agreed to pay, the Insurer the required Premium and the Insurer will provide indemnity as specified in this Policy and as set out in the Policy Schedule.

It is essential that the Insured reads all of the Policy terms and conditions before they purchase it to ensure that this Policy provides them the protection they require and is aware of the Limits of Indemnity provided and the amounts the Insurer will pay (including any Deductible that applies) noting that some of these will be stated in the Policy itself (these are our standard policy limits) and the remainder will be stated in the Policy Schedule; – is aware of the Definitions of this Policy.

The Insured must comply with all provisions of this Policy, otherwise the Insurer may be entitled to refuse to pay a Claim or reduce its liability under this Policy. This Policy is in force for the Period of Insurance set out in the Policy Schedule or until cancelled.

Duty of Disclosure Notice

This Policy is subject to the Insurance Contracts Act 1984. Under that Act the Insured has a duty of disclosure. Before the Insured enters into a contract of insurance they have a duty to tell the Insurer everything that the Insured knows, or could reasonably be expected to know, that is relevant to the Insurer's decision to provide this Policy. If the Insured is not sure whether something is relevant they should inform the Insurer anyway. The Insured has the same duty to inform the Insurer of those matters before they renew, extend, vary, or reinstate this Policy.

The Insured's duty however does not require disclosure of matters that:

- a) reduce the risk;
- b) are common knowledge;
- c) the Insurer knows or, in the ordinary course of business, should know;
- d) or, the Insurer has indicated they do not want to know.

If the Insured does not comply with their duty of disclosure obligations, the Insurer may be entitled to:

- a) reduce their liability for any claim; or



- b) cancel this Policy; or
- c) refuse to pay a claim; or
- d) avoid this Policy from its beginning, if the Insured's non-disclosure was fraudulent.

Claims Made Notice

This policy operates on a "claims made and notified" basis. This means that this policy covers the Insured for claims made against them and notified to the Insurer during the Period of Insurance.

Privacy

Agile Underwriting is committed to protecting the privacy of the personal information you provide us. Agile collects use and retains your personal information in accordance with the National Privacy Principles.

We need to collect the personal information on the applicable proposal form to consider your application for insurance and to determine the premium (if your application is accepted) when you are applying for, changing or renewing an insurance policy with us. This information will also be used if you lodge a claim under your policy. We may also need to request additional information from you in connection with your application or a claim. If you do not provide us with this information, or any additional information we request, we may not be able to process your application or offer you insurance cover or respond to any claim.

We may disclose the personal information we collect:

- a) To our relevant employees involved in delivering our services; – If your insurance broker collects this form from you, to that broker;
- b) To facilitators such as legal firms, professional experts such as accountants, actuaries, – engineers and technology experts;
- c) To the insurance companies with whom we transact business;
- d) To the Lloyd's Syndicates we represent (which are located in the United Kingdom);
- e) To insurance reference bureau or credit reference bureau;
- f) To reinsurers or reinsurance brokers (which may include reinsurers located outside of Australia).

Where we do disclose the information as above the recipient may hold the information in accordance with its own privacy policies. Those may include, by way of example, disclosing the information to and storage of that information by its associated entities which may be located overseas. We may also be required to provide your personal information to others for purposes of public safety and law enforcement and if required by law or by a law enforcement body to do so.

You may request access to your personal information, and where necessary, correct any errors in this information (some restrictions and costs may apply). If you would like to access a copy of your personal information or you wish to correct or update your personal information, please also contact us on 1300 705 031.



By completing and returning the proposal form and providing us with any additional information in connection with your application, you agree to us using and disclosing your information as set out above.

This consent to the use and disclosure of your personal information remains valid unless you alter or revoke it by giving us written notice. From time to time, we may use your personal information to send you details of new insurance products or other insurance related information that may be of interest to you. If you do not wish to receive such information, please advise us on 1300 705 031.

The Insurer – Certain Underwriters at Lloyd’s of London

The Insurer of this Policy are certain underwriters at Lloyd’s acting through Agile Underwriting Services Pty Ltd (Agile) as their agent.

Agile has been provided with a binding authority by the Insurers which allows us to enter into policies and settle claims on the Insurer’s behalf, subject to the terms of the binder authority. In dealing with the Policy, Agile acts for the Insurer and not you.

It is recommended that the Insured seeks independent legal advice as to the appropriateness of this Policy.

Special provisions in the Insurance Act 1973 allow Lloyd’s Underwriters to underwrite insurance business in Australia. Furthermore, the Insurer is regulated by both APRA (Australian Prudential Regulation Authority) and ASIC (Australian Securities and Investments Commission).

Code of Practice

This policy is compliant with the Insurance Council of Australia’s General Insurance Code of Practice, apart from any claims adjusted outside Australia. Agile and Underwriters at Lloyd’s proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. A copy of the code is available from the Insurance Council of Australia’s website at www.ica.com.au or from the Code’s dedicated website at; www.codeofpractice.com.au

Complaints and Dispute Resolution

Agile Underwriting Services Pty Ltd (Agile) takes the concerns of its customers very seriously and has detailed complaint handling and dispute resolution procedures that you may access, at no cost to you. To obtain a copy of the Agile Underwriting procedures, please contact Agile on 02 8062 4200. To assist Agile with your enquiries, please provide Us with your claim or policy number (if applicable) and as much information you can about the reason for your complaint or dispute. Agile’s complaints and dispute procedures are as follows:



(a) Stage 1 - Complaint Handling Procedure

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

Postal address: Level 9, 1 O'Connell St, SYDNEY, NSW, 2000

Telephone: 02 8062 4200

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

(b) Stage 2 – Dispute Resolution Procedure

If you are dissatisfied with Agile's response to your complaint, you may ask that your complaint be referred to:

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

Telephone: (+61 2) 8298 0783

Facsimile: (+61 2) 8298 0788

Email: idraustralia@lloyds.com

It will be handled by either Lloyd's Australia or the Lloyd's Complaint team in London.

Where your complaint is eligible for referral to the Australian Financial Complaints Authority (AFCA), your complaint will be reviewed by a person at Lloyd's Australia with appropriate authority to deal with your dispute. If your complaint or dispute is not resolved to your satisfaction or a final response has not been provided within 45 days, you may refer the matter to the AFCA for review. AFCA provides a free and independent dispute resolution service for consumers who have general insurance disputes falling within its terms of reference and its contact details are:

Postal address: Australian Financial Complaints Authority
GPO Box 3, Melbourne VIC 3001

Telephone: 1300 780 808



Section 1 Introduction

1.1 Subject to payment of the Premium or as agreed in writing, We agree to provide indemnity in accordance with and subject to the terms and conditions of this Policy.

1.2 Before this Policy commenced We received information provided on behalf of the Insured in the Proposal and in other ways. We have relied on this information to decide whether to enter into this contract and on what terms. If any of this information is wrong or false it may affect the cover provided by this Policy.

1.3 Any word or expression in which a specific meaning has been attached shall bear that special meaning wherever they appear. If a word has a specific meaning it appears in the Policy in bold black type and with a capital letter. The meanings of these words can be found in Section 9 Definitions.

Section 2 Insuring Clause

2.1 We agree to indemnify the Insured, up to the Limit of Indemnity, against civil liability for compensation to any third party arising from any Claim as a result of the conduct of the Insured's Professional Services that:

- a) is first made against the Insured during the Period of Insurance; and
- b) is notified to Us during the Period of Insurance; and
- c) arises from an act or omission committed after the Retroactive Date.

2.2 We also agree to pay Costs and Expenses incurred with Our written consent in the defence or settlement of any Claim indemnified by this Policy.

Section 3 Insuring Clause Clarification

For the purpose of clarifying the scope of cover under the Insuring Clause, indemnity is provided in respect of the following in accordance with, and subject to, the terms of this Policy;

3.1 Defamation

We agree to indemnify the Insured against civil liability for compensation arising from any Claim made against the Insured arising from unintentional defamation.



3.2 Competition & Consumer Legislation

We agree to indemnify the Insured against civil liability for compensation arising from any Claim made against the Insured under the terms of the Competition and Consumer Act 2010 (Commonwealth), the Fair Trading Act 1987 (NSW), the Fair Trading Act 1985 (Victoria) or similar legislation enacted by the other states and territories of the Commonwealth of Australia or the Dominion of New Zealand.

3.3 Intellectual Property

We agree to indemnify the Insured against civil liability for compensation arising from any Claim made against the Insured for any unintentional infringement of copyright, trademark, registered design or patent, or any plagiarism or breach of confidentiality.

3.4 Retroactive Date

“Unlimited Retroactive Cover” – if no Retroactive Date is specified in the Schedule or if the Retroactive Date is specified in the Schedule as “Unlimited”, this Policy shall provide indemnity in respect of Claims arising from acts, errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed (or alleged to have been committed).

“Limited Retroactive Cover” – where a Retroactive Date is specified in the Schedule, then this Policy shall only provide indemnity in respect of Claims arising from acts, errors or omissions committed or alleged to have been committed after the Retroactive Date.

Section 4 Automatic Extensions

We shall provide indemnity as is available under this Section, for no additional premium, provided always that:

- a) The indemnity provided by each Policy Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein);
- b) The inclusion of any Policy extension shall not increase the Limit of Indemnity.



4.1 Advancement of Costs

The Insurer will advance Insured Costs and expenses, Enquiry Costs incurred by the Insurer or the Insured with the Insurer's prior written consent, as they are incurred and prior to final adjudication of a Claim.

The Insurer may not refuse to advance Insured Costs and expenses, Enquiry Costs by reason only that the Insurer considers that conduct referred to in exclusion 6.6 'Fraud and Dishonesty' has occurred, until such conduct is established by a formal written admission by the relevant Insured or final, non-appealable adjudication of a judicial or arbitral tribunal (other than in a proceeding brought by the Insurer).

If and to the extent that the Insured is not entitled to coverage under the terms and conditions of this Policy, then the Insurer will cease to advance such costs and any amounts previously advanced shall be repaid to the Insurer.

4.2 Loss of Documents

We agree, in the event of loss or damage to Documents, to indemnify the Insured against all Costs and Expenses reasonably occurred by the Insured in replacing and restoring such documents provided that:

- a) such loss or damage is sustained during the Policy Period while the Documents are either in transit or in the custody of the Insured or any person to whom the Insured has entrusted them in the course of the normal conduct of the Professional Services;
- b) Where the Documents are in electronic format, the Insured or any person to whom the insured has entrusted them, have in place sufficient and proper procedures for the security and daily back-up of the Documents;
- c) The amount of any Claim for such Costs and Expenses shall be supported by bills and / or accounts which shall be subject to approval by Us or a competent person nominated by Us;

We shall not be liable for loss or damage to Documents caused by:

- a) riot or civil commotion
- b) fading, mould, vermin, pest infestation, wear, tear or any other gradually operating cause
- c) interference with electronically stored data by any person who is not a current principal, partner, director or Employee of the Insured.



