



## Technology Protection Policy wording

**About this policy**

This is a claims made and notified policy. This means that, subject to its other provisions, the policy only covers claims first made against you in the policy period and which are also notified to us in that period. It is important that you understand the full extent of your and our rights and duties under this policy so we urge you to read the entire policy carefully. All words and phrases that appear in bold type (except headings) have special meaning and are defined under Definitions (Section VIII) of this policy.

**I. Our promise to you**

**We** will indemnify **you** for any **claim** that falls within What has to go wrong (Section II) under this policy, What we will pay (Section IV) under this policy, and How much we will pay (Section V) under this policy.

**We** will not make any payment in connection with any **claim** unless **we** are notified in accordance with What you must notify and when (Section III) under this policy, the premium and applicable **retention** are paid, and **you** are in compliance with your obligations to us (Section VII) under this policy. Also, **we** will not make any payment that is excluded by What we will not pay (Section VI) under this policy.

**II. What has to go wrong**

The performance of **business activities** and **advertising activities** on or after the **retroactive date** by **you** or anyone on **your** behalf, including **your** subcontractors and outsourcers, results in a **claim** first made against **you** during the **policy period** for any actual or alleged:

- a. unintentional breach of a written contract brought by a **client**;
- b. negligence or breach of any duty to use reasonable care, including but not limited to negligent transmission of a computer virus, worm, logic bomb or Trojan horse or negligence in connection with a denial of service attack, or negligent misrepresentation;
- c. intellectual property infringement (but not any patent infringement or trade secret misappropriation), including but not limited to copyright infringement, trademark infringement, trademark dilution, trade dress and get up infringement, cyber squatting violations, moral rights violations, any act of passing-off, or any misappropriation of formats, characters, trade names, character names, titles, plots, musical compositions, voices, slogans, graphic material, or artwork;
- d. breach of section 52 or section 53 of the Trade Practices Act 1974 (Cth) or any equivalent provision of a State or Territory Fair Trading Act;
- e. deceptive business practices or false designation of origin but only when asserted in conjunction with and based on the same allegations as a **claim** under WHAT HAS TO GO WRONG (c) or (d) above;
- f. breach of any duty of confidentiality, invasion of privacy, or violation of any other legal protections for personal information, including but not limited to false light, intrusion upon a person's seclusion, public disclosure of a person's private information, misappropriation of a person's picture, name, voice or identity for commercial gain, unauthorised interception or recording of images or sound in violation of any civil anti-wiretap statute;
- g. defamation, including but not limited to libel, slander, trade libel, product disparagement, injurious falsehood, or any claim for emotional distress based on harm to the character or reputation of any person or entity.

**III. What you must notify and when**

A. Claims

**You** must notify **us** of **claims** against **you** as soon as practicable and within the **policy period**. Proper notification of **claims** must be sent in accordance with the notification details set forth on the schedule.

B. Potential claims

**You** must notify **us** of **potential claims** under this policy. Such notification must be provided as soon as practicable and within the **policy period**, and must to the full extent possible identify the particulars of the **potential claim**, including identifying the potential claimant(s), the likely basis for liability, the likely demand for relief, and any additional information about the **potential claim** that **we** reasonably request. Proper notification of **potential claims** must be sent in accordance with the notification details set forth on the schedule.

C. Automatic extended reporting period

If **we** renew this policy, then **we** agree to accept **your** proper notification of **claims** and **potential claims** under this policy up to 30 days after the **policy period** has expired, provided **you** first become aware of the **claim** or **potential claim** during the last 30 days of the **policy period**.

If **we** cancel this policy or do not offer renewal terms for this policy, then **we** agree to accept **your** proper notification of **claims** and **potential claims** under this policy up to 30 days after the **policy period** has expired, provided **you** first become aware of the **claim** or **potential claim** during the last 30 days of the **policy period** or during the 30 day window immediately following the **policy period**, and such **claim** or **potential claim** directly arises from **business activities** first performed after the **retroactive date** but before the end of the **policy period**.

The automatic extended reporting periods described in this section do not apply unless **we** are notified of such **claim** or **potential claim** as soon as practicable but no later than 30 days from the date **you** first learned of the **claim** or **potential claim**, and they do not apply to any policy that **we** have cancelled or refused to renew due to **your** non-payment of premium or failure to comply with Your obligations to us (Section VII).

It is agreed that the applicable extended reporting period(s) set forth in this section shall be superseded by any conflicting applicable law that provides **you** with a longer extended reporting period.

**IV. What we will pay**

A. Payments toward defence costs

**We** will pay covered **defence costs** incurred by **you**, or incurred with **your** prior approval by an **employee**, provided **you** have obtained **our** prior consent which will never be unreasonably withheld, and have paid the applicable **retention**.

B. Payments toward claim resolution

**We** will pay the amount agreed by **you** and **us** through good faith negotiation, mediation or some other form of alternative dispute resolution to settle a **claim** or satisfy a judgment or arbitration award against **you** or **your employee** subject to What we will pay C. below, including any judgment or award ordering the payment of claimant's lawyer fees and costs. Such amounts to be paid by **us** shall not include or be calculated based on any of **your** overhead expenses, lost costs or profits, salaries or wages, or any future cost of doing business, including but not limited to the cost of any future licence or royalty.

C. Payments towards claims against your employees

Subject to **your** written request following **your** review of a **claim** against an **employee**, **we** will pay sums as described in What we will pay A. and B. above incurred by **your employee** due to a **claim** being made against him or her that directly arises from the performance of **your business activities**. The only payments **we** will make toward a **claim** against **your employee** under this policy are payments to which **you** would be entitled under this policy if the same **claim** against **your employee** had been made against **you**.

**We** will not pay for any portion of any **claim** against **your employee** that:

- a. arises out of any fraudulent conduct, dishonest conduct, deliberate conduct, criminal conduct, malicious conduct, conduct committed in reckless disregard of another's rights (but not in respect of a defamation **claim**), conduct intended to cause harm to another person or business, or any knowing or willful violation of a law committed by **your employee**; however, this exclusion will not apply unless such conduct, or willful violation of the law has been established by a final adjudication in any judicial, administrative, or alternative dispute resolution proceeding, or by **you** or **your employee's** admission in a proceeding or otherwise, at which time **you** shall reimburse **us** for all payments made by **us** in connection with such conduct or willful violation of the law and all of **our** duties in respect of that entire **claim** shall cease;
- b. arises out of any matter that prior to the first day of the **policy period** (or if this policy is a renewal then prior to the first date of the first policy issued to **you** by **us** and from which the current policy forms an unbroken chain of successive policies issued to **you** by **us**) **you** knew or reasonably ought to have known would be likely to lead to a **claim** against **you** or **your employee**; or
- c. results in whole or in part from **your employee's** admission of liability in a proceeding or otherwise.

