



**Woodina**  
Underwriting Agency

**Information Technology Liability  
Insurance Policy**

**For Information Technology  
Individual Contractors**

## NOTICES

### Introduction

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;
- 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:

- reduce the risk;
- are common knowledge;
- the Insurer knows or, in the ordinary course of business, should know; 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:

- reduce their liability for any claim;
- cancel this Policy;
- refuse to pay a claim;
- avoid this Policy from its beginning, if the Insured's non-disclosure was fraudulent.

## Claims Made Notice

Section 1 (Professional Indemnity) of this policy operates on a claims made and notified basis. This means that this section covers the Insured for claims made against them and notified to the Insurer during the Period of Insurance.

Section 2 (Public and Products Liability) of this policy operates on an occurrence basis.

## Privacy

Woodina Underwriting is committed to protecting the privacy of the personal information you provide us. Woodina collects uses 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:

- To our relevant employees involved in delivering our services;
- If your insurance broker collects this form from you, to that broker;
- To facilitators such as legal firms, professional experts such as accountants, actuaries,
- engineers and technology experts;
- To the insurance companies with whom we transact business;
- To the Lloyd's Syndicates we represent (which are located in the United Kingdom) ;
- To insurance reference bureau or credit reference bureau;
- 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 (07) 3387 2800.

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 (07) 3387 2800.

### The Insurer – Lloyd's of London

The Insurer of this Policy is Lloyd's of London acting through Woodina Underwriting Agency Pty Ltd (Woodina) as their agent.

Woodina 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, Woodina 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 and Woodina are 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. Woodina 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](http://www.ica.com.au) or from the Code's dedicated website at [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

### Complaint Procedure

Any enquiry or complaint relating to this insurance should, in the first instance, be referred to Woodina. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Australia Limited  
Level 9  
1 O'Connell Street  
Sydney NSW 2000

Telephone Number: (02) 8298 0700

Facsimile Number: (02) 8298 0788

who will refer your dispute to Policyholder & Market Assistance at Lloyd's.

Complaints that cannot be resolved by Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

The Underwriters at Lloyd's supporting Woodina's binding authority agree that:

- i. In the event of a dispute arising under this Insurance, the underwriters at the request of the insured 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 General Representative in Australia, Suite 2, Level 21 Angel Place, 123 Pitt Street, Sydney NSW 2000, who has authority to accept service and to enter an appearance on the underwriters' behalf, and who is directed at the request of the insured to give a written undertaking to the insured that he will enter an appearance on underwriters' behalf.
- iii. If a suit is instituted against any one of the underwriters, all underwriters on the binding authority will abide by the final decision of such Court or any competent Appellate Court.

## POLICY TERMS

### SECTION 1 INSURING CLAUSE – PROFESSIONAL INDEMNITY

Coverage under this Section is provided on a claims made and notified basis.

#### 1.1 Insuring Clause

- i. The Insurer will indemnify the Insured and any Contractor for civil liability for any Claim for compensation first made against the Insured and any Contractor during the Period of Insurance and notified to the Insurer during the Period of Insurance for a breach of professional duty in the conduct of the Insured's Business and first made after the Retroactive Date.
- ii. The Insurer also agrees to pay Defence Costs either incurred by the Insurer or incurred by the Insured with the Insurer's prior written consent in connection with any Claim for compensation under this Policy.

#### 1.2 Automatic Extensions

The indemnity granted under this Policy is extended to include the following Automatic Extensions of cover but always subject to the Insuring Clause and all other terms and conditions of this Policy.

##### 1.2.1 Fraud and Dishonesty

The Insurer agrees to indemnify the Insured in respect of any Claim which would otherwise be excluded because of the Fraud and Dishonesty Exclusion 4.9 of this Policy provided that the Insurer will not provide cover in respect of any:

- i. person committing or condoning any act, omission or breach excluded by Exclusion 4.9 of this Policy where the Insured has knowingly engaged in or condoned the act, error or omission;
- ii. loss sustained as a result of any act or omission occurring after the date on which the Insured first discovers, or has reasonable cause for suspicion of, a fraudulent or dishonest act or omission on the part of any person;
- iii. loss of negotiable instruments, bearer bonds, coupons, stamps, bank or currency notes.