4.3 Fraud and Dishonesty

We agree to indemnify the Insured against civil liability for compensation arising from any Claim made against that Insured, which would otherwise be excluded by reason of Exclusion 6.6 (Fraud and dishonesty), arising from any dishonest, fraudulent, criminal or malicious act or omission, by an Insured.

Provided always that such indemnity shall not be provided to any Insured who committed, allowed, or condoned any dishonest, fraudulent, criminal or malicious act or omission.

4.4 Enquiry Costs

We will indemnify the Insured for Enquiry Costs provided that;

- a) notice requiring the Insured's response or attendance is first received by the Insured and is notified to Us during the Period of Insurance;
- b) Such response or attendance arises directly from conduct committed or allegedly committed by the Insured in the performance of the Professional Services;
- c) Such indemnity is subject to the written consent of Us prior to the incurring of the Enquiry Costs;
- d) We; at Our discretion, are entitled to appoint legal representation to represent the Insured at the inquiry or hearing;
- e) Regular or overtime wages, salaries or fees of the Insured are excluded from indemnity under this extension;

Our total aggregate liability during any one Period of Insurance in respect of Enquiry Costs made under this policy extension shall not exceed \$250,000 and shall be part of and not in addition to the Limit of Indemnity as shown in the Policy Schedule.

4.5 Extended Reporting Period

In the event that this Policy is neither renewed nor replaced at the end of the Policy Period with insurance that covers substantially the same risk exposure as this Policy, the Principal Policyholder will be entitled to purchase an extended reporting period of 365 days.

The Principal Policyholder will not be entitled to purchase an extended reporting period if the Policyholder is Insolvent during the Policy Period.

The extended reporting period begins immediately following the expiry of the Policy Period and ends on the earlier of 4.p.m. on the three hundred and sixty fifth day thereafter, or at the time on the effective date on which the Policyholder obtains insurance that covers substantially the same risk exposure as this Policy. The additional premium for the extended reporting period will be 100% of the Full Annual Premium.



If the extended reporting period ends because the Policyholder obtains insurance that covers substantially the same risk exposure as this Policy then the Insurer will retain a short term premium calculated at the pro rata proportion of the additional premium plus ten percent and the Principal Policyholder will receive a refund of any balance of the premium, unless there have been any notifications during the Policy Period or the extended reporting period, in which case no refund shall be given. The entitlement to purchase the extended reporting period lapses upon expiry of the Policy Period. The application to purchase the extended reporting period must be received by the Insurer prior to the expiry of the Policy Period, and payment of the additional premium must be made to the Insurer within thirty days of the same date.

During the extended reporting period the Insured may continue to notify the Insurer of Claims, but only Claims based on any act, error or omission committed or alleged to have been committed prior to expiry of the Policy Period. Any notification to the Insurer during this extended reporting period will be deemed to have been first notified to the Insurer during the Policy Period.

4.6 Court Attendance Costs

We agree to provide up to \$500 per day for Court Attendance Costs incurred by Employees of the Insured, or up to \$1,000 per day for Court Attendance Costs incurred by partners, principals or directors of the Insured if they are legally compelled to attend a civil proceeding as a witness in a Claim covered by this Policy.

Our total aggregate liability during any one Period of Insurance for all Court Attendance Costs shall not exceed \$50,000 and \$2,500 per day and shall be part of and not in addition to the Limit of Indemnity as shown on the Policy Schedule.

4.7 Mitigation of Costs

The Insurer will indemnify the Insured for the Insured costs and expenses necessarily and reasonably incurred in respect of any action taken to mitigate a loss or potential loss that otherwise would be the subject of a Claim under the Policy provided that:

- a) the Insured first discovers the relevant act, error or omission which would give rise to the loss during the Policy Period and notifies the Insurer during the Policy Period;
- b) the Insured provides written notice to the Insurer during the Policy Period of their intention to take such action prior to incurring any costs and expenses;
- c) the Insured obtains from the Insurer a written consent prior to incurring such costs, such consent not to be unreasonably withheld;
- d) the onus of proving entitlement to indemnity pursuant to this extension shall be upon the Insured;
- e) the costs and expenses incurred by the Insured in proving entitlement to indemnity pursuant to this extension shall be met by the Insured; and



- f) the total liability of the Insurer for all costs and expenses incurred under this extension will not exceed in the aggregate, during the Policy Period \$250,000. The Excess is applicable to this extension.

4.8 Privacy Breach Costs

The Insurer will indemnify the Insured for the reasonable direct costs of notifying individuals or corporations of a Privacy Breach, resulting from the conduct of the Professional Services.

Provided that:

- a) the Insured first discovers the Privacy Breach during the Policy Period and notifies the Insurer during the Policy Period; and
- b) the Insured provides written notice to the Insurer during the Policy Period of their intention to take such action prior to incurring any costs; and
- c) the Insured obtains from the Insurer written consent prior to incurring such costs, such consent not to be unreasonably withheld; and
- d) the total liability of the Insurer for all costs incurred under this extension will not exceed in the aggregate, during the Policy Period \$250,000.

The Excess is applicable to this extension. For the purposes of this extension, the Retroactive date exclusion 6.15 is amended to read 'any costs resulting from any incident occurring prior to the Retroactive Date'.

4.9 Public Relations Expenses

We agree to pay any reasonable fee, costs, and expenses of a public relations consultant where the Insured for the sole purpose of protecting the Insured's reputation that has been brought to question as a direct result of a Claim covered by this Policy. Provided always that:

- a) The Insured notifies Us on first becoming aware of the Insured's reputation being brought into question, and provide full written details outlining the circumstances surrounding the event; and
- b) We have given prior written consent to retain the services of such public relations consultant; and
- c) Our total aggregate liability during any one Period of Insurance for all public relations expenses shall not exceed \$250,000 and shall be part of and not additional to the Limit of Indemnity as shown in the Policy Schedule.



4.10 Newly created subsidiary

We agree to include in the definition of Insured to include any Subsidiary created by the Named Insured during the Period of Insurance for a period of up to fourteen (14) days (but never beyond the expiry date of the period of cover) from the date of such creation.

Provided always that this policy extension will only apply in respect of Claim against the Subsidiary arising from an act, error or omission occurring subsequent to the date of creation of the Subsidiary.

4.11 Run off Cover Insured Entity

We agree that in the event that an insured entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity then the coverage provided under this Policy with respect to such insured entity shall continue until the expiry date of the Period of Insurance.

Provided always that such coverage shall only apply in respect of Claim(s) arising from an act, error or omission occurring prior to the effective date that such insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity.

4.12 Joint Venture Liability

We agree to indemnify the Insured in respect of any Claim resulting from the Insured's participation in any joint venture in connection with the Professional Services provided that:

- a) The indemnity provided shall only relate to the Insured's proportion of any liability by such joint venture; and
- b) The Insured's income derived from participation in the joint venture has been included in the calculation of income furnished by the Insured in the Proposal Form; and
- c) No cover is provided to the joint venture partner of the Insured

4.13 Continuous Cover

Where the Insured:

- a) first became aware of facts or circumstances that might give rise to a Claim, prior to the Period of Insurance; and
- b) had not notified Us of such facts or circumstances prior to the Period of Insurance,

then Exclusion 6.13 will not apply to any notification during the Period of Insurance of any Claim resulting from such facts or circumstances, provided that;

- a) the Insured's failure to notify is not fraudulent; and



- b) the Insured has been continuously insured, without interruption at the time of notification of the Claim to Us, under a policy issued by Agile Underwriting Solutions Pty Ltd, and was insured by Agile Underwriting Solutions Pty Ltd, at the time the Insured first became aware of such facts or circumstances; and
- c) We may reduce their liability under the Policy to the extent of any prejudice We may suffer in connection with the Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Period of Insurance; and
- d) the Limit of Indemnity We provide shall be the lesser available under the policy in force when the Insured first became aware of the facts or circumstances or under this Policy. The terms of this Policy otherwise apply.

4.14 Sub-Contractors

This Policy covers any sub-contractor, sub-consultant or agent performing work pursuant to a contract with the Insured, where such work is performed as part of the Insured's Professional Service and under the Insured's direct supervision and control.

4.15 Spousal Liability

If a Claim against an Insured includes a claim against such Insured's Spouse solely by reason of:

- a) such Spouse's legal status as a Spouse of such Insured; or
- b) such Spouse's ownership interest in property which the claimant seeks as recovery for Claims made against such Insured, then the Spouse's legal liability for compensation resulting from such Claim will be treated for the purposes of this Policy as the liability of the Insured. This extension does not apply to the extent the Claim alleges any act, error or omission by such Insured's Spouse.

4.16 Cyber Liability (Third Party only)

We agree that we will indemnify the Insured for Damages and Defence Costs resulting from any Claim directly or indirectly arising out of or in connection with any Data Security Breach and any Client Network Infection, provided:

- (a) the Claim is first made against You during the Period of Insurance and You notify Us in writing during the Period of Insurance;
- (b) Our maximum liability for all claims made under this coverage shall not exceed a Sub Limit of Indemnity of \$250,000 in the aggregate (including all costs and expenses incurred);
- (c) We may engage, at Our own expense, a computer forensics specialist or security specialist to investigate an alleged Data Security Breach or Client Network Infection, and You shall cooperate fully with such specialist's investigation;
- (d) You have maintained anti-virus and malware prevention solutions on Your computer systems



and keep these systems updated at regular intervals.

For the purpose of this extension the following definitions shall apply:

"Client Network Infection" means the actual or alleged transmittal from Your computer system to Your client's computer system in connection with the Professional Business, of a computer virus or other electronic infection which causes damage to that client's computer or computer network or disrupts that client's business.

"Damages" means loss, judgments and settlements, but does not include fines, penalties, punitive or exemplary damages, or the return, withdrawal or reduction of professional fees or commissions, any equitable relief or any award of legal costs and expenses.

"Data Security Breach" means the actual or alleged breach, violation, unauthorised interception, unauthorised use, or misuse by any person of any security systems or procedures maintained by You for storage of Your client's confidential information in connection with the Professional Business.

"Defence Costs" means all reasonable costs, charges, fees and expenses (including but not limited to legal costs and expenses) incurred in defending any Claim covered under this extension, but does not include Your wages, salaries or fees.