D. Payments toward your own declaratory relief actions

**We** will pay reasonable lawyer's fees excess of the amount of the **retention** incurred by **you** to prosecute **your** own declaratory relief action if:

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- a. a claimant has advised **you**, in writing, that **you** are committing copyright or trademark infringement;
- b. after that claimant has asserted such a written **claim**, and after **you** have filed a declaratory relief action directly in response to that **claim**, the claimant files a counterclaim against **you** alleging copyright or trademark infringement; and
- c. the counterclaim is covered under this policy and pending against **you** while **you** are prosecuting **your** declaratory relief action.

**E. Payments toward your outstanding fees**

If **your client** refuses to pay **your** contractually agreed fees (including any amount **you** are legally liable to pay a sub-contractor at the date **your client** first refuses to pay), and **you** satisfy **us** that:

- a. **you** do not have reasonable grounds to legally compel payment of the amount owed; and
- b. there is written evidence from **your client** that they intend to make a legitimate **claim** against **you** for an amount covered by this policy that is greater than the amount **you** are owed;

then **we** will pay the amount **you** are owed excess of the amount of the **retention** (excluding any amount for **your** lost profit, mark-up and liability for taxes or its equivalent) if **you** satisfy **us** that **our** payment is reasonably likely to fully and finally resolve all known **claims** and **potential claims** by that **client**.

If subsequently a **claim** is still made against **you** following **our** payment of **your** outstanding fees, then these payments will be a credit against any amounts payable by **us** in the defence and/or resolution of that **claim**.

**F. Allocation and defence of claims**

**We** have the right but not the obligation to take control of and conduct in **your** name, the investigation, settlement or defence of any **claim**. If **we** think it necessary **we** will appoint a lawyer other appropriate person to deal with the **claim**.

**We** will not pay any amounts **you** are held liable to pay or pay in settlement on account of portions of **claims** not covered under this policy, and **we** will not pay any **defence costs** incurred in connection with such non-covered claims or portions of **claims**. Any payments made in connection with non-covered **claims** or portions of **claims** will not apply to the erosion of any **retention** under this policy.

**We** and **you** agree to allocate all amounts, including **defence costs** between covered and non-covered portions of **claims**, and **we** and **you** agree to **use** best efforts to determine a fair allocation of such amounts and costs including amounts and **defence costs** jointly incurred on both covered and non covered **claims** or portion of **claims**. A fair allocation will be determined having regard to the covered portions and non covered portions of the causes of action of the subject of the **claim**. If **we** cannot agree on a fair allocation, **you** agree and **we** agree to submit the issue to dispute resolution in accordance with General matters (Section IX) of this policy.

## V. How much we will pay

**Our maximum payment**

The schedule sets out the amount of **policy limits** and **retentions** which apply to this policy and also the basis upon which those **policy limits** and **retentions** apply.

However, if a policy sub-limit is specified in the schedule to this policy, then such sub-limit shall apply. All sub-limits under this policy are included within the **policy limit** and are not in addition to the **policy limit**.

If this policy has an additional limit for **defence costs** then, if a payment for a claim is greater than the **policy limit** then **our** liability for **defence costs** will be limited to the same proportion that the **policy limit** bears to the payment made.

**Paying the policy limit**

Upon payment of the **policy limit**, **our** obligations under this policy shall be completely fulfilled and **we** shall have no further liability of any kind under the policy. At any stage, **we** can pay **you** the remainder of the **policy limit**. We will pay **defence costs** already incurred at the date of our payment. **We** will then have no further liability to **you** under this policy, either for **defence costs**, indemnity or otherwise.

## VI. What we will not pay

### Exclusions

We will not make any payment, including **defence costs** toward any portion(s) of any:

1. **claim** for, alleging, or arising from any contractual liability where at the time such contract was entered **you** were aware or reasonably ought to have been aware that there were not sufficient technical, logistical, or financial resources to perform the contract as promised, including **your** promise to meet a certain performance standard under a service level agreement;
2. **claim** for, alleging, or arising from any breach of a warranty or guarantee; however, this exclusion will not apply to the following:
  - a. **your** warranty or guarantee that **you** will use reasonable care and skill in the performance of a contract;
  - b. **your** warranty or guarantee that any software, hardware, firmware, or related services falling within **your business activities** will not infringe another's intellectual property rights (but not any patent infringement or trade secret misappropriation), privacy rights or breach any duty of confidentiality;
  - c. any implied warranty or similar statutory term requiring any software, hardware, or firmware falling within **your business activities** to meet a certain standard of quality, safety or fitness, even if **you** have expressly warranted that such software, hardware, or firmware will meet the legally required standard to which **you** are subject;
  - d. **your** warranty or guarantee that any software, hardware, firmware, or related services falling within **your business activities** will substantially conform to any material, written specifications and performance standards forming part of the contract between **you** and **your client**; or
3. **claim** for, alleging, or arising from any breach of any exclusivity, non-competition, non-solicitation, or other similar commercial terms in **your** contract with a **client**;
4. **claim** resulting in an award for consequential loss, special damages, or loss of claimant's profits. However, this exclusion will not apply to:
  - a. a court's award of consequential loss, special damages or loss of claimant's profits resulting from **your** contractual disclaimer of such damages being deemed unenforceable by the same court issuing the award;
  - b. consequential loss, special damages, or loss of claimant's profits where **you** have limited this in **your** contract with a client, where it is reasonable for **you** to have done so;
5. **claim** for, alleging, or arising from any defect in any software, hardware, firmware, or associated network cabling that is solely caused by a third party, including but not limited to any third party software supplier, manufacturer or originator; however, this exclusion will not apply to: (1) covered **defence costs** incurred by **you** to defend such portions of a **claim** but only until (if ever) there is a finding in any legal proceeding (including any arbitration) or any admission that the defect at issue is solely caused by a third party, at which time **you** shall reimburse **us** for all **defence costs** that **we** have paid toward that **claim**, or (2) any amount **you** satisfy **us** that **you** are legally able to recover under a written contract;
6. **claim** for, alleging, or arising from any costs or expenses involved in the repair, upgrade, correction, recall or replacement of any software, hardware, firmware, or associated network cabling, or any costs or expenses relating to **your** legal obligation to comply with an injunction; however, this exclusion will not apply to any portion of a judgment requiring **you** to pay direct damages to **your client** for breach of contract;
7. **claim** for, alleging, or arising from **your** commercial decision to cease providing a particular product or service but only if **you** are contractually obligated to continue providing such product or service;