##### 1.2.2 Defamation

The Insurer agrees to indemnify the Insured in respect any Claim for unintentional libel, slander or defamation.

### 1.2.3 Intellectual Property Rights

The Insurer agrees to indemnify the Insured in respect of any Claim for unintentional:

- i. infringement of copyright, trademarks, registered designs, circuit layouts, patents, plagiarism or passing off; and
- ii. breach of confidentiality.

### 1.2.4 Licensee Intellectual Property Rights

The Insurer agrees to indemnify the Insured in respect of any Claim that would otherwise be excluded under Exclusion 4.2 (Assumed Liability) arising from a Claim made against the Insured by a Licensee of the Insured's under any warranty or indemnity by the Insured arising from the Insured's ownership and right to licence its Intellectual Property Rights to the Licensee.

### 1.2.5 Competition & Consumer Legislation

The Insurer agrees 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 or territories of the Commonwealth of Australia or the Dominion of New Zealand.

### 1.2.6 Former Principals

The Insurer agrees to indemnify the Insured in respect of any Claim against any former principal, partner, director, or Employee of the Insured in respect of the conduct of the Insured's Business.

### 1.2.7 Loss of Documents

The Insurer agrees to indemnify the Insured in respect of any costs and expenses incurred by the Insured in replacing or restoring lost Documents for which the Insured is legally responsible if:

- i. the loss of the Documents is first discovered during the Period of Insurance;
- ii. the Insured notifies the Insurer within 30 days of discovery of the loss of the Documents;
- iii. the Insured provides the Insurer with invoices substantiating the costs and expenses incurred by the Insured in replacing or restoring the lost Documents and the Insurer approves or a competent person nominated by the Insurer approves the invoices.

The Insurers total liability under this extension for any one Claim and in the

aggregate from all Claims during the Period of Insurance shall not exceed \$500,000. This sub-limit is part of and not in addition to the Limit of Indemnity.

#### 1.2.8 Run Off Cover

The Insurer agrees to indemnify any person, corporation, Subsidiary or entity insured by this Policy until expiry of the Period of Insurance if:

- i. such person retires or otherwise ceases to provide professional duties in connection with the Insured's Business; or
- ii. such corporation, Subsidiary or entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity.

#### 1.2.9 Joint Ventures

The Insurer agrees to indemnify the Insured in respect of any Claim against the Insured resulting from its conduct of the Insured's Business as a joint venture partner. The Insurer will not indemnify the joint venture partner(s) of the Insured.

#### 1.2.10 Attendance at Enquiries

The Insurer agrees to indemnify the Insured for the costs incurred by the Insurer, or the reasonable costs incurred by the Insured with the Insurers prior written consent, of the Insured's legal representation at any enquiry relating to or connected with the Insured's Business, which the Insured is legally compelled to attend provided that:

- i. the enquiry is ordered or commissioned during the Period of Insurance;
- ii. the Insurer shall be entitled to nominate lawyers to represent the Insured;
- iii. the Insured notified the Insurer in writing within the Period of Insurance and within 30 days of having received notice of the inquiry;
- iv. the enquiry does not take place in the USA and or Canada;

The Insurer's maximum aggregate liability for all Claims under this automatic extension shall not exceed \$20,000 during the Period of Insurance.

#### 1.2.11 Court Attendance Costs

The Insurer agrees to indemnify the Insured for any Court attendance costs of any partner, principal, director or Employee of the Insured who is legally required to attend Court as a witness in a Claim covered by this Policy, to an amount not exceeding \$250 per day for Employees and \$500 per day for those other persons. No Deductible applies to this automatic extension.



### 1.2.12 Heirs, Estates and Legal Representatives

The Insurer agrees to indemnify the estate, heirs, legal representatives or assigns of any deceased, incompetent or insolvent Insured in respect of Claims arising from the conduct of the Insured's Business.

### 1.2.13 Continuous Cover

The Insurer will provide Continuous Cover under this Policy where the Insured:

- i. first became aware of facts or circumstances that might give rise to a Claim, prior to the Period of Insurance; and
- ii. had not notified the Insurer of such facts or circumstances prior to the Period of Insurance, then Exclusion 4.1 will not apply to any notification during the Period of Insurance of any Claim resulting from such facts or circumstances, provided that:
  - a) there is an absence of fraudulent non-compliance with the Insured's duty of disclosure and an absence of fraudulent misrepresentation by the Insured in respect of such facts or circumstances; and
  - b) the Insured has been continuously insured, without interruption at the time of the notification of the Claim to the Insurer, under a professional indemnity policy issued by the Insurer and was insured by the Insurer at the time when the Insured first became aware of such facts or circumstances; and
  - c) the Insurer may reduce its liability under this Policy to the extent of any prejudice the Insurer 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.