Additional Cyber Liability Exclusions

for the purpose of this extension only, in addition to the exclusions set out in section 6, or other restrictions to the cover provided under this Policy, the following Additional exclusions will apply;

We shall not be liable for any claim under this extension directly or indirectly arising out of or in connection with;

Any Claim arising from the actual or alleged intentional release or disclosure of confidential information by You which is alleged to be in violation of any statute, regulation, ethical rule, court or arbitral order, or confidentiality agreement;

Any Claim arising from Your actual or alleged intentional transmittal of a computer virus or other electronic infection;

The costs of repairing, replacing, or modifying Your data security system or clearing Your computers or network of viruses and electronic infections, either preventatively or in response to a Claim against You; (iv) war, riot, civil commotion, insurrection, or usurpation of governmental power;

Any governmental authority seizing or gaining access to Your computer or computer network; any proceedings against You before a governmental agency in connection with a Data Security Breach or Client Network Infection, including any audit or other investigation by such governmental agency;



Any Claim, or Costs and Expenses for which You are entitled to an indemnity under any other part of this Policy.

4.17 Statutory Liability

Notwithstanding exclusion 6.5 – Fines and Penalties, We will pay for your Statutory Liability for any Claim where that liability is incurred in connection with your Professional Services, provided that:

- a) We may lawfully pay for such Statutory Liability
- b) This extension does not extend to Statutory Liability which arises either directly or indirectly based upon, attributable to, or in consequence of any:
 - i. Intentional or knowing violation or breach of law;
 - ii. Conduct of Your part which is grossly negligent or reckless;If so established by Your admission or by a judgement or other final adjudication against You;
- c) Our aggregate liability for all losses under this Extension shall not exceed \$250,000 and shall be part of and not in addition to the Limit of Indemnity as shown in the Policy Schedule and is subject to the deductible.
- d) Should cover for Statutory Liability not be lawfully paid, then all costs and expenses are also excluded.
- e) For the purposes of this extension only “Claim” shall mean:
 - i. A civil proceeding brought against You for recovery of pecuniary penalties;
 - ii. Written notice from a relevant authority requiring payment of pecuniary penalties by You.

Section 5 Optional Extensions

It is agreed that:

- a) the indemnity provided by each Optional Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein);
- b) the optional extensions do not increase the Limit of Indemnity
- c) where an Optional Extension is not specified as included in the Schedule then this Policy shall not provide any indemnity in relation to coverage specified under such Option Extension.



5.1 Fidelity

We agree to provide indemnity to the Insured against loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Insured or for which the Insured is legally liable where any such loss is sustained in consequence of any dishonest or fraudulent act or omission in which an Insured participated. Provided always that:

- a) such loss is first discovered by the Insured during the Period of Insurance and is notified in writing to Us within the Period of Insurance and within twenty-eight (28) days of the date of such discovery;
- b) We shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the Insured concerned;
- c) We shall not be liable to indemnify any Insured who committed or condoned any dishonest or fraudulent conduct in consequence of which the loss occurred;
- d) the Insured shall bear the burden of adducing satisfactory proof to substantiate any loss hereunder (including any legal, investigative, accounting or other costs incurred in such process) and We will be under no obligation to provide indemnity to the Insured until such time as We are satisfied that such loss has, in fact, been sustained;
- e) Our liability for each loss under this Optional Extension and Our aggregate liability for all losses under this Optional Extension shall not exceed \$100,000 and shall be part of and not in addition to the Limit of Indemnity as shown in the Policy Schedule.
- f) the Deductible specified in the Policy Schedule applies to any one event, events or series of events caused by acts or omissions of the same person or persons (whether identifiable or not) and events in which such person or persons is/are involved or implicated shall be treated as one event.

5.2 Previous Business

We agree to provide indemnity in respect of any Claim for compensation made against any person who is or becomes or ceases to be during the Period of Insurance a principal, partner or director of the Named Insured for any civil liability arising from a breach of professional duty and incurred on the part of such person in the conduct of the same profession as the Insured's Professional Services before that person joined the Named Insured.



Section 6 Exclusions

We shall not be liable under this Policy to provide indemnity in respect of any Claim against any Insured:

6.1 Asbestos

directly or indirectly based upon, attributable to, or in consequence of asbestos, asbestos fibres or derivatives of asbestos in whatever form or quantity.

6.2 Assumed duty or obligation

directly or indirectly based upon, attributable to, or in consequence of any duty or obligation assumed by an Insured by way of contract, warranty, guarantee or indemnity, to the extent that such liability exceeds the liability the Insured would have incurred in the absence of such contract, warranty, guarantee or indemnity.

6.3 Bodily injury and property damage

directly or indirectly based upon, attributable to, or in consequence of Bodily Injury or Property Damage unless such injury or damage arises directly out of any breach of a professional duty owed by the Insured arising from the provision of Professional Services.

6.4 Deregistration

directly or indirectly based upon, attributable to, or in consequence of in so far as the Insured is required by law to maintain a statutory registration in order to be entitled to practice or provide the Professional Services, Claims arising from acts, errors or omissions by or on behalf of the Insured subsequent to the suspension or cancellation of such registration.

6.5 Fines and penalties

for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law including but not limit to, civil penalties.



6.6 Fraud and dishonesty

directly or indirectly based upon, attributable to, or in consequence of:

- a) any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of an Insured or their consultants, sub-contractors or agents; or
- b) any act or omission of an Insured or their consultants, sub-contractors, or agents committed or alleged to have been committed with a reckless disregard for the consequences thereof; or
- c) any wilful breach of any statute, contract or duty by an Insured or their consultants, sub-contractors or agents.

6.7 Insolvency

directly or indirectly based upon, attributable to, or in consequence of the Insured's insolvency, bankruptcy or liquidation.

6.8 Jurisdictional limits

- a) brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
- b) arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

6.9 Mergers or acquisitions

directly or indirectly based upon, attributable to, or in consequence of advice in relation to mergers or acquisitions.

6.10 Nuclear

directly or indirectly based upon, attributable to, or in consequence of ionising radiation or contamination by radioactivity from any nuclear fuel or any nuclear waste from the combustion of any nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear device or assembly, or a nuclear component thereof.



6.11 Other insurances

directly or indirectly based upon, attributable to, or in consequence of;

- a) the Insured's liability as an employer; or
- b) actual or alleged unlawful discrimination (or other unlawful act, error or omission) by any Insured against any Employee or employment applicant; or
- c) the Insured's functions and duties as a director and / or officer of the Insured or any legal entity, corporation or other incorporated body; or
- d) the occupation of land or buildings by an Insured; or
- e) the Insured's liability as an owner or operator of any aircraft, marine craft or motor vehicles of any kind.

6.12 Pollutants

directly or indirectly based upon, attributable to, or in consequence of the actual or threatened discharge, dispersal, seepage, release or escape of any Pollutant into or onto real or personal property, water or the atmosphere.

6.13 Prior or pending

- a) made, threatened or intimated against an Insured prior to the Period of Insurance; or
- b) directly or indirectly based upon, attributable to, or in consequence of any fact or circumstance:
 - i) of which written notice has been given, or ought reasonably to have been given, under any previous policy; or
 - ii) of which an Insured first became aware prior to the Period of Insurance, and which such Insured knew or ought reasonably to have known had potential to give rise to a Claim under this Policy.

6.14 Related or associated entities

brought or maintained by or on behalf of:

- a) an Insured or any Subsidiary or parent of an Insured; or
- b) any person who, at the time of the act, error or omission giving rise to the Claim is a Family Member or company owned or controlled by a Family Member unless such person or company is acting without any prior direct or indirect solicitation or cooperation of an Insured.



- c) any company or trust which is operated or controlled by the Insured or its nominees or trustees and which an Insured has a direct financial interest.

6.15 Retroactive date

arising from work performed prior to the Retroactive Date specified in the Schedule.

6.16 Sale or supply of goods

directly or indirectly based upon, attributable to, or in consequence of the sale, manufacture, installation, construction, alteration, repair, servicing or treating of any goods or products sold, distributed or supplied by the Insured.

6.17 Territorial limits

directly or indirectly based upon, attributable to, or in consequence of an act, error or omission occurring within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

6.18 Terrorism

directly or indirectly based upon, attributable to, or in consequence of any actual or alleged act of Terrorism or any action taken in controlling, preventing, suppressing or in any way relating to any actual or alleged act of Terrorism.

This exclusion operates in connection with any act of Terrorism regardless of any other cause or event and regardless of the sequence of the act of Terrorism and the other cause or event.

6.19 Trading debts

directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by an Insured or any guarantee given by an Insured for a debt.



6.20 War

directly or indirectly based upon, attributable to, or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition of or damage to property by or under the order of any government, public or local authority.

Section 7 Claims conditions

7.1 Claims notification

The Insured shall, as soon as practicable and prior to expiry of the Period of Insurance, give Us written notice of any Claim made against the Insured. Furthermore, every letter, demand, writ summons and legal process pertaining to such Claim shall be forwarded to Us as soon as practicable after receipt.

All Claim notifications should be forwarded to;

The Claims Manager, Agile Underwriting Services Pty Ltd, level 5, 63 York Street, Sydney, NSW 2000

Or Email: claims@agileunderwriting.com

It is the Insured's responsibility to ensure such notification has been forwarded to and received by Agile Underwriting Services Pty Ltd.

7.2 Claims mitigation and co-operation

- a) If the Insured, either prior to or during the Period of Insurance becomes aware of a situation which could, if not rectified, lead to a Claim or increase the quantum of a Claim, the Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder.
- b) The Insured shall frankly and honestly disclose to Us all relevant information and, in addition shall provide assistance to Us, as We, may require to enable Us to investigate and to defend any Claim under this Policy and/or to enable Us to determine Our liability under this Policy.
- c) Other than costs & expenses occurred by Us to enable Us to determine our liability under this Policy, compliance with this condition shall be at the Insured's own cost, unless otherwise agreed in writing by Us.



7.3 Claims conduct

- a) We shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any Claim and shall have full discretion in the conduct of any proceedings and in the settlement of any Claim.
- b) The Insured agrees not to settle any Claim, incur any costs & expenses or investigation costs & expenses, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any Claim or loss without Our written consent, such consent not to be unreasonably withheld. We shall not be liable for any settlement, costs & expenses, investigation costs & expenses, admission, offer or payment, or assumed obligation to which they have not consented in writing.
- c) We may, if We believe that any Claim will not exceed the Deductible, instruct the Insured to conduct the defence of the Claim. In such situation, We will reimburse the Insured for all reasonable Costs & Expenses in the defence of the Claim in the event that any payment made to dispose of the Claim exceeds the Deductible.