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8. **claim** for, alleging, or arising from any self-replicating, malicious code that was not specifically targeted to **your** system; however, this exclusion will not apply to any covered portion of any **claim** for negligent transmission of a computer virus, worm, logic bomb, or Trojan horse;
9. **claim** for, alleging, or arising from any bodily injury, including but not limited to death, mental injury, and mental disease; however, this exclusion will not apply to:
  - a. a **claim** (except if brought in the USA or Canada) for bodily injury directly arising from designs, plans, specifications, formulae, directions or advice prepared or given by **you** for a fee;
  - b. any portion of any **claim** seeking damages for mental anguish or distress where such damages solely stem from a covered cause of action for defamation, breach of privacy, or negligent publication;
10. **claim** for, alleging, or arising from any damage to, or destruction or loss of use of any tangible property; however, this exclusion will not apply to:
  - a. a **claim** (except if brought in the USA or Canada) for damage to, or destruction or loss of use of any tangible property directly arising from designs, plans, specifications, formulae, directions or advice prepared or given by **you** for a fee;
  - b. any document, information, data or model given to **you** by a client and for which **you** are responsible;
11. **claim** for, alleging, or arising from any commercial dispute with **your** business partner or business associate, including but not limited to any reseller, distributor, original equipment manufacturer, third-party sales agent, systems integrator, or joint venturer, but only to the extent such a **claim** is based upon:
  - a. a commission or royalty, or any other term upon which such partner or associate is to be compensated in connection with doing business with **you**, or any compensation or remuneration promised or owed by **you** pursuant to those terms; or
  - b. **your** decision to cease doing business with such a partner or associate.
12. **claim** for, alleging, or arising from any infringement, use, or disclosure of a patent, or any use, disclosure or misappropriation of a trade secret;
13. **claim** for, alleging, or arising from any fraudulent conduct, dishonest conduct, deliberate conduct, criminal conduct, malicious conduct, conduct committed in reckless disregard of another's rights (but not in respect of a defamation **claim**), conduct intended to cause harm to another person or business, or any knowing or wilful violation of a law, whether committed by **you** or committed by another whose conduct or violation of the law **you** have ratified or actively condoned; however, this exclusion will not apply unless such conduct, or wilful violation of the law has been established by a final adjudication in any judicial, administrative, or alternative dispute resolution proceeding, or by **your** own admission in a proceeding or otherwise, at which time **you** shall reimburse **us** for all payments made by **us** in connection with such conduct or wilful violation of the law and all of **our** duties in respect of that entire **claim** shall cease;
14. **claim** for, alleging, or arising from any restrictive trade practices, deceptive trade practices (other than breach of section 52 or section 53 of the Trade Practices Act 1974 (Cth) or any equivalent provision of a State or Territory Fair Trading Act ) or restraint of trade or antitrust statute, legislation or regulation; however, this exclusion will not apply to any covered portion of any **claim** for deceptive trade practices, or false designation of origin where that cover is expressly granted under What has to go wrong (d) and (e) (Section II);
15. **claim** for, alleging, or arising from any governmental enforcement of any state or federal regulation, including but not limited to any regulation promulgated by the Australian Securities and Investments Commission, the Australian Stock Exchange, the Australian Competition and Consumer Commission, the Australian Communications and Media Authority or the Office of the Privacy Commissioner;

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16. **claim** for, alleging, or arising from any:
  - a. liability or breach of any duty or obligation owed by **you** regarding the sale or purchase of any stocks, shares, or other securities, or the misuse of any information relating to them, including breach or alleged breach of any related legislation or regulation, including but not limited to the Corporations Act 2001 (Cth), the Australian Stock Exchange Listing Rules, Australian Securities and Investment Commission Act 2001 or the U.S. Securities Act of 1933 and Securities Exchange Act of 1934, both as amended;
  - b. liability or breach of any duty or obligation owed by **you** regarding any statement or representation (express or implied) contained in **your** accounts, reports or financial statements, or concerning **your** financial viability;
  - c. liability or breach of any duty or obligation owed by **you** regarding financial advice **you** give or the arrangement of any financing or credit by **you**;
  - d. violation of any taxation law or regulations;
  - e. breach of any fiduciary duty owed by **you**;
17. **claim** for, alleging, or arising from any:
  - a. racketeering or conspiracy law, including but not limited to violation of the Racketeer Influenced and Corrupt Organisations (RICO) Act and all amendments to this Act or any rules or regulations promulgated under it;
  - b. collusion, extortion, or threatened violence;
18. **claim** for, alleging, or arising from any:
  - a. liability or breach of any duty or obligation owed by **you** in connection with the operation or administration of any health, superannuation, pension or employee benefit scheme, plan, trust or fund, including but not limited to violation or alleged violation of any related legislation or regulation such as the Corporations Act 2001 (Cth) or the Superannuation Industry (Supervision) Act 1993 (Cth) or the U.S. Employee Retirement Income Security Act of 1974;
  - b. liability or breach of any duty or obligation owed by **you** as an employer, including but not limited to any allegation of discrimination, harassment, or wrongful termination;
  - c. liability or breach of any duty or obligation owed to **you** and/or **your** shareholders by any of **your** director(s), officer(s), trustee(s), or board member(s), including but not limited to any allegation of insider trading or breach of any duty of corporate loyalty;
19. **claim** for, alleging, or arising from any chargeback, liability, or fee incurred by **you** or **your client** as a result of a merchant service provider, including any credit card company or bank, wholly or partially reversing or preventing a payment transaction;
20. **claim** made against **you** by:
  - a. any person or entity falling within the definition of **you**;
  - b. any entity in which **you** directly or indirectly hold more than a 15% ownership interest, or that **you** directly or indirectly manage, control, or operate, in whole or in part; or
  - c. any person or entity that directly or indirectly holds more than a 15% ownership interest in **you**, or that directly or indirectly owns, manages, controls, or operates **you**, in whole or in part;

however, this exclusion will not apply to any portion of any **claim** based on a liability to an independent third party directly arising out of the performance of **your** defined **business activities** but which is brought against **you** via a subsidiary, parent or sister company;
21. **claim** made against **you** by any person or entity that **you** currently employ or formerly employed, including but not limited to **employees**, freelancers, and independent contractors; however, this exclusion will not apply to any portion of any **claim** solely based on **business activities** performed when such person or entity was not working for **you**;
22. **claim** for or arising from **your** provision of any sweepstakes, gambling activities, or lotteries;

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23. **claim** for which **you** are legally obligated to pay punitive and/or exemplary damages; however **we** will pay an award of such damages if insurable in the jurisdiction where such award was first ordered;
24. **claim** for which **you** are legally obligated to pay criminal, civil, or regulatory sanctions, fines, penalties, disgorgement of profits, treble damages, and/or multiple damages, including but not limited to those imposed by any federal, state, or local governmental body or by Australasian Performing Rights Association, AMCOS, ASDACS, or other similar licensing organisation;
25. **claim** arising out of any matter that prior to the first date of the **policy period** (or if this policy is a renewal then prior to the first date of the first policy issued to **you** by **us** and from which the current policy forms an unbroken chain of successive policies issued to **you** by **us**), **you** knew or reasonably ought to have known would be likely to lead to a **claim**;
26. **claim** for, alleging, or arising from any armed struggle, civil unrest or conflict or any nationalisation, confiscation, requisition, expropriation, appropriation, seizure or destruction of property by or under the order of any government or public or local authority;
27. **claim** for, alleging, or arising from any act or threatened act of terrorism, including but not limited to the use of force or violence, of any person(s) or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear;
28. **claim** for, alleging, or arising from any pollution, contamination or toxic exposure, including but not limited to any pollution, contamination or toxic exposure caused by or arising out of the following: noise, electromagnetic fields, radio waves, nuclear radiation, or radioactive contamination; or the mining, processing, manufacturing, use, testing, ownership, sale or removal of asbestos, asbestos fibres or material containing asbestos; or exposure to asbestos, asbestos fibres or materials containing asbestos; or the provision of instructions, recommendations, notices, warnings supervision or advice given, or which should have been given, in connection with asbestos, asbestos fibres or structures or materials containing asbestos;
29. **claim** for, alleging, or arising from any failure or interruption of service provided by an internet service provider, telecommunications provider or other utility provider except when **you** provide those services as part of **your business activities**;
30. **claim** brought outside the countries set out in the schedule under **Applicable Courts** unless you have worldwide cover. This includes proceedings in the Applicable Courts which are based on a judgement or award outside the **Applicable Courts**.