### 1.2.14 Breach of Contract

The Insurer agrees to indemnify the Insured for any unintentional breach of a written contract whilst providing or supplying Information Technology Products or Information Technology Services and any other activities specified in the Policy Schedule as the Insured's Business due to:

- i. any breach of an implied statutory term concerning necessary quality, safety or fitness for purpose; or
- ii. any breach of an express or implied duty to use reasonable care and skill; or
- iii. any material defect in such Information Technology Products or Information Technology Services and any other activities specified in the Policy Schedule as the Insured's Business; or
- iv. the Information Technology Products or Information Technology Services and any

other activities specified in the Policy Schedule as the Insured's Business not conforming in all material respects to the written specification that forms part of such written contract.

#### 1.2.15 Mitigation of Loss Cover/Fee Recovery

- i. In the event that any client of the Insured expresses dissatisfaction with the Information Technology Services provided by the Insured and refuses to pay all or part of any fee owed to the Insured in respect of such Information Technology Services, the Insurer may at its sole discretion and subject to its prior written consent reimburse any such amount owed where in the Insurer's sole opinion this will avoid a Claim being made against the Insured for a greater amount and for which indemnity would otherwise be afforded under this Policy.

Provided always that:

- a) in the event that a Claim is subsequently made against the Insured following reimbursement of the outstanding fee by the Insurer, the maximum amount payable by the Insurer including all amounts previously paid shall not exceed the Limit of Indemnity; and
  - b) the Insured shall reimburse to the Insurer any amount which is subsequently recovered from such client; and
  - c) the Insured shall assign to the Insurer all rights in relation to the amounts owed.
- ii. The Insurer shall indemnify the Insured for any reasonable costs and expenses necessarily incurred with the Insurers prior written and continuing consent in respect of any action taken to mitigate a loss that would otherwise become the subject of a Claim for which indemnity would be provided under this Policy.

The sub-limit of liability for all such payments under this extension is \$50,000 in the aggregate for all Claims. The sub-limit is part of and not in addition to the Limit of Indemnity.

#### 1.2.16 Emergency Defence Costs

The Insurer agrees subject to any provision in the Policy to the contrary, if it is not possible for the Insured to obtain the Insurer's consent prior to incurring Defence Costs, the Insurer will waive prior consent so long as the Insurer's consent is obtained within 30 days of the first of such Defence Costs being incurred and provided that:

- i. the Insurer is only liable to indemnify the Insured for that part of the Insured's liability in respect of each Claim and Defence Costs in excess of the Deductible; and
- ii. if the Insurer subsequently refuses to pay under the Policy, the Insured must reimburse the Insurer for any Defence Costs that the Insurer has paid in advance,

according to their respective rights and interests.

The sub limit of liability for all such payments under this extension is \$100,000 in the aggregate for all Claims. This sub-limit is part of and not in addition to the Limit of Indemnity.

#### 1.2.17 Public Relations Expense

The Insurer agrees to pay 90% of any reasonable fees, 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:

- i. The Insured notifies the Insurer 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
- ii. The Insurer have given prior written consent to retain the services of such public relations consultant; and
- iii. The Insurer's total aggregate liability during any one Period of Insurance for all public relations expenses shall not exceed \$20,000, and shall be part of and not additional to the Limit of Indemnity as shown on the Policy Schedule.
- iv. The Deductible stated in the Policy Schedule shall not apply to cover under this extension.

#### 1.2.18 Vicarious Liability – Consultants, Contractors and Agents

The Insurer agrees to indemnify the Insured in respect of any Claim arising out of a breach of the Insured's Business activities undertaken by consultants or agents appointed by the Insured provided that there is no indemnity extended to the consultant or agent unless they are a Contractor.

## SECTION 2 INSURING CLAUSE - PUBLIC AND PRODUCTS LIABILITY

Coverage under this Section is provided on an Occurrence basis.