7.4 Senior counsel clause

- a) We and the Insured shall not be required to contest any legal proceedings unless a Senior Counsel, to be mutually agreed upon by Us and the Insured, shall advise that such proceedings should be contested. Failing agreement for the appointment, the Senior Counsel is to be appointed by the President of the State Bar Association.
- b) In formulating such advice, the Senior Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely Costs & Expenses and the prospects of the Insured successfully defending the Claim.
- c) The cost of such Senior Counsel's opinion shall be regarded as part of the Costs & Expenses.

7.5 Right to contest

In the event that We recommend a settlement in respect of any Claim and the Insured does not agree that such Claim should be settled, then the Insured may elect to contest such Claim. Provided always that Our liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Costs & Expenses incurred with Our written consent up to the date of such election, less the Deductible.

7.6 Multiple claims

All Claims arising out of, based upon, attributable to or in respect of a single act, error or omission or series of acts, errors or omissions consequent upon or attributable to one source or original cause shall be considered to be one Claim for the purpose of this Policy.



7.7 Subrogation

- a) If any payment is made under this Policy We are subrogated to the Insured's rights or recovery and the Insured must assist and provide such information as We reasonably require to exercise such rights.
- b) We agree not to exercise any such rights against any director, principal or Employee of the Insured unless the Claim is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the director, principal or Employee.
- c) The Insured shall not without Our prior written consent, enter into any contract or agreement which excludes, limits or prejudices a right of recovery which the Insured may have in respect of any Claim covered by this Policy.



Section 8 General Conditions

8.1 Alteration to risk

The Insured must notify Us as soon as reasonably practicable of any material change in the risk insured by this Policy. We are entitled to amend the terms of this Policy and / or charge an additional premium based on Our assessment of any change in the risk insured by this Policy.

A material change in the risk shall include, but is not limited to;

- a) An Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding up proceedings;
- b) Any material changes to the nature of the Professional Services offered by the Insured;
- c) Any material changes in the Insured's business.

8.2 Assignment

This Policy cannot be assigned by the Insured without Our written consent.

8.3 Cancellation

- a) The Insured may cancel this Policy at any time in writing to Us. Upon receipt of such request We will retain a short period premium calculated at the pro rata portion of the annual premium for the time they have been on risk and the Insured shall receive a refund of any balance of the Premium actually paid.
- b) We may cancel this Policy in accordance with the Insurance Contracts Act 1984.
- c) If there have been any Claims made under the Policy no refund shall be given.

8.4 Deductible

We shall only be liable for that part of each and every Claim (which includes all Costs and Expenses incurred) which exceeds the amount of the Deductible as specified in the Schedule subject at all times to the Limit of Indemnity specified in the Schedule.

The Deductible shall be borne by the Insured at their own risk.



Where the Deductible is specified to be inclusive of Costs and Expenses, the Insured shall pay the Costs and Expenses as they are incurred, up to the amount of the Deductible.

Where the Deductible is specified to be exclusive of Costs and Expenses, the Deductible shall not apply to the Costs and Expenses incurred.

If any expenditure is incurred by Us which by virtue of this clause is the responsibility of the Insured then such amount shall be reimbursed to Us by the Insured forthwith.

8.5 GST basis of settlement

- a) Where payment is made under this Policy for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any Input Tax Credit that the Insured is, or will be, entitled to under a New Tax System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is made.
- b) Where payment is made under this Policy as compensation instead of payment for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any Input Tax Credit that the Insured would have been entitled to under a New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

8.6 Governing law

This Policy is governed by the law of the territory or State where the Policy was issued, which is stated in the Schedule. The courts of that place have jurisdiction in any dispute about or under this Policy.

8.7 Interpretation

In this Policy;

- a) the single includes the plural and the masculine includes the feminine and vice versa
- b) the titles and headings to the various sections of the Policy are included solely for ease of reference and do not in any way limit or expand or otherwise affect the terms of such sections.



8.8 Limit of indemnity

- a) Our total liability for any one Claim, including Costs and expenses, will not exceed the Limit of Indemnity specified in the Schedule, and Our total liability in the aggregate in respect of all Claims, during the Period of Insurance, will not exceed the Aggregate Limit of Indemnity specified in the Schedule.
- b) Where the Limit of Indemnity is specified in the Schedule as costs exclusive, We will pay, Costs and expenses, in addition to the Limit of Indemnity, an amount not exceeding the Limit of Indemnity.
- c) Where the Limit of Indemnity is specified in the Schedule as costs inclusive, Costs and expenses, shall be included in, and not in addition to, the Limit of Indemnity specified in the Schedule.
- d) This clause does not increase any sub-limit in the Policy.

8.9 Other insurance

If at the time any Claim arises under the Policy there is any other insurance in force covering the same liability the Insured shall promptly provide Us full details of such other insurance, including the identity of the insurer, the policy number and such further information as We may reasonably require.

8.10 Reinstatement of the Limit of Indemnity

If the Limit of Indemnity is either partially or totally exhausted by the payment of a Claim under this Policy, We agree to reinstate the Limit of Indemnity by an amount equal to the Limit of Indemnity (or a multiple of such Limit of Indemnity if there is more than one reinstatement under the Policy) provided that:

- a) Our total liability in respect of all Claims under this Policy shall not exceed the Limit of Indemnity as specified in the Schedule;
- b) such reinstatement is only available for subsequent Claims totally unrelated to those that give rise to the partial or total exhaustion of the Limit of Indemnity.

8.11 Sanctions

We shall not provide cover and We shall not be liability to pay any Claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such Claim or provision of such



benefit would expose Us to any sanction, prohibition or restriction under United States resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

8.12 Severability and non-imputation

Where this Policy insures more than one party, any failure on the part of any of the parties to:

- a) comply with the duty of disclosure under the Insurance Contracts Act 1984;
- b) comply with any obligation under this Policy (other than the obligation to pay premium); or
- c) refrain from conduct which is dishonest, fraudulent, criminal or malicious,

shall not prejudice the right of the remaining party or parties to indemnity under this Policy, provided that such remaining part of parties shall:

- a) be entirely innocent of and have no prior knowledge of any such failure; and
- b) as soon as practicable after becoming aware of any such failure, advise Us in writing of all its relevant circumstances.

8.13 Variation of the policy

No variation of this Policy will be effective, unless made by Endorsement which is signed by a properly authorised employee of Agile Underwriting Solutions Pty Ltd.

Section 9 Definitions

9.1 Aggregate limit of indemnity

shall mean the amount shown as the Aggregate Limit of Indemnity in the Schedule.

9.2 Bodily Injury

shall mean physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any person.



9.3 Claim

shall mean:

- a) The receipt by the Insured of any demand for compensation made by a third party against the Insured.
- b) Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the Insured which contains a demand for compensation made by a third party against the Insured.

9.4 Costs & Expenses

shall mean the reasonable legal costs and other expenses incurred by or on behalf of the Insured or by Us in the investigation defence or settlement of a Claim.

9.5 Court attendance costs

shall mean the reasonable costs incurred by the Insured in attending a civil proceeding as a witness in a Claim. These costs shall include, but not be limited to travel expenses, locum expenses, meals, and accommodation.

9.6 Deductible

shall mean the amount shown as the Deductible in the Schedule. The Deductible applies to all amounts payable under this Policy including the indemnity provided under Clause 2.2 (Costs and Expenses).

9.7 Documents

shall mean deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.



9.8 Employee

shall mean any person employed under a contract of service or apprenticeship with the Insured during or prior to commencement of the Period of Insurance.

9.9 Enquiry costs

shall mean the necessary and reasonable legal costs and expenses incurred by the Insured arising out of any notice from an inquiring body requiring a response from the Insured or requiring the Insured's attendance at an investigation, inquiry or hearing before the inquiring body.

9.10 Family member

shall mean:

- a) any spouse, domestic partner, or companion;
- b) any parent, or parent of the spouse, domestic partner or companion;
- c) any sibling or child;

of an Insured.

9.11 Insured

shall mean:

- a) the Named Insured;
- b) any person who is, during the Period of Insurance, a principal, partner or director of the Named Insured but only in respect of work performed while a principal, partner or director of the Named Insured;
- c) any person who is, during the Period of Insurance, and Employee of the Named Insured but only in respect of work performed while an Employee of the Named Insured; or
- d) any former principal, partner, director or Employee of the Named Insured, but only in respect of work performed while a principal, partner, director or Employee of the Named Insured;
- e) any Subsidiary of the Named Insured named in the Proposal;
- f) the estate, heirs, legal representatives or assigns of an Insured in the event of the death or incapacity of that Insured.



9.12 Investigation costs & expenses

shall mean legal costs and other expenses incurred by or on behalf of the Insured or by Us arising out of any legally compellable attendance by an Insured at any official investigation, examination or enquiry in relation to the conduct of the Professional Services where such investigation, examination or enquiry may lead to a recommendation in respect of civil liability or civil proceedings which would be the subject of a Claim covered by this Policy.

9.13 Limit of indemnity

shall mean the limit of Our liability under this Policy as specified in the Schedule.

9.14 Named insured

shall mean the person, persons, partnership, company, corporation or other entity specified as the Named Insured in the Schedule.

9.15 Period of insurance

shall mean the period specified in the Schedule.

9.16 Policy

shall mean:

- a) the Schedule, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein;
- b) any endorsement attaching to and forming part of this Policy either at inception or during the Period of Insurance; and
- c) the Proposal.



9.17 Pollutants

shall mean:

- a) any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, alkalis, chemicals; or
- b) any waste materials including materials recycled, reconditioned or reclaimed; or
- c) any other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emission.

9.18 Premium

shall mean the Premium specified in the Schedule or in any endorsement to the Schedule.

9.19 Professional Services

shall mean the profession, as specified in the Schedule, which is conducted by the Named Insured. If the Named Insured should change its name and there is no other change which materially alters the risk, the Insured's profession will continue to be covered by this Policy.

9.20 Property damage

shall mean damage to or loss or destruction of tangible property or loss of use thereof.

9.21 Proposal

shall mean the Proposal made by the Insured to Us containing particulars and statements which, together with other information provided by the Insured, are the basis of this Policy and are considered as incorporated herein.

9.22 Retroactive Date

shall mean the Retroactive Date shown in the Schedule.



9.23 Schedule

shall mean the Schedule to this Policy.

9.24 Senior Counsel

shall mean a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior court in the Commonwealth of Australia or the Dominion of New Zealand.

9.25 Subsidiary

shall mean:

- a) any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the Named Insured specified in the Schedule; or
- b) any entity over which a Named Insured is in a position to exercise effective direction or control.