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## VII. Your obligations to us

### Your representations

**You** agree that all representations (whether verbal or written) made by **you** in connection with the application for this policy and all materials submitted by **you** or on **your** behalf in connection with the application to this policy are true, accurate, and not misleading, and were relied upon by **us** and were material to **our** decision to issue this policy to **you**.

Before **you** enter into this policy with **us**, **you** have a duty, under the Insurance Contracts Act 1984, to disclose to **us** every matter that **you** know, or could reasonably be expected to know, is relevant to **our** decision to accept the risk of this policy and, if so, on what terms.

**You** have the same duty to disclose those matters to **us** before **you** renew, extend or amend.

**Your** duty however does not require disclosure of a matter:

- a. that diminishes the risk undertaken by **us**;
- b. that is of common knowledge;
- c. that **we** know or, in the ordinary course of **our** business, ought to know; or
- d. if **we** have waived **your** duty to disclose the matter.

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If **you** fail to comply with **your** duty of disclosure, **we** may be entitled to reduce **our** liability in whole or in part under **your** policy in respect of a claim or **we** may cancel the policy. If **your** non-disclosure is fraudulent, **we** have the right to avoid the policy from its beginning.

Your dealings with others

**We** will not make any payment under this policy if **you**, when dealing with **your client** or a third party, admit that **you** are liable (unless **you** have **our** prior written consent), or collude to obtain a recovery under this policy, or prejudice **our** rights of recovery against any party.

**You** must also ensure that **our** rights of recovery, including but not limited to any subrogated rights of recovery, against a third party are not unduly restricted or financially limited by any term in any of **your** contracts.

**You** must also not reveal the amount of cover available under this insurance, unless **you** had to give these details in negotiating a contract with **your** client (including negotiating any request for proposal), **you** are required by law or compelled by a court, or **you** otherwise have **our** prior written consent.

Providing us with information and assistance

**You** must provide **us** with full, timely, and accurate information about all **claim(s)** and **potential claim(s)** that **you** have notified to **us** under this policy. If **you**, or anyone on **your** behalf, tries to deceive **us** by deliberately giving **us** false information in connection with such a notification, then **we** will not make any payment toward any **claim** and **potential claim** arising out of or related to that notification and we may cancel the policy.

**You** must:

1. give **us**, or anyone appointed by **us**, at **your** expense, all the assistance, cooperation and information which **we** reasonably require under this policy, and **you** must do anything which **we** reasonably request to avoid, minimize, or resolve any **claim** and **potential claim**. This includes **you** following any legal advice **we** obtain and **you** paying the **retention** when requested by **us**;
2. notify **us** as soon as practicable of all settlement offers made by a claimant in connection with such **claim** or **potential claim**; and
3. give **us** all assistance and cooperation **we** reasonably require to pursue at **our** expense any subrogated right of recovery **we** may have in connection with such **claim** or **potential claim**.

Subject to **your** rights under the Insurance Contracts Act (Cth) 1984 **we** will not make any payment under this policy unless **you** comply with these obligations.

If a situation arises where **we** have a good faith belief that a claimant's monetary offer to settle a covered **claim** is reasonable when **you** do not, then **we** will neither compel **you** to accept the settlement offer nor will **we** cease providing cover for such a **claim** merely because **you** did not accept the offer. However, if **we** recommend that **you** do accept such an offer and **you** elect not to, then **our** maximum payment toward that particular **claim** following the rejection or expiration of that offer will be outstanding covered **defence costs** incurred up to the date the settlement offer was rejected or expired, plus the amount of the unaccepted settlement offer, minus **your** remaining **retention** on the day the settlement offer is rejected or expires. If this amount is in excess of the **retention**, then at **your** request and subject to **our** discretion **we** will pay this amount to **you** in a lump sum payment in return for **you** fully releasing **us** from all liability with respect to the unsettled **claim**.

In exchange for this release, **we** will not seek reimbursement for any portion of **our claim** payment to **you**, even if the **claim** is later resolved for less than the amount **we** paid **you**.

Notifying us of changes to your business

**You** must promptly tell **us** if **you** materially change **your** business, acquire or merge with another business or if any party acquires **your** business. **We** will only provide cover under this policy for such a change if **we** have given **our** written approval and **you** have agreed to all additional coverage terms and/or additional premium **we** may request to cover the change in risk. However, **you** have no obligation to notify **us** under this section of any entity that falls within subsection (a) of the definition of **acquired entity** under Definitions (Section VIII) of this policy.

Satisfying your retention

**We** will not make any payment under this policy unless **you** pay the applicable **retention**. **You** may not insure the **retention**, and neither sums paid toward uncovered portions of **claims** nor payments **you** recover from another insurer or indemnitor will erode the **retention**.

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If **you** reasonably establish that a series of **claims** against **you** directly arise from:

1. the same original cause, a single source or a repeated or continuing problem in **your** work; or
2. a single or continuing investigation or a common set of facts or state of affairs in relation to a defamatory statement;

then all such notifications that **we** accept and agree are related will be treated as a single **claim** and **you** need only pay a single **retention**. All of the notifications that are related will be considered as having been made on the date of **your** first proper notification to **us**.

### VIII. Definitions

All phrases and words that appear in bold type in this policy (excluding headings), either in singular or plural form, have the meaning that is given to them below:

#### Acquired entity

“Acquired entity” means:

- a. any entity that the **Insured** directly or indirectly acquires during the **policy period**, but only to the extent that the entity performs the same **business activities** as the **Insured** and only if the annual revenue or the total book value of the consideration provided in return for such control is less than 10% of the **Insured’s** annual revenue, and no **claim** or **potential claim** exists against such entity that has resulted or is reasonably likely to result in a payment in excess of 50% of the **retention** (including **defence costs**); and
- b. any entity that the **Insured** acquires during the **policy period** which has an annual revenue of more than 10% of the **Insured’s** annual revenue, but only if **you** have provided **us** with written notification of the acquisition within 30 days of such, and only if **we** have provided **our** written consent to provide coverage to that entity under this **policy**, such consent never to be unreasonably withheld.

For purposes of this definition, “acquires” means taking ownership of over 50% of the outstanding voting stock or interest, or assets of any business entity.

#### Advertising activities

“Advertising activities” means any marketing, publicity or promotion of **your** products or services.