### 2.1. Insuring Clause

The Insurer agrees to indemnify the Insured and any Contractor against any Claim for legal liability to pay compensation for Personal Injury or Property Damage as a result of an Occurrence happening in connection with the Insured's Business during the Period of Insurance.

## 2.2. Joint Ventures

The Insurer agrees to indemnify the Insured in respect of any Claim against the Insured caused by an Occurrence resulting from its conduct of the Insured's Business as a joint venture partner. The Insurer will not indemnify the joint venture partner(s) of the Insured.

## 2.3. Tenants Liability

The Insurer will extend indemnity under this Section which would otherwise be excluded by Exclusion 4.14 (Property in the Insured's Physical Custody or Legal Control) to any lessor with whom the Insured has executed a signed and dated rental or lease agreement to conduct the Insured's Business provided that no further, broader or wider cover will be granted to such lessor than would have been granted to the Insured under this section if the Insured had been found legally liable for Personal Injury or Property Damage arising from the conduct of the Insured's Business at the rental or leased premises.

## SECTION 3 LIMITS OF INDEMNITY

### 3.1. Limit of Indemnity

#### 3.1.1 Section 1 – Professional Indemnity

The total liability of the Insurer under 3.1.1 in respect of any one Claim and in the aggregate for all Claims shall not exceed the Limit of Indemnity as noted in the Policy Schedule.

All Claims arising from the same breach of professional duty, or related breaches of professional duty, shall be regarded as one Claim.

The Insurer will have no liability under Section 1 (Professional Indemnity) for any Claims where the Insurer has granted indemnity under Section 2 (Public and Products Liability).

#### 3.1.2 Section 2 – Public and Products Liability

The total liability of the Insurer under 3.1.2 in respect of any one Claim caused by or arising from an Occurrence shall not exceed the Limit of Indemnity as noted in the Policy Schedule.

The total aggregate liability of the Insurer under this Policy in any one Period of Insurance in respect of Products Liability Claims will not exceed the Limit of Indemnity as noted in the Policy Schedule.

All Claims arising from the same Occurrence shall be regarded as one Claim.

The Insurer will have no liability under Section 2 (Public and Products Liability) for any Claims where the Insurer has granted indemnity under Section 1 (Professional Indemnity).

### **3.2. Reinstatement of the Limit of Indemnity – Applicable to Section 1 – Professional Indemnity only**

If the Limit of Indemnity is either partially or totally exhausted by the payment of a Claim under this Policy, the Insurer agrees to reinstate the Limit of Indemnity by an amount equal to the Limit of Indemnity provided that:

- i. The Insurer's total liability in respect of all Claims shall not exceed the Limit of Indemnity in the aggregate in the Policy Schedule; and
- ii. such reinstatement is only available to subsequent Claims totally unrelated to those that give rise to the partial or total exhaustion of the Limit of Indemnity.

### **3.3. Defence Costs in Addition to the Limit of Indemnity**

The Insurer agrees, in addition to the Limit of Indemnity, to pay the Defence Costs of any Claim which is the subject of indemnity of this Policy provided that:

- i. where the Insured's liability exceeds the available Limit of Indemnity, the Insurer shall only pay such proportion of the Defence Costs as the available Limit of Indemnity bears to the Insured's liability;
- ii. where the amount the Insurer has paid or incurred as Defence Costs exceeds the share that the Insurer is obliged to pay under 3.3 (i), the Insured shall upon demand, pay to the Insurer the excess amount. Alternatively, the Insurer may deduct the excess amount from any entitlements the Insured may have at any time under this Policy.

### **3.4. Deductible**

- i. The Insured is responsible for the Deductible in respect of each and every Claim. Subject to clause (c) below, the Insurer is only liable to indemnify the Insured for that part of the Insured's liability in respect of each Claim and Defence Costs in excess of the Deductible.
- ii. Where the Insurer has paid on the Insured's behalf part or all of the Deductible, the Insured shall reimburse the Insurer.
- iii. Unless otherwise expressed in the Policy Schedule, all Deductibles are exclusive of Defence Costs up to the amount of the Deductible.
- iv. Costs and expenses incurred by the Insurer in determining whether the Insurer is liable to indemnify the Insured under this Policy shall not be subject to the Deductible and will be met by the Insurer.
- v. For the purposes of determining the Deductible applicable to any Claim covered by this Policy, all Claims arising from the same breach of professional duty, or related

breaches of professional duty, shall be regarded as one Claim.