9.25 Statutory Liability

Shall mean Pecuniary penalties awarded against You in the jurisdictions, and pursuant to the laws, of Australia and New Zealand for a strict liability offence in connection with:

- a) A breach of environmental laws;
- b) The discharge, release, dispersal or escape of Pollutants
- c) A breach of occupational health and safety laws or regulations

And with respect to (a) above the property damage exclusion contained in Exclusion 6.3 shall not apply;

And with respect to (b) above Exclusion 6.12 shall not apply;

And with respect to (c) above the bodily injury exclusion contained in Exclusion 6.3 shall not apply.



9.26 Sub-Limit of Indemnity

Shall mean a sub limit of indemnity which is set out in the Schedule and/or in this Policy wording and which is applicable to any one claim or Loss under a specified Insuring Clause. Any Sub Limit of Indemnity is included in and does not apply in addition to the Limit of Indemnity and is also subject to the Aggregate Limit of Indemnity.

9.27 Terrorism

shall mean an act, including by not limited to the use of force or violence and / or the threat thereof, of any person or group(s) of persons, or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons including the intention to influence any government and / or put the public, or any section of the public, in fear.

9.28 We or Us or Our

shall mean certain underwriters at Lloyd's through their cover holder Agile Underwriting Solutions Pty Ltd.

9.29 You/Your

Shall mean the Insured

9.30 Agile Underwriting Services Pty Ltd

shall mean Agile Underwriting Services Pty Ltd, ABN 48 607 908 243, AFSL 483374



Public Liability

Policy Wording

Issued by Agile Underwriting Services Pty Ltd
ABN 48 607 908 243 — AFSL 483374 Pol 05v2.2019



AGILE.

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Schedule

Item 1	Premium	\$(insert)
Item 2	Policy number	[insert]
Item 3	Insured	[insert]
Item 4	Business	[insert]
Item 5	Limit of liability	\$(insert)
Item 6	Pollution prevention sub limit	\$1,000,000
Item 7	Deductible	\$(insert)
Item 8	Endorsed employers	[insert]
Item 9	Related employee deductible	\$(insert)
Item 10	Injury to contractors deductible	\$(insert)
Item 11	Period of Insurance	[insert time/date] to [insert time/date]
Item 12	Territorial limits	[insert]
Item 13	DiC Cover included	[yes or no]
Item 14	Endorsed contracts	[describe the endorsed contracts]
Item 15	Underlying Insurance	[describe the policy(ies) by reference to specific policy number's] and their replacement or renewal equivalents.



Policy Wording and PDS

1. Definitions

When used in this policy (including its endorsements) the words below have the following meanings.

- 1.1 **act of terrorism** means any act, or preparation to perform an act, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- (a) involves violence against one or more persons;
- (b) involves damage to property;
- (c) endangers life other than that of the person committing the action;
- (d) creates a risk to health or safety of the public or a section of the public; or
- (e) is designed to interfere with or to disrupt an electronic system.

- 1.2 **advertising liability** means:

- (a) infringement of copyright of, or passing off of a title or slogan;
- (b) unfair competition, piracy or idea misappropriation contrary to an implied contract;
- (c) invasion of privacy; or
- (d) defamation, libel, slander;

committed or alleged to have been committed during the **period of insurance** in any advertisement, publicity article, broadcast or telecast arising out of the **insured's** advertising activities or any advertising activities conducted on the **insured's** behalf, in the course of advertising the **products**, or goods or services related to those **products**.

- 1.3 **aircraft** means any vessel, craft or thing made, or intended, to fly but does not include a **drone**.

- 1.4 **acquired business** means any company or companies acquired or established or created by the entity named at Item 3 in the **schedule**, provided that:

- (a) its business is consistent with the **business**;
- (b) its turnover does not exceed 10% of the turnover that was used to calculate the **premium**;
and
- (c) it is domiciled in Australia or New Zealand.

- 1.5 **business** means all activities and operations specified at Item 4 in the **schedule** and includes:

- (a) at the insured's discretion, private work carried out by an **employee** for a director or partner or **employee** of the insured's;
- (b) attendance at or participation in trade fairs, shows and exhibitions by any **employee** or director in connection with their employment;
- (c) the ownership, maintenance, repair and occupation of premises or facilities belonging to the **insured**;



- (d) the provision and management of catering, social, sports, welfare, childcare, theatrical and related facilities including galas for the benefit of **employees**;
 - (e) the provision of sponsorship; and
 - (f) the provision of fire, first aid, ambulance and security services.
- 1.6 **compensation** means monies paid or agreed to be paid by judgment or settlement for:
- (a) **personal injury**;
 - (b) **property damage**; or
 - (c) **advertising liability**.
- 1.7 **computer virus** means any corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of any nature whatsoever.
- 1.8 **cyber event** means any **occurrence** in any way connected with:
- (a) an **IT Network**; or
 - (b) **computer virus**.
- 1.9 **deductible** means the amount stated at Item 7 in the **schedule**.
- 1.10 drone means a remotely piloted aircraft (**RPA**) but only to the extent that:
- (a) the **RPA** is being used in strict accordance with all relevant legislation, rules or regulations put in place, administered or enforced by the Australian Government Civil Aviation Safety Authority (whether or not the legislation, rules or regulations have territorial application); and
 - (b) any injury, loss, damage, cost or expense under consideration has no connection with invasion or breach of privacy through the use or operation of the **RPA**.
- 1.11 **employee** means:
- (a) any person hired by the **insured** from another employer subject to a written agreement under which the person is deemed to be employed by the **insured**;
 - (b) any person under a contract of service or apprenticeship with the **insured**;
 - (c) any self-employed person working under contract with the **insured** and under its direction;
 - (d) any student or person undertaking work for the **insured** under a work experience or similar scheme; or
 - (e) any voluntary helper;
- whilst engaged in connection with the **business**.
- 1.12 **employment practices** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of



employment by the **insured** or a **related employer**.

- 1.13 **endorsed contracts** means the contract(s) mentioned at Item 14 in the **schedule**.
- 1.14 **endorsed employer** means the entities referred to at Item 8 in the **schedule**.
- 1.15 **hovercraft** means any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.
- 1.16 **limit of liability** means the amounts stated at Item 6 in the **schedule**.
- 1.17 **injury to contractors claim** means any claim in connection with **personal injury** where the **insured's** legal liability is in any way related to any person undertaking work for reward in connection with **business** (not including a **related employee**).
- 1.18 **injury to contractors deductible** means the amount stated at Item 10 of the **schedule**.
- 1.19 inquiry means any inquest, coronial inquiry or criminal proceedings:
 - (a) regarding **personal injury** or **property damage**; and
 - (b) not connected with the laws of **North America**.
- 1.20 **insured** means the entity named at Item 3 in the **schedule** and includes:
 - (a) any of the **insured's** subsidiary companies (including subsidiaries thereof) and any other entity under the **insured's** control, and over which the **insured** exercises active management;
 - (b) any of the **insured's** directors, officers, **employees** or partners but only whilst acting within the scope of their duties in such capacity;
 - (c) any **acquired business** but only for 90 days following the takeover or formation of the company or companies at which time the **acquired business** will no longer be included as an **insured**;
 - (d) any social and/or sporting clubs, first aid, fire and ambulance services formed with the **insured's** consent and includes any office bearer or member thereof in their respective capabilities as such; and
 - (e) any of the **insured's** directors or senior executives in respect of private work undertaken by the **insured's employees** for such director or senior executive.
- 1.21 **internet operations** means
 - (a) transfer of computer data or programmes by use of electronic mail systems by the insured or the insured's employees, including for the purpose of this definition only, part-time and temporary staff, contractors and others within the insured's organisation whether or not such data or programmes contain any malicious or damaging code, including but not limited to computer virus, worm, logic bomb, or trojan horse;
 - (b) access through the insured's network to the world wide web or a public internet site by the insured or the insured's employees, including for the purposes of this definition only, part-time and temporary staff, contractors and others within the insured's organisation;
 - (c) access to the insured's intranet (meaning internal company information and computing resources) which is made available through the world wide web for the insured's customers or others outside the insured's organisation; and
 - (d) the operation and maintenance of the insured's web site.



- 1.22 **IT network** means any computer hardware (or components thereof), software (or components thereof), communication system networks, **internet operations**, websites wheresoever hosted, online or offline media libraries, data, or any other peripheral devices.
- 1.23 **motor vehicle** means any type of machine and attachments thereto (including a trailer) which:
- (a) travels on wheels or on self-laid tracks; and
 - (b) is propelled by other than manual or animal power.
- 1.24 **North America** means:
- (a) the United States of America and Canada; and
 - (b) any state or territory incorporated in, or administered by, the United States of America or Canada.
- 1.25 **occurrence** means an event, including continuous or repeated exposure to conditions, that results in **personal injury**, **property damage** or **advertising liability** neither expected nor intended from the **insured's** standpoint, during the **period of insurance**.
- 1.26 **period of insurance** means the period stated at Item 11 in the **schedule**.
- 1.27 **personal injury** means:
- (a) bodily injury, death, disease, illness, disability, nervous shock, mental anguish or mental injury or loss of consortium;
 - (b) false arrest, false detention, wrongful imprisonment, malicious prosecution or humiliation;
 - (c) wrongful entry or wrongful eviction or other invasion of privacy;
 - (d) defamation, libel or slander; and
 - (e) assault and/or battery committed by or at the direction of the **insured** whilst engaged in the **business** and for the purpose of preventing or eliminating danger to persons or property.
- 1.28 **pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acid, alkalis, chemicals or waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.
- 1.29 **pollution prevention sub limit** means the amount shown at Item 6 in the **schedule**.
- 1.30 **premium** means the amount shown at Item 1 in the **schedule**.
- 1.31 **products** means any goods or products manufactured, grown, extracted, produced, processed, treated, altered, handled, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by the insured (including packaging, containers or any associated instructions) in connection with the **business** in or from the **territorial limits**, and after it has ceased to be; the **insured's** property or in the **insured's** custody or legal control.
- 1.32 **property damage** means:
- (a) physical damage to, or loss of or destruction of tangible property, including the subsequent loss of use of that property;
 - (b) loss of use and/or loss of value of tangible property that has not been physically damaged, physically lost or physically destroyed provided such loss of use and/or loss of value is caused by physical damage to, physical loss of or physical destruction of other tangible property; and includes denial of access to property, premises, services or facilities, interference with or



stoppage of vehicular or pedestrian traffic; and

- (c) trespass, nuisance or interference with right of way or right to light air or water, easement or quasi-easement.

1.33 **related employee** means

- (a) any person under a contract of service or apprenticeship with a **related employer**;
- (b) any self-employed person working under contract with a **related employer** and under its, or the **insured's**, direction;
- (c) any person hired by a **related employer** from another employer subject to a written agreement under which the person is deemed to be employed by a **related employer**;
- (d) any student or person undertaking work for the a **related employer** under a work experience or similar scheme;
- (e) any voluntary helper to a **related employer**;

whilst engaged in connection with the **business**.