#### Applicable courts

“Applicable courts” means the courts stated as the “applicable courts” on the schedule attached to this policy.

#### Business activities

“Business activities” means those activities described as “business activities” on the schedule to this policy, and which are performed within the **geographical limit**.

#### Claim

“Claim” means any written assertion of liability or any written demand for financial compensation or injunctive relief made against **you**.

#### Client

“Client” means any person or entity with whom **you** have contracted to provide services or deliverables that expressly fall within **your business activities**.

#### Defence costs

“Defence costs” means all reasonable and necessary lawyers’ fees and legal costs incurred investigating, settling, defending, and/or appealing or defending an appeal against a covered **claim**, but not including any overhead costs, general business expenses, salaries, or wages incurred by **you** or any other person or entity entitled to coverage under this policy.

#### Employee

“Employee” means an individual performing employment duties solely on **your** behalf in the ordinary course of **your business activities** and who is subject to **your** sole control and direction and to whom **you** supply the instrumentalities and place of work necessary to perform such **business activities**. **You** and **your** independent contractors will not be treated as **employees** under this policy.

#### Existing subsidiary

“Existing subsidiary” means each and every entity included on the application for this policy, but only if:

- a. the **insured** directly or indirectly owns more than 50% of the assets or outstanding voting shares or interests as of the first day of the **policy period**, and
- b. its annual revenue is included on **your** application for this **policy**.

#### Geographical limit

“Geographical limit” means the limit stated as the “geographical limit” on the schedule to this policy.

## Technology Protection

<b>Insured</b>	“Insured” means the entity stated as “the insured” on the schedule to this policy.
<b>Policy limit</b>	“Policy limit” means the amount stated as the “policy limit” on the schedule to this policy.
<b>Policy period</b>	“Policy period” means the period of time stated as the “policy period” on the schedule to this policy.
<b>Potential claim</b>	“Potential claim” means any matter reasonably likely to lead to a <b>claim</b> covered under this policy.
<b>Retention</b>	“Retention” means the amount as stated as the “retention” on the schedule to this policy.
<b>Retroactive date</b>	Retroactive date” means the date stated as the “retroactive date” on the schedule to this policy. However, in respect of any <b>claim</b> or <b>potential claim</b> arising out of activities performed by an <b>acquired entity</b> above, “retroactive date” means the date the <b>Insured</b> first took control of such entity, unless otherwise agreed by <b>us</b> in writing.
<b>We/Us/Our</b>	“We,” “Us,” and “Our,” means Syndicate(s) at Lloyds managed by Hiscox Syndicates Ltd.
<b>You/Your</b>	<p>“You” and “Your” means:</p> <ol style="list-style-type: none"> <li>the <b>Insured, existing subsidiaries, and acquired entities</b>, but not including <b>employees</b> or independent contractors of the <b>Insured</b> or any <b>existing subsidiary</b> or <b>acquired entity</b>;</li> <li>board members, executive officers, in-house counsel, risk managers, chief technology officers, chief information officers, and chief privacy officers of the <b>Insured, existing subsidiaries, and acquired entities</b>; and</li> <li>a person or entity that takes legal control of the <b>insured, existing subsidiary, or acquired entity</b> upon the insolvency or bankruptcy of the <b>insured, existing subsidiary, or acquired entity</b>.</li> </ol>

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## IX. General matters

Dispute resolution	<p>a. <b>We</b> and <b>you</b> will seek in good faith to resolve any dispute arising out of or relating to this policy, including its construction, application and validity by negotiation without recourse to court proceedings. In the event of a dispute <b>we</b> or <b>you</b> must give written notice to the other proposing to resolve the dispute by negotiation (“dispute notice”). Within 14 days after service of the dispute notice, one or more representatives of each party shall meet in good faith to attempt to resolve the dispute by agreement.</p> <p>If the dispute is not resolved within 21 days of the dispute notice, either party may upon written notice to the other (“ADR Notice”) refer the dispute to mediation in accordance with (b). below.</p> <p>b. <b>We</b> and <b>you</b> agree to seek in good faith to settle any dispute through mediation under the auspices of the Australian Commercial Disputes Centre (“ACDC”). In order to commence a mediation, <b>we</b> or <b>you</b> must give written notice to the other party to the dispute. The mediator shall be agreed upon within 21 days of the date of the ADR Notice, failing which the mediator shall be appointed by the CEO of the ACDC. The mediation shall start not later than 30 days after the appointment of the mediator.</p> <p>In the event that the parties cannot agree on any issue as to the conduct of the mediation (other than any disagreement as to the appointment of the mediator), at the request of <b>you</b> or <b>us</b> the CEO of the ACDC and the mediator (if he/she has been appointed) will consult with the parties and decide the issue for them.</p>
Jurisdiction	Any dispute arising out of or relating to this policy, including over its construction, application and validity, if not resolved by negotiation or ADR, will be submitted to the exclusive jurisdiction of any competent court of the state of New South Wales or the Federal Court.
Currency	All references to dollar amounts in this policy are references to and payable in the currency of Australia.



## Technology Protection

### Cancellation

The policy will be cancelled by **you** if **you** give **us** 60 days' written notice. **We** may cancel the policy if the premium is not paid by the due date or in accordance with the Insurance Contracts Act 1984.

**We** will return a pro-rata amount of premium unless **we** have accepted any notification of any **claim** or **potential claim** before the cancellation takes effect..



**Public & Products Liability**  
Policy wording

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**About this policy**

It is important that you understand the full extent of your and our rights and duties under this policy so we urge you to read the entire policy carefully. All words and phrases that appear in bold type (except headings) have special meaning and are defined under Definitions (Section VIII) of this policy.

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**I. Our promise to you**

We will indemnify **you** for **defence costs** incurred as a result of a claim that falls within What has to go wrong (Section II) under this policy, What we will pay (Section IV) under this policy, and How much we will pay (Section V) under this policy.

We will not make any payment in connection with any claim unless **we** are notified in accordance with What you must notify and when (Section III) under this policy, the premium and applicable **retention** are paid, and **you** are in compliance with Your obligations to us (Section VII) under this policy. Also, **we** will not make any payment that is excluded by What we will not pay (Section VI) under this policy.

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**II. What has to go wrong**

Claims against you

The performance of **business activities** by **you** or anyone on **your** behalf results in a claim against **you** for:

- a. **bodily injury** or **property damage** occurring during the **policy period**;
- b. **personal injury** or **denial of access** committed during the **policy period**;

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**III. What you must notify and when**

**You** must notify **us** as soon as practicable of:

- a. any claim(s) against **you**
- b. i. **your** discovery that **products** are defective;
- ii. any threatened criminal action by any government, administrative or regulatory body.

Proper notification of claims must be sent in accordance with the notification details set forth on the Schedule.

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**IV. What we will pay**

A. Payments toward defence costs

We will pay covered **defence costs** as incurred by **you**.

B. Payments toward claim resolution

We will pay covered amounts that **you** are legally liable to pay as compensation.