## SECTION 4 EXCLUSIONS

The Insurer will not indemnify the Insured under any section of this Policy (including Defence Costs) for any Claim arising directly or indirectly from:

### 4.1. Prior Claims and Circumstances

- i. any Claim arising from or in connection with a fact or circumstance that the Insured knew or ought reasonably to have known prior to the Period of Insurance might or could give rise to a Claim;
- ii. any Claim arising from or in connection with a fact or circumstance of which notice has been or reasonably should have been given under any previous insurance policy;
- iii. any Claim that was first made, threatened or intimated against the Insured prior to the Period of Insurance.

### 4.2. Assumed Liability/Contractual Liability

- i. any contractual or other assumed liability, including by way of contract, guarantee, indemnity or warranty entered into by the Insured which is not connected with, incurred, entered into or assumed in the normal conduct of the Insured's Business.
- ii. any contractual or other assumed liability including by guarantee, indemnity or warranty entered into by the Insured where the Insured assumes liability above and beyond the liability that would have arisen at common law within the jurisdiction of the Commonwealth of Australia arising from the conduct of the Insured's Business.

### 4.3. Fines and Penalties

any award of any fines, penalties, liquidated damages, punitive damages, exemplary damages, aggravated damages, or any other non-compensating damages of any kind.

### 4.4. Liability to Employees

any Claim based upon, attributable to, or in consequence of the Insured's liability as an employer, including Personal Injury (personal injury, sickness, disease, death, mental injury, anxiety, stress, emotional distress and/or nervous shock) of any person occurring in the course of their employment with the Insured.

### 4.5. Related Parties

any Claim brought or maintained by, or on behalf of:

- i. any Insured entity; or
- ii. any person who, at the time of the act, error or omission giving rise to the Claim, is a Family Member of the Insured; or
- iii. any entity operated or controlled by any Insured or Family Member of the Insured.

#### 4.6. Trading Debts and Insolvency

any Claim arising out of the Insured's insolvency, bankruptcy, liquidation, or failure to pay any trading debt.

#### 4.7. Subrogation Rights

any liability, loss or damage in respect of which the Insured has at any time foregone, excluded or limited a right of recovery.

#### 4.8. USA and Canada

- i. any actual or alleged act, error or omission committed within the territorial limits of the United States of America or Canada or any of their territories or protectorates; or
- ii. which is brought in a court of law within the territorial limits of the United States of America or Canada or directly or indirectly arising from any settlement or for the enforcement of any judgment or order obtained within the territorial limits of, or determined pursuant to the laws of those countries or their territories or protectorates.

#### 4.9. Fraud and Dishonesty and Reckless Acts

any actual or alleged:

- i. dishonest, fraudulent, criminal or malicious act committed by the Insured;
- ii. wilful breach of any statute, contract or duty committed by the Insured; or
- iii. conduct with a reckless disregard for the consequences thereof by the Insured

#### 4.10. Pollution

any Claim or liability arising from, directly or indirectly attributable to or in consequence of the actual or alleged release or discharge of any Pollutants other than:

- i. any Claim arising out of Pollution caused by a sudden, identifiable, unintended and unexpected incident which takes place in its entirety at a specific time and place, except when a Claim or suit is brought in the USA or Canada or any dependent

territory; or

- ii. any loss, cost or expense incurred for the prevention of Pollution or arising out of any direction by any governmental authority that the Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralise any such Pollution; or
- iii. all Pollution which arises out of one incident shall be deemed to have occurred at the time such incident takes place.

The maximum amount the Insurer will pay for (i), (ii) or (iii) above is \$500,000 any one loss and in the annual aggregate.

#### 4.11. Asbestos

any Claim or liability

- i. arising from; or
- ii. directly or indirectly attributable to; or
- iii. in consequence of

asbestos or other material of which asbestos forms part thereof.

#### 4.12. War and Terrorism

any Claim or liability directly or indirectly caused by, resulting from or in connection with any of the following:

- i. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- ii. any act of terrorism; or
- iii. any action taken in controlling, preventing, suppressing or in any way relating to (i) and/or (ii) above.