1.34 **related employee deductible** means the amount referred to at Item 9 in the schedule.

1.35 **related employer** means any entity which operates for the dominant purpose of supplying labour to an **insured** but does not include any **endorsed employer**.

1.36 **schedule** means the Schedule attaching to and forming part of this policy, including any Schedule substituted for the original Schedule.

1.37 **Agile** means **Agile** Underwriting Solutions Pty Ltd (ABN 48 607 908 243, AFS Licence No. 483374) as agent for Certain Underwriters at Lloyd's.

1.38 **territorial limits** means the geographical area stated at Item 12 in the **schedule**.

1.39 **underlying insurance** means:

- (a) the policy(s) referred to at Item 15 in the **schedule**; and
- (b) any policy of environmental impairment insurance.

1.40 **watercraft** means any vessel, craft or thing made, or intended to float on or in, or travel on or through or under water.



2. General information

In this section, references to **You** and **Your** are references to the **insured**.

2.1 About Agile

Agile Underwriting Services Pty Ltd arranges policies for and on behalf of Certain Underwriters at Lloyd's (**Underwriters**). **Agile** acts as the agent for the **Underwriters**.

Agile's contact details are:

Head Office: Level 5, 63 York Street, SYDNEY, NSW, 2000

Postal address: Level 5, 63 York Street, SYDNEY, NSW, 2000

Telephone: 1300 705 031

Website: www.agileunderwriting.com

2.2 About Lloyd's

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

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

2.3 About this policy

In consideration of the **insured**, having paid or agreed to pay the **premium**, on the basis of all information provided to **Agile**, **Agile** agree with **You**, the **insured**, to provide insurance on the terms set out in this policy.

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

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

2.4 Australian Currency

All payments by **You** to **Agile** and **Agile** to **You** or someone else under **Your** policy must be in Australian currency. If a loss under this policy is stated in a currency other than Australian dollars, payment under this policy shall be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars as reported in the Australian Financial Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.

2.5 Australian law

The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with Australian law. In the event of any dispute arising under this policy including, but not limited to, its construction and/or validity and/or performance and/or interpretation, **You** and **Agile**



will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

Any summons notice or process to be served upon **Agile** or **Underwriters** may be served upon:

Lloyd's Underwriters' General Representative in Australia

Suite 2, Level 9 1 O'Connell Street

Sydney NSW 2000 Australia

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

2.6 Cooling off period

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

2.7 Cancellation

- (a) **You** may cancel this policy at any time by giving notice in writing to **Agile**. **You** can cancel **Your** Policy at any time by notifying **Agile** at Level 9, 1 O'Connell St, Sydney NSW 2000.
- (b) **Agile** may cancel this policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984 (Cth), such cancellation to take effect within 30 days from the time of notification received by **You**.
- (c) Upon cancellation by the **insured** a refund of premium will be allowed pro rata of 80% of the premium for the unexpired **period of insurance**.
- (d) Upon cancellation by **Agile**, a refund of premium will be allowed pro rata for the unexpired **period of insurance**.

2.8 This Wording and Product Disclosure Statement (**PDS**)

This document is a **PDS** and is also **Agile's** Policy Wording.

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

It is important that **You** carefully read and understand this document before making a decision. Other documents may form part of **Agile's** Policy Wording and PDS and if they do, **Agile** will tell **You** in the relevant document. Please keep this document and any other documents that **Agile** tell **You** form part of **Your** policy in a safe place in case **You** need to refer to them in the future.

If **You** notice an error, or if **You** have any questions, please contact **Agile** as set out at clause 2.11 below. If **You** find **You** need to change the cover for whatever reason, get in contact with **Agile**.

2.9 General Insurance Code of Practice (the **Code**).

Agile are a signatory to the **Code**. The **Code** sets out minimum standards that **Agile** will uphold in respect of the products and services that **Agile** provide. Further information about the **Code** is available at www.codeofpractice.com.au and on request.



2.10 **Your** duty of disclosure

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

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

2.11 Who can I contact if I have questions?

Agile have simplified our contact points so **You** can easily get in touch with us.

FOR ENQUIRIES RELATING TO	PLEASE CONTACT
General enquiries, including policy questions and coverage, and policy amendments. Any questions, just call or email.	1300 705 031
Cancelling Your policy - You can cancel Your policy at any time.	1300 705 031
Making a claim online - You can claim directly through our online portal.	http://www.agileunderwriting.com/
Making a claim Get in touch straight away and we can help.	1300 705 031

2.12 Complaints and dispute resolution

Agile takes the concerns of its customers very seriously. **Agile** has detailed complaint handling and dispute resolution procedures that **You** may access, at no cost to **You**. To obtain a copy of **Agile's** procedures, please contact **Agile** on 02 8062 4200. To assist **Agile** with **Your** enquiries, please provide Us with **Your** claim or policy number (if applicable) and as much information **You** can about the reason for **Your** complaint or dispute. **Agile's** complaints and dispute procedures are as follows:

(a) Stage 1 - Complaint Handling Procedure

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

Postal address: Level 9, 1 O'Connell St, SYDNEY NSW 2000

Telephone: 02 8062 4200

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

(b) Stage 2 – Dispute Resolution Procedure

If **You** are dissatisfied with **Agile's** response to **Your** complaint, **You** may ask that **Your** complaint be referred to:



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

Telephone: (+61 2) 8298 0783

Facsimile: (+61 2) 8298 0788

Email: idraustralia@lloyds.com

It will be handled by either Lloyd's Australia or the Lloyd's Complaint team in London.

Where **Your** complaint is eligible for referral to the Australian Financial Complaints Authority (**AFCA**), **Your** complaint will be reviewed by a person at Lloyd's Australia with appropriate authority to deal with **Your** dispute. If **Your** complaint or dispute is not resolved to **Your** satisfaction or a final response has not been provided within 45 days, **You** may refer the matter to the **AFCA** for review. **AFCA** provides a free and independent dispute resolution service for consumers who have general insurance disputes falling within its terms of reference and its contact details are:

Postal address: Australian Financial Complaints Authority
GPO Box 3, Melbourne VIC 3001

Telephone: 1300 780 808

2.13 Privacy Statement

At **Agile**, we are committed to protecting **Your** privacy in accordance with the Privacy Act 1988 (Cth). **You** can access the **Agile** privacy policy at www.Agile.com.



3. Insuring clauses

3.1 General liability

Subject to the terms and conditions of this policy, **Agile** will indemnify the **insured** for all amounts which the **insured** becomes legally liable to pay as **compensation**:

- (a) arising out of **personal injury**, **property damage**, or **advertising liability** happening during the **period of insurance**; and
- (b) as a result of an **occurrence** within the **territorial limits** in connection with the **business** or **products**.

3.2 Additional payments

Notwithstanding Condition 5.11, but otherwise subject to the terms and conditions of this policy, **Agile** will pay:

- (a) legal costs and expenses incurred by **Agile**, or the **insured** with **Agile**' written consent, in the settlement or defence of any claim for **compensation** in respect of which the **insured** is entitled to indemnity under this policy, or if sustained, would be so entitled.
- (b) the reasonable expenses incurred by the **insured** for first aid to others at the time of **personal injury** caused by an **occurrence** (other than medical expenses prohibited by law).
- (c) compensation to the **insured** if, at **Agile**'s request, an **insured** attends court as a witness in connection with an **occurrence** in respect of which the **insured** is entitled to indemnity under this policy, at the following rates per day for each day on which attendance is required:
 - (i) any director, officer or partner of the **insured** \$300 per day;
 - (ii) any **related employee**, or employee of the **insured** \$200 per day.

However, in respect of any **occurrence** in **North America**, or **occurrences** in respect of which a claim for **compensation** is brought in a court in **North America**, the **Limits of Liability** specified in the **schedule** shall be inclusive of all additional payments under this clause.

3.3 Representation at inquiry

Upon request from an **insured**, **Agile** will provide the **insured** with legal representation at any **inquiry** where the **inquiry** arises from an **occurrence** likely to give rise to a liability covered clause 3.1 of this policy.

3.4 Temporary protection

In addition to the cover afforded by clause 3.1, but otherwise subject to the terms and conditions of this policy, **Agile** will pay costs and expenses necessarily and reasonably incurred to avoid a third party suffering **property damage** consequent upon an **occurrence** provided that **Agile**'s liability will be limited to the **compensation** for which the **insured** would have been legally liable had the third party suffered **property damage**. This extension of cover does not apply to any **occurrence** in connection with **pollutants**.

3.5 Pollution prevention extension

In addition to the cover afforded by clause 3.1, but otherwise subject to the terms and conditions of this policy, **Agile** will pay costs and expenses necessarily and reasonably incurred by the **insured** where those costs and expenses are incurred solely to avoid a third party sustaining **property damage** where such **property damage**:



- (a) is likely to arise from to a discharge, seepage, migration, dispersal, release or escape of **pollutants** into or upon any property, land the atmosphere or any watercourse or body of water (including ground water);
- (b) is as a result of a sudden identifiable, unintended and unexpected an event (not including continuous or repeated exposure to conditions) which takes place in its entirety at a specific time and place during the **period of insurance**; and
- (c) is neither expected nor intended from the **insured's** standpoint.

However, this extension of cover does not apply to the costs and expenses in connection with removing, nullifying or cleaning up **pollutants** on any property owned, occupied, leased and/or licensed by the **insured**.

3.6 Overseas personal liability

Where the **insured** is not entitled to indemnity under any other policy of insurance, self-insurance or deductible programme effected by or on behalf of the **insured**, subject to the terms and conditions of this policy, **Agile** will indemnify **employees** and directors (and their spouses whilst accompanying the **employee** or director) for legal liability to pay **compensation** as a result of an **occurrence** happening:

- (a) during the **period of insurance**
- (b) in connection with the **business**; and
- (c) whilst the **employee** or director is travelling outside his or her country of domicile in connection with the **business**.



4. Exclusions

Agile will not be liable under this policy in respect of:

4.1 Advertising liability

advertising liability in connection with or contributed to by:

- (a) failure of performance of contract, but this shall not relate to claims resulting from unauthorised appropriation of ideas based upon alleged breach of an implied contract;
- (b) incorrect description of any article or commodity; or
- (c) mistake in advertised price.

4.2 Aircraft products

any liability whatsoever in connection with or contributed to by any of the **insured's products** which, which the **insured** knew, or ought to have known, are intended for incorporation into any **aircraft** or **drone**.