D. Claims against others

If, as a result of **your business activities**, any party brings a claim, which falls within (a) above, against **your** client or customer or a distributor of **your products** and **you** are liable for that claim, **we** will treat such claim as if made against **you** and make the same payment to the client, customer or distributor that **we** would have made to **you**, provided that the party to be indemnified:

- a. has not, in **our** reasonable opinion, caused or contributed to the claim against them;
- b. accepts that **we** can control the claim's defence and settlement in accordance with the terms of this section;
- c. has not admitted liability or prejudiced the defence of the claim before **we** are notified of it;



## General Liability – Public & Products Liability

- d. gives **us** the information and co-operation **we** reasonably require for dealing with the claim.
- E. Criminal proceedings  
If any governmental, administrative or regulatory body brings any criminal action against **you** during the **policy period** for any breach of statute or regulation directly relating to any actual or potential claim under this section, **we** will pay the costs incurred with **our** prior written consent to defend such an action against **you** or any employee of **yours**.
- F. Allocation and defence of claims  
**We** have the right but not the obligation to take control of and conduct in **your** name, the investigation, settlement or defence of any claim. If **we** think it necessary **we** will appoint a lawyer, adjuster or other appropriate person to deal with the claim.
- We** will not pay any amounts **you** are held liable to pay or pay in settlement on account of portions of claims not covered under this policy, and **we** will not pay any **defence costs** incurred in connection with such non-covered claims or portions of claims. Any payments made in connection with non-covered claims or portions of claims will not apply to the erosion of any **retention** under this policy.
- We** and **you** agree to allocate all amounts, including **defence costs** between covered and non-covered portions of claims, and **we** and **you** agree to **use** best efforts to determine a fair allocation of such amounts and costs including amounts and **defence costs** jointly incurred on both covered and non covered claims or portion of claims. A fair allocation will be determined having regard to the number of the covered portions and non covered portions of the causes of action the subject of the claim. If **we** cannot agree on a fair allocation, **you** agree and **we** agree to submit the issue to dispute resolution in accordance with Part 7 IV of this policy.

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## V. How much we will pay

- Our maximum payment  
**We** will pay up to the **policy limit** shown in the schedule for each actual or threatened claim, unless listed below. **We** will also pay for **defence costs**.
- If this policy has an additional limit for **defence costs**, if a payment for a claim is greater than the **policy limit** then **our** liability for **defence costs** will be limited to the same proportion that the **policy limit** bears to the payment made.
- You must pay the **retention** for each claim.
- All claims which arise from the same original cause, single source or a repeated or continuing shortcoming in **your** work will be regarded as one claim
- Special Limits
- For claims arising from **your products**, the most **we** will pay is a single limit of indemnity for the total of all such claims and their defence costs. **You** must pay the relevant **retention** shown in the schedule.
  - For claims arising from **pollution**, the most **we** will pay is a single limit of indemnity for the total of all such claims and their **defence costs**, including any claims forming part of a series of other claims regarded as one claim under this section. **You** must pay the relevant **retention** shown in the schedule.
  - For claims brought in the United States of America or Canada, the most **we** will pay is a single limit of indemnity for the total of all such claims and their **defence costs**. **You** must pay the relevant **retention** shown in the schedule.
  - The most **we** will pay for the costs to defend criminal proceedings is the amount shown in the schedule. This applies to all actions brought against **you** during the **policy period**.
- Paying the policy limit  
Upon payment of the **policy limit**, **our** obligations under this policy shall be completely fulfilled and **we** shall have no further liability of any kind under the policy. At any stage, **we** can pay **you** the remainder of the **policy limit**. We will pay **defence costs** already incurred at the date of our payment. **We** will then have no further liability to **you** under this policy, either for **defence costs**, indemnity or otherwise.

**VI. What we will not pay**

Property for which you are responsible

A. We will not make any payment, including **defence costs** and damages, toward any portion(s) of any claim for, alleging, or arising from:

- a. loss of or damage to any property belonging to **you** or which at the time of the loss or damage is in **your** care, custody or control. This does not apply to:
  - i. employees' or visitors' vehicles or effects while on **your** premises;
  - ii. premises, including their contents, which are not owned or rented by **you**, where **you** are temporarily carrying out **your business activities**;
  - iii. premises rented to **you**, for loss or damage not insurable under property insurance policies and for which **you** would not be liable other than by the lease or other agreement.

b. the ownership, possession, maintenance or use by **you** or on **your** behalf of any aircraft or other aerial device, hovercraft, watercraft (other than hand propelled or sailing craft less than 20 feet in length in inland or territorial waters) or any motor or mechanically propelled vehicles and their trailers.

This does not apply to:

- i. any **tool of trade**;
- ii. the loading or unloading of any vehicle.

Injury to employees

c. **bodily injury** to any person arising out of and in the course of their employment under a contract of service or apprenticeship with **you** or who is or is deemed to be an **Employee of yours** pursuant to any workers compensation legislation.

Pollution

- d. i. any **pollution** of buildings or other structures or of water or land or the atmosphere;
- ii. any **bodily injury** or **property damage** directly or indirectly caused by **pollution** unless caused by a sudden, identifiable, unintended and unexpected incident which occurs in its entirety at a specific time and place during the **policy period**;
- iii. any **pollution** occurring in the United States of America or Canada.

Computer virus

e. transmission of a computer **virus**.

Professional advice

f. designs, plans, specifications, formulae, directions or advice prepared or given by **you** for a fee.

Your products

- g. the costs of repairing, reconditioning or replacing any **product** or any of its parts.
- h. ii. any of **your products** relating to aircraft, including missiles or spacecraft, and any ground support or control equipment used in connection with such products;
- iii. any of **your products** installed in aircraft, including missiles or spacecraft, or used in connection with such craft, or for tooling used in their manufacture including ground-handling tools and equipment, training aids, instruction manuals, blueprints, engineering or other data, advice and services and labour relating to such craft or **your products**.
- i. any of **your** products which are known to **you** or which in the ordinary course of business ought to have been known by **you** to be defective, or incapable of fulfilling the purpose for which they were intended or warranted (expressly or impliedly) or guaranteed.

Deliberate or reckless acts

j. any act, breach, omission or infringement **you** deliberately, spitefully, wilfully, maliciously, dishonestly or recklessly commit, condone or ignore which could reasonably be expected to cause injury or damage to another party even if such injury or damage is of a different degree or type than could reasonably have been anticipated.

Contracts

k. **your** liability under any contract which is greater than the liability **you** would have at law without the contract.



## General Liability – Public & Products Liability

Date recognition	I. <b>date recognition.</b>
War terrorism and nuclear	m. <b>war, terrorism or nuclear risks.</b>
Asbestos risks	n. <b>asbestos risks.</b>
Child molestation	o. any molesting or interfering with minors.
	B. <b>We</b> will not make any payment for;
Restricted recovery rights	p. that part of any claim where <b>your</b> right of recovery is restricted by any contract.
Non-compensatory damages	q. fines and penalties (whether contractual or statutory), liquidated damages, punitive, aggravated or exemplary damages.
Claims outside the applicable courts	r. any claim brought outside the countries set out in the schedule under <b>Applicable Courts</b> unless <b>you</b> have worldwide cover. This includes proceedings in the Applicable Courts which are based on a judgement or award outside the <b>Applicable Courts</b>
Correcting problems	s. <b>Products</b> claims if <b>you</b> fail to take reasonable steps to remedy or rectify, at <b>your</b> expense, any defect or failure in the goods or services <b>you</b> have supplied to a client, customer or distributor.