For the purposes of this exclusion, an act of terrorism means an act, including but not limited to the use of force or violence or the threat thereof, of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear.



#### 4.13. Nuclear

any Claim or liability directly or indirectly attributable to or in connection with:

- i. loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting from or arising therefrom or any consequential loss; or
- ii. any legal liability directly or indirectly caused by or contributed by or arising from:
  - a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
  - b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

#### 4.14. Property in the Insured's Physical Custody or Legal Control

any Claim or liability arising from or directly or indirectly attributable to or in consequence of Property Damage to property owned by the Insured or in the Insured's physical or legal control, other than:

- i. premises which are leased or rented to the Insured; or
- ii. premises which the Insured temporarily occupies in order for the Insured to carry out work; or
- iii. vehicles (not belonging to the Insured or used by the Insured or on the Insured's behalf) in the Insured's physical or legal control whilst within a car park owned or operated by the Insured unless part of the Insured's Business is the operation of a car park for reward; or
- iv. the Insured's Employees property; or
- v. other property in the Insured's physical or legal control, provided that the Insurer's total liability payable from all Claims during the Period of Insurance shall not exceed \$250,000 in the aggregate for all Claims.

#### 4.15. Aircraft or Watercraft

any Claim or liability

- i. arising from; or
- ii. directly or indirectly attributable to; or
- iii. in consequence of

the ownership, maintenance, servicing, operation or use by the Insured of any Aircraft or Watercraft.

#### 4.16. Motor Vehicle

any Claim or liability

- i. arising from; or
- ii. directly or indirectly attributable to; or
- iii. in consequence of

the ownership, maintenance, operation, possession, use, loading or unloading by the Insurer of any motor vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Personal Injury.

This exclusion does not apply to liability caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer provided no indemnity is or would be available to the Insured under any policy of compulsory liability insurance had the Insured complied with their obligations pursuant to such law.

#### 4.17. Faulty Workmanship

any Claim or liability

- i. arising from; or
- ii. directly or indirectly attributable to; or
- iii. in consequence of

the cost of performing, correcting or improving any work undertaken by the Insured.

#### 4.18. Product Recall

any Claim or liability

- i. arising from; or
- ii. directly or indirectly attributable to; or
- iii. in consequence of

the recall, withdrawal, inspection, repair, replacement or loss of use of the Insured's

Information Technology Products or of any property of which the Insured's Information Technology Products form a part, if these Information Technology Products are recalled by the Insured or another, or withdrawn from the market or from use, because of any known or suspected defect or deficiency therein.

#### 4.19. Excluded Activities

any Claim arising from or directly or indirectly attributable to or in consequence of:

- i. any Information Technology Products or Information Technology Services and any other activities specified in the Policy Schedule as the Insured's Business provided to the Aviation industry that in any way impact the flight and/or navigation of any Aircraft; or
- ii. any Information Technology Products or Information Technology Services and any other activities specified in the Policy Schedule as the Insured's Business provided to the Defence industry that in any way impact any weapon or combat systems; or
- iii. any Information Technology Products or Information Technology Services and any other activities specified in the Policy Schedule as the Insured's Business provided to the Medical industry that in any way impact the diagnosis or treatment of any ailment, illness or disease.

## SECTION 5 DEFINITIONS

### 5.1. Aircraft

Aircraft means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

### 5.2. Claim

Claim means

- i. any civil proceeding brought by a third party against the Insured for compensation; or
- ii. a written demand by a third party for monetary damages

### 5.3. Contractor

Contractor means an entity or person performing work pursuant to a contract with the Insured, where such work is performed as part of the Insured's Business and under the Insured's supervision and control.

#### 5.4. Deductible

Deductible means the amount specified in the Policy Schedule which is exclusive of Defence Costs.

#### 5.5. Defence Costs

Defence Costs means any necessary and reasonable fees, expenses, costs and disbursements incurred by the Insured or by the Insured with the Insurers prior written consent in investigating or defending a Claim covered by this Policy.

#### 5.6. Documents

Documents means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, whether printed, written or reproduced by any method including computer records and electronically stored data but does not mean bearer bonds or coupons, stamps, bank or currency notes, money or any negotiable instrument.

#### 5.7. Employee

Employee means any person employed under a contract of service or apprenticeship but shall not mean a consultant, contractor or agent.