4.3 Aircraft, watercraft, hovercraft

any liability whatsoever in connection with or contributed to by the ownership, maintenance, possession, use or operation, loading or unloading, of any **aircraft, watercraft** or **hovercraft** (other than **watercraft** not exceeding 15 metres in length for use on inland or coastal waters).

4.4 Contractual liability

any liability or obligation assumed by the **insured** under any agreement or contract except to the extent that the liability or obligation arises from **endorsed contracts** or a provision in a contract (whether written or oral):

- (a) for lease of real or personal property (save for a provision which obliges the **insured** to effect insurance or provide indemnity in respect of the subject matter of the lease);
- (b) with any public supplier for the supply of water, gas, electricity, fuel, sewerage or waste removal services, telephone and communications services (save for contracts with such suppliers for the performance of work by the **insured**);
- (c) with any railway authority, railway company or other independent carrier for the loading, unloading and/or transport of the **insured's products**;
- (d) where such liability or obligation would otherwise have been implied by law.

4.5 Custody and control

property damage to property owned by, hired to or in the custody or control of the **insured** or any **employee** or any party acting on behalf of the **insured**, other than:

- (a) guests', visitors', directors', officers', **employees'** or partners' personal effects;
- (b) **motor vehicles** in a car park, unless the car park is owned or operated by the **insured** for reward;
- (c) premises at which the **insured** is undertaking work in connection with the **business**;
- (d) any building (including its fixtures and fittings) leased, hired or rented to the **insured** provided **Agile** shall not be liable in respect of liability assumed by the **insured** under a tenancy or other agreement which would not have been implied by law in the absence of such agreement; or



- (e) other property in the **insured's** charge or control (except while undergoing any process or being worked upon) for which the **insured** has not assumed any responsibility to obtain insurance, subject to a limit of \$500,000 for any one **occurrence** and in the aggregate during any one **period of insurance**.

4.6 Cyber risks

any liability whatsoever in connection with or contributed to by a **cyber event**.

4.7 Deliberate acts

any liability whatsoever in connection with or contributed to by any deliberate act or omission of the **insured** or any **employee** and which could reasonably have been expected, having regard to the nature and circumstances of such an act or omission.

4.8 Injury to employees

any liability to indemnify or pay **compensation** in connection with:

- (a) **personal injury** where any **insured, related employer, related employee** or **employee** is indemnified or entitled to be indemnified under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not the **insured, related employer, related employee** or **employee** is a party to such contract of insurance;
- (b) any scheme created by legislation to provide compensation to persons who sustain **personal injury** arising out of or in the course of their **employment**; or
- (c) any claim for **employment practices**.

However, if the **insured**:

- (d) is required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or any common law liability (whether limited or not) for **personal injury**; or
- (e) is not required to so insure or otherwise fund such liability by reason only that the personal injury is to a person who is not a 'worker' or 'employee' within the meaning of the relevant workers' compensation law or the **personal injury** is not an injury which is subject to such law,

then this policy will cover liability for **personal injury** to the extent that the **insured's** liability would not have been covered under any such fund, scheme, policy of insurance or self-insurance arrangement had the **insured** complied with its obligations pursuant to such law.

4.9 Motor liability

any liability whatsoever in connection with or contributed to by the use of a **motor vehicle** owned by, or in the physical or legal control of the **insured**:

- (a) which is required by law to be registered; or
- (b) in respect of which insurance is required by virtue of any legislation.

However, this clause does not apply to:

- (c) a **motor vehicle** (other than a **motor vehicle** owned or used by or on behalf of the **insured**) whilst that **motor vehicle** is in a car park owned or operated by the **insured** for no income or reward as a car park operator; or



- (d) **personal injury or property damage** occurring during the loading or unloading of a **motor vehicle** caused by or arising from the collection or delivery of any goods from or to the **motor vehicle** where such **personal injury or property damage** occurs beyond the limits of any carriageway or thoroughfare, and where applicable legislation does not require insurance against such liability.

4.10 North America

any liability in **North America** in connection with or contributed to by the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to existence of, or presence of any:

- (a) fungi or bacteria; or
- (b) substance, vapour or gas produced by or arising out of any fungi or bacteria.

4.11 Other insurance

any liability whatsoever which forms the subject of:

- (a) insurance procured to cover specific work(s), contract(s) or agreement(s); or
- (b) **underlying insurance**.

However, where:

- (c) the scope of cover, definitions, terms, conditions or limits of liability or deductibles under such insurance referred to in (a) or (b) above (the **Other Policy**) not indemnify the **insured** in whole or in part in respect of such **insured's** legal liability for **compensation** and additional payments as outlined in clauses 3.2 to 3.5 inclusive (the **Gap In Cover**); and
- (d) Item 13 of the schedule records that the insured has purchased DiC Cover.

this policy shall provide indemnity for the **Gap In Cover** provided that, but for the **Other Policy**, indemnity would have been afforded for the **Gap In Cover** under this policy.

4.12 Pollution

any liability whatsoever in connection with or contributed to by:

- (a) **personal injury or property damage** in connection with or contributed to by the discharge, seepage, migration, dispersal, release or escape of **pollutants** into or upon any property, land the atmosphere or any watercourse or body of water (including ground water);
- (b) **personal injury or property damage** in connection with or contributed to by the discharge, seepage, migration, dispersal, release or escape of **pollutants** caused by any **product** that has been discarded, dumped, abandoned or thrown away by others;
- (c) the cost of removing, nullifying or cleaning up **pollutants**; or
- (d) the cost of preventing the escape of **pollutants**.

Clauses 4.12(a) and 4.12(c) above shall not apply where the claim:

- (e) has no connection with **North America**; and
- (f) arises from a sudden identifiable, unintended and unexpected event from the **insured's** standpoint which takes place in its entirety at a specific time and place during the **period of insurance**.



4.13 Professional liability

any liability whatsoever in connection with or contributed to by the rendering or failure to render professional advice or service by the **insured**, or any error or omission in connection therewith.

However, this clause shall not apply to:

- (a) the **insured's** liability in respect of **personal injury** or **property damage** resulting from the provision of professional advice or services which is not given for any fee or reward; or
- (b) the rendering or failure to render professional advice by any **employee** to provide first aid or other medical services at the **insured's** premises. Medical services excludes advice or services provided by a qualified medical practitioner, nurse or first aid attendant.

4.14 Punitive or liquidated damages

any amount which constitutes:

- (a) fines or penalties; or
- (b) liquidated, punitive or exemplary damages or multiplication of awards.

4.15 Radioactive contamination

any liability whatsoever in connection with or contributed to by:

- (a) ionising radiation 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 thereof.

4.16 Repair and replacement

any liability whatsoever in connection with or contributed to by:

- (a) rectifying defective work carried out by or on behalf of the **insured**;
- (b) the recall, removal, repair, recovery, alteration or replacement of the **insured's products** arising from a defect in or an error in connection with the sale or supply of such **products** or the guaranteed performance of the insured's products or the unsuitability thereof for the use for which they are supplied; or
- (c) the failure of the **insured's products** to meet the level of performance, quality, fitness or durability expressly or implied warranted or represented by an **insured**.

4.17 Specific products and substances

any liability whatsoever in connection with or contributed to by:

- (a) AIDS, HIV or HIV related illness;
- (b) asbestos or asbestos products;
- (c) human biological materials including extracts thereof (e.g. blood, plasma, plasmaproteins, immunoglobulins, cells, tissue, organs, urine, excretions, etc.);
- (d) polychlorinated biphenyls including polychlorinated biphenyl generated dibenzofurans and dioxins;
- (e) Human implants;



- (f) the manufacture or supply of all pharmaceutical active ingredients including medical implants;
- (g) e-cigarettes and related products; or
- (h) tobacco and tobacco related products.

4.18 Terrorism

any injury, loss, damage, cost or expense whatsoever in connection with any **act of terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This clause also excludes injury, loss, damage, cost or expense of whatsoever nature in connection with any action taken in controlling, preventing, suppressing or in any way relating to any **act of terrorism**.

If **Agile** alleges that, by reason of this clause, any injury, loss, damage, cost or expense is not covered by this policy the burden of proving the contrary shall be upon the **insured**.

4.19 Waived or limited rights

any injury, loss, damage, cost or expense whatsoever where the **insured** has waived, limited or reduced its rights to:

- (a) recovery of, or contribution to the injury, loss, damage, cost or expense from any other party; or
- (b) to raise a defence, set off or counter claim in answer to its legally liability for any injury, loss, damage, cost or expense whatsoever .

However, this clause does not apply to **endorsed contracts**.

4.20 War

any liability whatsoever in connection with or contributed to by or arising from any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.



5. Conditions

5.1 Assignment

No assignment of interest under this policy shall bind **Agile** until our consent is endorsed herein.

5.2 Change in risk

Every change materially affecting the facts or circumstances existing at the commencement of or during the course of this policy, or at any subsequent renewal date, shall be notified to **Agile** as soon as such change comes to the **insured's** notice.

Agile reserves the right to accept or deny coverage at the time of such notification and to establish a separate rate and premium for any such coverage.

If any entity becomes an **acquired business** this clause will apply notwithstanding the automatic extension provided in clause 1.20(c).

5.3 Claims assistance and cooperation

The **insured** must assist and cooperate with **Agile** fully and promptly in relation to a claim, including:

- (a) allowing **Agile** to negotiate, defend or settle the claim or **inquiry**:
 - (i) in the **insured's** name and on the **insured's** behalf; or
 - (ii) in the name of and on behalf of any other party covered by the **insured's** policy;
- (b) as far as possible, preserve any product, appliance, plant or other items which might prove necessary or useful as evidence until **Agile** have had an opportunity of inspection.
- (c) furnish to **Agile** details of any other insurance covering or which may cover the same loss;
- (d) sending to us any claim, writ, summons, or full details of other relevant legal or other proceedings such as an impending prosecution or inquest the **insured** receives or becomes aware of; and
- (e) supplying **Agile** with all information and assistance we may reasonably require.

5.4 Claims control

- (a) The **insured** shall not, without **Agile's** written consent, admit or repudiate liability, negotiate or make any offer, promise or payment in connection with any claim.
- (b) **Agile** shall be entitled, but not obliged, to take over and conduct in the **insured's** name, the defence or settlement of any claim or **inquiry** or to prosecute in the name of the **insured** at its own expense and for its own benefit, any claim against any persons, and shall have full discretion in the conduct of any proceedings and in the settlement of any claim.

5.5 Cross liability

Subject to clause 5.10, when an **insured** consists of more than one party, the **insured** shall be considered as a separate **insured** as though a separate policy had been issued to each of the said parties but nothing herein contained shall operate to increase the **limit of liability** or the **pollution sub limit**.