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### VII. Your obligations to us

Your representations	<p><b>You</b> agree that all representations (whether verbal or written) made by <b>you</b> in connection with the application for this policy and all materials submitted by <b>you</b> or on <b>your</b> behalf in connection with the application to this policy are true, accurate, and not misleading, and were relied upon by <b>us</b> and were material to <b>our</b> decision to issue this policy to <b>you</b>.</p> <p>Before <b>you</b> enter into this policy with <b>us</b>, <b>you</b> have a duty, under the Insurance Contracts Act 1984, to disclose to <b>us</b> every matter that <b>you</b> know, or could reasonably be expected to know, is relevant to <b>our</b> decision to accept the risk of the insurance and, if so, on what terms.</p> <p><b>You</b> have the same duty to disclose those matters to <b>us</b> before <b>you</b> renew, extend or amend this policy.</p> <p><b>Your</b> duty however does not require disclosure of a matter:</p> <ol style="list-style-type: none"><li>that diminishes the risk undertaken by <b>us</b>;</li><li>that is of common knowledge;</li><li>that <b>we</b> know or, in the ordinary course of <b>our</b> business, ought to know; or</li><li>if <b>we</b> have waived your duty to disclose the matter.</li></ol> <p>If <b>you</b> fail to comply with <b>your</b> duty of disclosure, <b>we</b> may be entitled to reduce <b>our</b> liability in whole or in part under <b>your</b> policy in respect of a claim or <b>we</b> may cancel the policy. If <b>your</b> non-disclosure is fraudulent, <b>we</b> have the right to avoid the policy from its beginning.</p>
Your dealings with others	<p><b>We</b> will not make any payment under this policy if <b>you</b>, when dealing with <b>your client</b> or a third party, admit that <b>you</b> are liable (unless <b>you</b> have <b>our</b> prior written consent), or collude to obtain a recovery under this policy, or prejudice <b>our</b> rights of recovery against any party.</p> <p><b>You</b> must also ensure that <b>our</b> rights of recovery, including but not limited to any subrogated rights of recovery, against a third party are not unduly restricted or financially limited by any term in any of <b>your</b> contracts.</p> <p><b>You</b> must also not reveal the amount of cover available under this insurance, unless <b>you</b> had to give these details in negotiating a contract with <b>your client</b> (including negotiating any request for proposal), <b>you</b> are required by law or compelled by a court, or <b>you</b> otherwise have <b>our</b> prior written consent.</p>
Providing us with	<p><b>You</b> shall provide <b>us</b> with full, timely and accurate information about any claim that <b>you</b> contend</p>



## General Liability – Public & Products Liability

information and assistance

falls within the coverage afforded by this policy.

**You** shall:

1. give **us**, or anyone appointed by **us**, at **your** expense, such assistance, cooperation and information as **we** reasonably require under this policy, to avoid, minimize, or resolve any claim; and
2. notify **us** as soon as practicable of all settlement offers made by a claimant in connection with any **claim**; and
3. give **us** all assistance and cooperation **we** reasonably require to pursue at **our** expense any subrogated right of recovery **we** may have in connection with any claim or declaratory relief action.

Subject to **your** rights under the Insurance Contracts Act (Cth) 1984 **we** will not make any payment under this policy unless **you** comply with these obligations.

If **you** or anyone on **your** behalf tries to deceive **us** by deliberately giving **us** false information in connection with such a claim, then **we** will not make any payment arising out of or relating to that claim.

Notifying us of changes to your business

**You** must promptly tell **us** if **you** materially change **your** business (a material fact or circumstance is one which might affect **our** decision to provide insurance or the conditions of that insurance), **We** will only provide coverage under this policy for such a change if **we** have given **our** written approval and **you** have agreed to all additional coverage terms and/or additional premium **we** may request to cover the change in risk.

Your due diligence

**You** must

1. **You** must take reasonable steps to prevent accident or injury and to protect **your** property against loss or damage. **You** must keep any property insured under this policy in good condition and repair;
2. **You** must make every reasonable effort to minimize any loss, damage or liability and take appropriate emergency measures immediately if they are required to reduce any claim.

Satisfying your retention

**We** will not make any payment under this policy unless **you** first pay the applicable **retention**. The **retention** shall apply separately to each claim unless it is reasonably established that a series of claims against **you** directly arise from the same original cause, a single source or a repeated or continuing problem in **your business activities** then all such claims that **we** agree are related will be treated as a single claim and **you** need only pay a single **retention** and they shall be subject to a single **policy limit**.

Any combination of **defence costs** and compensation with respect to a claim may satisfy the **retention**. The **policy limit** is excess of the **retention**.

Subrogation

In the event of any payment under this policy, **we** shall be subrogated to all of **your** rights of recovery against any person or entity for such payments and **you** shall fully cooperate with **us** in asserting such rights of recovery, including executing all papers required and by permitting **us** to prosecute an action in **your** name at **our** expense if so requested, and **you** shall do nothing to prejudice such rights. **We** shall have no subrogation rights against **you**.

Any recovered amounts shall first be applied on a pro-rata basis to **you** and to **us** for sums **you** or **we** incurred to pursue the subrogation action. The remainder of any recovered amounts shall be distributed on a pro-rata basis both to **you** for payments made under the **retention** and to **us** for **our** payments made in excess of the **retention**.

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### VIII. Definitions

All phrases and words that appear in bold type in this policy (excluding headings), either in singular or plural form, have the meaning that is given to them below:

## General Liability – Public & Products Liability

<b>Asbestos risks</b>	<p>“Asbestos risks” means:</p> <ol style="list-style-type: none"> <li>a. the mining, processing, manufacturing, use, testing, ownership, sale or removal of asbestos, asbestos fibres or material containing asbestos; or</li> <li>b. Exposure to asbestos, asbestos fibres or materials containing asbestos; or</li> <li>c. The provision of instructions, recommendations, notices, warnings, supervision or advice given, or which should have been given, in connection with asbestos, asbestos fibres or structures or materials containing asbestos.</li> </ol>
<b>Applicable courts</b>	<p>“Applicable courts” means the courts stated as the “applicable courts” on the schedule attached to this policy.</p>
<b>Bodily injury</b>	<p>“Bodily injury” means death, or any bodily or mental injury or disease of any person.</p>
<b>Business activities</b>	<p>“Business activities” means those activities described as “business activities” on the schedule to policy, and which are performed within the <b>geographical limit</b>.</p>
<b>Date recognition</b>	<p>“Date Recognition” means any failure by any equipment (including any hardware or software) to correctly recognize any given date or to process any data or to operate properly due to any failure to correctly recognize any given date.</p>
<b>Defence costs</b>	<p>“Defence costs” means all reasonable legal costs incurred with <b>our</b> prior written agreement to investigate, settle or defend a claim against <b>you</b>.</p>
<b>Denial of access</b>	<p>“Denial of access” means nuisance, trespass or interference with any easement or right of air, light, water or way.</p>
<b>Geographical limit</b>	<p>Geographical limit” means the limit stated as the “geographical limit” on the schedule to this policy.</p>
<b>Insured</b>	<p>“Insured” means the entity stated as “the insured” on the schedule to this policy.</p>
<b>Nuclear risks</b>	<p>“Nuclear risks” means:</p> <ol style="list-style-type: none"> <li>a. any sort of nuclear material, nuclear reaction, nuclear radiation or radioactive contamination;</li> <li>b. Any products or services which include, involve or relate in any way to anything in (a) above, or the storage, handling or disposal of anything in (a) above;</li> <li>c. All operations carried out on any site or premises on which anything in (a) or (b) above is located.</li> </ol>
<b>Personal injury</b>	<p>“Personal injury” means false arrest, detention, or imprisonment; malicious prosecution; wrongful entry into, or eviction of a person from, a room, dwelling or premises that they occupy; invasion of any rights of privacy.</p>
<b>Policy limit</b>	<p>“Policy limit” means the amount stated as the “policy limit” on the schedule to this policy.</p>
<b>Policy period</b>	<p>“Policy period” means the period of time stated as the “policy period” on the schedule to this policy.</p>
<b>Pollution</b>	<p>“Pollution” means any pollution or contamination, including noise, electromagnetic fields, radiation and radio waves.</p>
<b>Products</b>	<p>“Products” means any goods supplied to others which were sold, manufactured, repaired, installed, erected, altered, cleaned or treated by <b>you</b>.</p>
<b>Property damage</b>	<p>“Property damage” means physical loss of or injury to or destruction of tangible property including the resulting loss of use of such property.</p>
<b>Retention</b>	<p>Retention” means the amount as stated as the “retention” on the schedule to this policy.</p>
<b>Terrorism</b>	<p>“Terrorism” means An act, or the threat of an act, by any person or group of persons, whether</p>

## General Liability – Public & Products Liability

acting alone or on behalf of or in connection with any organisation or government, that:

- a. Is committed for political, religious, ideological or similar purposes; and
- b. is intended to influence any government or to put the public, or any section of the public, in fear; and
- c.
  - i. Involves violence against one or more persons; or
  - ii. Involves damages to property; or
  - iii. endangers life other than that of the person committing the action; or
  - iv. creates a risk to health or safety of the public or a section of the public; or
  - v. is designed to interfere with or to disrupt an electronic system.

**Tool of trade** “Tool of trade” means mobile plant or equipment being used where insurance or security is not required under the provisions of any road traffic legislation.

**Virus** “Virus” means a piece of unauthorised executable code which propagates itself through **your** computer system or network.

**We/Us/Our** “We,” “Us,” and “Our,” means Syndicate(s) at Lloyds managed by Hiscox Syndicates Ltd.

**War** “War” means war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power.

**You/Your** “You” and “Your” means:

1. any person who was, is or becomes a director, officer, trustee, partner in, volunteer, or employee of the **insured**, but only in respect to claims arising out of the course and scope of their duties as such and in the event of their death, incapacity or bankruptcy, any claim against their estates, heirs, legal representatives or assigns shall be considered a claim against them;
2. any person or entity that takes legal control of the **insured, existing subsidiary or acquired entity** upon the insolvency or bankruptcy of the **insured, existing subsidiary or acquired entity**.

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### IX. General matters

**Settlement of claims** If a situation arises where **we** have a good faith belief that a claimant’s monetary offer to settle a covered claim is reasonable when **you** do not, then **we** will neither compel **you** to accept the settlement offer nor will **we** cease providing coverage for such a claim merely because **you** did not accept the offer. However, if **we** recommend that **you** do accept such an offer and **you** elect not to, then **our** maximum payment toward that particular claim following the rejection or expiration of that offer will be the outstanding covered **defence costs** incurred up to the date the settlement offer was rejected or expired, plus the amount of the unaccepted settlement offer, minus **your** remaining **retention** on the day the settlement offer is rejected or expires. If this amount is in excess of the **retention**, then at **your** request and subject to **our** discretion **we** will pay this amount to **you** in a lump payment in return for **you** fully releasing **us** from all liability with respect to the unsettled claim.

In exchange for this release, **we** will not seek reimbursement for any portion of **our** claim payment to **you**, even if the claim is later resolved for less than the amount **we** paid to **you**.

**Cancellation** The policy will be cancelled by **you** if **you** give **us** 60 days’ written notice. **We** may cancel the policy if the premium is not paid by the due date or in accordance with the Insurance Contracts Act 1984.

**We** will return a pro-rata amount of premium unless **we** have accepted any notification of any claim



## General Liability – Public & Products Liability

or **loss** before the cancellation takes effect.

### Severability

If a board member, executive officer, in-house counsel, or risk manager of the **insured**, an **existing subsidiary** or an **acquired entity** breaches a condition of or obligation under the policy, their breach shall be attributable to themselves and to all of **you**. If a condition of or obligation under the policy is breached by a person or entity who is not a board member, executive officer, in-house counsel, or risk manager, their breach shall be attributable only to themselves and to any persons among **you** who have condoned, ratified or remained passive after learning of such breach, but not to any of the others of **you**.

### Dispute Resolution

a. **We** and **you** will seek in good faith to resolve any dispute arising out of or relating to this policy, including its construction, application and validity by negotiation without recourse to court proceedings. In the event of a dispute **we** or **you** must give written notice to the other proposing to resolve the dispute by negotiation (“dispute notice”). Within 14 days after service of the dispute notice, one or more representatives of each party shall meet in good faith to attempt to resolve the dispute by agreement.

If the dispute is not resolved within 21 days of the dispute notice, either party may upon written notice to the other (“ADR Notice”) refer the dispute to mediation in accordance with (b) below.

b. **We** and **you** agree to seek in good faith to settle any dispute through mediation under the auspices of the Australian Commercial Disputes Centre (“ACDC”). In order to commence a mediation, **we** or **you** must give written notice to the other party to the dispute. The mediator shall be agreed upon within 21 days of the date of the ADR Notice, failing which the mediator shall be appointed by the CEO of the ACDC. The mediation shall start not later than 30 days after the appointment of the mediator.

In the event that the parties cannot agree on any issue as to the conduct of the mediation (other than any disagreement as to the appointment of the mediator), at the request of **you** or **us** the CEO of the ACDC and the mediator (if he/she has been appointed) will consult with the parties and decide the issue for them.

### Jurisdiction

Any dispute arising out of or relating to this policy, including over its construction, application and validity, if not resolved by negotiation or ADR will be submitted to the exclusive jurisdiction of any competent court of the state of New South Wales or the Federal Court.

### Currency

All references to dollar amounts in this policy are references to and payable in the currency of the Australia.