5.6 Deductible

The **deductible** is the first amount payable by the **insured** for each **occurrence**. **Agile** will never be liable to indemnify the **insured** for the **deductible**. However:



- (a) in relation to any ***injury to contractors claim*** the ***injury to contractors*** applies rather than the ***deductible***.
- (b) in relation to any ***personal injury*** to an ***employee*** of a ***endorsed employer*** the ***related employee deductible*** applies rather than the ***injury to contractors deductible*** or the ***deductible***.

5.7 Discharge of any liability

Agile may at any time pay the ***limit of liability*** or ***pollution sub limit*** (after deduction of sum or sums already paid), or any lesser sums for which any claim or claims can be settled, and shall then be under no further liability in respect thereof except for the payment of amounts referred to in clause 3.2 incurred prior to such payment.

In the event of a claim or series of claims arising from an ***occurrence*** resulting in liability of the ***insured*** to pay a sum in excess of the ***limit of liability*** or ***pollution sub limit***, **Agile's** liability under clause 3.2 shall not exceed an amount being in the same proportion as **Agile's** payment bears to the total payment made by or on behalf of or to be made by the ***insured*** in satisfaction of the claim or claims.

5.8 Fraud

If any claim upon this policy be in any respect fraudulent, or if any fraudulent means or devices be used by the ***insured***, or if any damage be occasioned by a wilful act of the ***insured*** or with their connivance, all benefit under this policy shall be forfeited and the policy void.

5.9 Inspection and audit

Agile shall be permitted to inspect the ***insured's*** property and operations at any reasonable time. Neither **Agile** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of an ***insured*** or others to determine or warrant that such property or operations are safe or healthy, or are in compliance with any law, rule or regulation.

Agile may examine and audit the ***insured's*** books and records at any time during the ***period of insurance*** and within three years after the final termination of the policy, as far as they relate to the subject matter of this insurance.

5.10 Joint responsibility

Where the ***insured*** is comprised of more than one legal entity, information supplied to **Agile** shall be deemed to have been furnished by and on behalf of all such entities, and any information supplied to **Agile** or any omission or non-disclosure in relation to any renewal or extension hereof, shall likewise be deemed to have been furnished, omitted or withheld on behalf of all such entities.

Any and all ***insured's*** and any persons deriving benefit under this policy are jointly liable and responsible for any breach of any terms of this policy and/or misrepresentation and/or non-disclosure and/or fraud.

5.11 Limit of liability

Agile's liability for any one ***occurrence***, and in the aggregate where applicable, shall not exceed the ***limit of liability***.

For any claims under clause 3.5, the ***pollution prevention sub limit*** rather than the ***limit of liability*** will apply for any one claim and in the aggregate during any one ***period of insurance***.



5.12 Notice and proof of claim

Upon the discovery of any **personal injury**, **property damage**, **advertising liability** or circumstance giving rise or which may give rise to a claim under this policy (whether or not the **insured** believes the claim amount might fall below the applicable deductible) the **insured** shall:

- (a) advise of the cause and the amount of loss and any other proof or information with respect to the claim that may be reasonably required;
- (b) take reasonable steps to prevent further loss; and
- (c) at all reasonable times permit **Agile** to inquire into, investigate and examine the circumstances of any loss.

5.13 Occurrence series clause

- (a) An **occurrence** or series of **occurrences** which are attributable directly or indirectly or allegedly attributable directly or indirectly to the same event, condition, defect or hazard, or failure to warn shall be added together and treated as one **occurrence**, irrespective of the period of time after the commencement of the **period of insurance** or the number of persons or entities that sustain **property damage** and/or **personal injury**.
- (b) All such **occurrences** shall be deemed to have occurred on the day of the first of such **occurrences**.
- (c) The **limit of liability** and **pollution sub limit** are non-cumulative.
- (d) **Agile** shall not indemnify the **insured** for any liability of whatsoever nature in connection with **personal injury** or **property damage** where such **personal injury** or **property damage** is in any way connected with an **occurrence** or events or circumstances, whether of a continuous, intermittent or repeated exposure, which had occurred or commenced or existed prior to the commencement of the **period of insurance**.

5.14 Premium

Unless otherwise stated, the premium is adjustable. The **insured** shall, within 60 days after the expiry of each **period of insurance**, provide such information as **Agile** may require to adjust the premium.

Any difference in premium shall be paid by or allowed to the **insured**, provided that the adjusted premium will not be less than any minimum premium specified in the **schedule**. The **insured** shall at all times allow **Agile** to inspect such records.

5.15 Reasonable precautions

It is a condition precedent to **Agile's** liability under this policy that the **insured** shall, at its own expense:

- (a) take, and cause to be taken, reasonable precautions to prevent **personal injury**, **property damage** and/or **advertising liability**;
- (b) comply with all statutory or local authority law, obligations and requirements or equivalent;
- (c) prevent the manufacture, sale or supply of defective **products**; and
- (d) withdraw, inspect, repair, replace, trace, recall or modify any of the **products** containing any defect or deficiency of which the **insured** has knowledge or has reason to suspect.

5.16 Sanctions

Agile shall not make any payments nor provide any benefit to any **insured** or any other party to the



extent that such payment, benefit and/or any **business** or activity of the **insured** would violate any applicable trade or economic sanctions, law or regulation.

5.17 Subrogation

Agile waive all rights of subrogation under this policy against any **insured** except if such insured is protected from such loss by any other contract or policy of indemnity or insurance. In that event, **Agile's** right of subrogation is not waived to the extent of the indemnity or insurance under such other contract or policy.

5.18 Severability

In the event any clause of this policy, or part of any clause, is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

CyberCare

Combined Policy Wording and Product Disclosure Statement (PDS)

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



Powered by  **AGILE.**

Coverholder at **LLOYD'S**

CYBERCARE POLICY WORDING & PRODUCT DISCLOSURE STATEMENT (PDS)

Prepared on 23rd March 2020

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

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PART A: POLICY DISCLOSURE STATEMENT

1. WHO CAN I CONTACT IF I HAVE QUESTIONS?

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

FOR ENQUIRIES RELATING TO	PLEASE CONTACT
General enquiries, including policy questions and coverage, and policy amendments.	1300 705 031 help@agileunderwriting.com
Cancelling your policy You can cancel your policy at any time.	1300 705 031 cancel@agileunderwriting.com
Making a claim online You can claim directly through our online portal.	cybercare.poweredbyagile.com.au/how_to_claim
Making a claim Get in touch straight away and we can help.	1300 705 031 claims@agileunderwriting.com
Making a complaint If you're not happy...we want to know.	1300 705 031 complaints@agileunderwriting.com

2. ABOUT AGILE UNDERWRITING SERVICES

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

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

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

3. ABOUT LLOYD'S

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

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

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

4. ABOUT THIS POLICY

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

Your schedule of insurance

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

What makes up Your premium

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

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

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

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

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

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

Claims Made Basis

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

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

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

Check Your documents

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

General Insurance Code of Practice

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

6. YOUR DUTY OF DISCLOSURE

What You must tell Us

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

If You do not tell Us

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

7. WHO CAN PURCHASE THIS POLICY

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

8. GENERAL CONDITIONS

Commencement and Period of Your Policy

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

Renewal of Your Policy

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

Expiry of Your Policy

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

Significant tax implications

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

Australian Law and Service of Suit

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

The Insurers hereon agree that:

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

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

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

Australian Currency

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

Cooling off period

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

9. CANCELLATION OF YOUR POLICY

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

When You can cancel

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

If You:

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

When We can cancel

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

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

10. COMPLAINTS AND DISPUTE RESOLUTION

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

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

Stage 1 - Complaint Handling Procedure

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

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

Telephone: 1800 705 031

Email: complaints@agileunderwriting.com

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

Stage 2 – Dispute Resolution Procedure

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

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

Telephone: +61 (0) 2 8298 0783

Email: ldraustralia@lloyds.com

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

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

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

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

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

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

11. UPDATING OUR PDS

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

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

12. PRIVACY STATEMENT

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

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

We may also provide your information to your broker and contracted third party service providers (e.g. Loss adjuster companies), but will take all reasonable steps to ensure that they comply with the Privacy Act. Our Privacy Policy contains information about how you can access the information we hold about you, ask us to correct it, or make a privacy related complaint.

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

13. WORDS WITH SPECIAL MEANINGS

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

SEVERAL LIABILITY NOTICE

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

LSW 1001 (Insurance) 08/94

PART B - POLICY WORDING

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

1. INSURING CLAUSES

1.1 Electronic Business Interruption and Increased Cost of Working

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

1.2 Cyber Liability

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

1.3 Privacy Regulatory Defence and Penalties

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

1.4 Breach and Recovery Costs

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

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

1.5 Cyber Extortion

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

1.6 Cyber Deception

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

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

2. LIMIT OF INDEMNITY AND EXCESS

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

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

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

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

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

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

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

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

2.2 Excess and Waiting Period

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

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

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

3. AUTOMATIC EXTENSIONS

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

3.1 Continuity of Cover – A Renewal Benefit

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

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

3.2 Run-Off Cover

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

3.3 Severability and Non-imputation

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

4. EXCLUSIONS

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

4.1 Bodily Injury & Property Damage

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

4.2 Dishonesty

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

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

4.3 Jurisdiction Limits

Any:

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

4.4 Known and/or Prior Facts and/or Acts

Any:

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

4.5 Nuclear, War & Terrorism

Any of the following:

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

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

4.6 Other Insurance

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

4.7 Wear and Tear

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

4.8 Sanctions

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

4.9 Natural Perils

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

4.10 Anti-competition

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

4.11 Trading losses and/or liabilities

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

4.12 PCI Fines & Assessments

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

4.13 Contractual Liability or Obligation

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

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

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

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

4.15 Fines and Penalties

Any:

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

4.16 Power/Utilities/Telecoms failure

Any:

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

4.17 Government Actions

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

4.18 Intellectual Property

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

4.19 Employment Claim and Insured against Insured

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

5. CLAIMS CONDITIONS

5.1 Duty to Co-operate

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

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

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

5.2 Notification

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

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

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

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

5.3 Subrogation

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

5.4 Underwriters Entitled to Defend & No Admission of Liability

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

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

6. GENERAL CONDITIONS

6.1 Alteration of Risk

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

6.2 Avoidance by Underwriters

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

6.3 Cancellation

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

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

6.4 Disclosure of Information by Insured

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

6.5 Governing Law and Disputes

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

6.6 GST

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

6.7 Interpretation

In this Policy:

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

6.8 Several Liability

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

6.9 Premium Payment

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

6.10 Statements of Facts Clause

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

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

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

6.11 Insuring Clause 1.6 (Cyber Deception) condition

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

6.12 Newly Created or Acquired Subsidiary

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

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

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

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

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

7. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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