#### 5.8. Family Member

Family Member means:

- i. any spouse, domestic partner or companion; or
- ii. any parent, or parent of the spouse, domestic partner or companion; or
- iii. any sibling, child, adopted child or any child living with the person as if the child were a member of the person's family.

#### 5.9. Insured's Business

Insured's Business means the Information Technology Products and/or Information Technology Services and any other activities specified in the Policy Schedule and for Section 2 (Public and Products Liability) only; the provision of canteens, social, sports welfare and childcare organisations for the benefit of the Insured's Employee's, first aid, fire and ambulance services and the maintenance of the Insured's premises.

#### 5.10. Information Technology Products

Information Technology Products means computer equipment designed, specified, manufactured, installed, supplied, repaired or marketed including computer hardware,

computer firmware, computer software, computer chip including embedded control logic or microprocessor chip, telecommunications system or other electronic computer device, provided either singularly or in connection with Information Technology Services.

#### 5.11. Information Technology Services

Information Technology Services means services, advice or work provided including consultancy services, design, specification, training, testing, data processing, data hosting, data communications service, project management, systems integration, or project implementation, analysis or maintenance, provided either singularly or in connection with Information Technology Products.

#### 5.12. Insured

Insured means:

- i. The person, partnership, company, Subsidiary or other entity, specified as the Insured in the Policy Schedule; and
- ii. Any person who is during the Period of Insurance a principal, partner, director or employee of the person, partnership, company, Subsidiary or other entity specified as the Insured in the Policy Schedule, but only while acting in the course of the Insured's Business.

#### 5.13. Insurer

Insurer means certain underwriters at Lloyd's through their coverholder Woodina.

#### 5.14. Limit of Indemnity

Limit of Indemnity means the maximum amount payable by the Insurer in respect of any one Claim as specified in the Policy Schedule.

#### 5.15. Occurrence

Occurrence means an event, or series of events consequent on or attributable to one source or originating cause, including continuous or repeated exposure to substantially the same general conditions which results in Personal Injury or Property Damage and which is neither expected nor intended by the Insured.

#### 5.16. Period of Insurance

Period of Insurance shall mean the period specified in the Policy Schedule.

#### 5.17. Personal Injury

Personal Injury means:

- i. bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury; or
- ii. false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution and humiliation; or
- iii. libel, slander, defamation of character or invasion of right of privacy; or
- iv. assault and battery not committed by the Insured or at the Insured's direction unless committed for the purpose of preventing or eliminating danger to persons.

#### 5.18. Policy

Policy means

- i. the insuring clauses, extensions, exclusions, conditions, definitions, Policy Schedule and other terms contained herein;
- ii. any endorsement to this Policy whether issued at the inception of this Policy or during the Period of Insurance; and
- iii. the information provided by the Insured in proposing insurance including the Proposal.

#### 5.19. Policy Schedule

Policy Schedule means the Policy Schedule attaching to this Policy.

#### 5.20. Pollutants

Pollutants means any contaminant whether solid, liquid or gas including but not limited to chemicals, smoke, vapours and fumes.

#### 5.21. Premium

Premium means the Premium specified as payable in the Policy Schedule.

#### 5.22. Products Liability

Products Liability means Personal Injury or Property Damage caused by any:

- i. defect of the Insured's Information Technology Products;
- ii. deficiency in any advice given at any time or intended to be given by the Insured concerning the use or storage of any of the Insured's Information Technology Products.

### 5.23. Property Damage

Property Damage means:

- i. physical damage to, loss of or destruction of property including the loss of use thereof or resulting therefrom; or
- ii. loss of use of property which has not been physically damaged or destroyed provided such loss of use is caused by physical damage to or destruction of other tangible property during the Period of Insurance.

### 5.24. Proposal

Proposal means:

- i. the written proposal by the Insured made to the Insurer containing information and statements which, together with any other information or documents provided, are the basis of this Policy and are considered incorporated in it; or
- ii. an online Proposal that has been generated solely based on the information provided by the Insured when applying for this Policy.

### 5.25. Subsidiary

Subsidiary means any entity which by virtue of any applicable legislation or law is deemed to be a Subsidiary of the Insured or in which the Insured owns or controls, directly or indirectly 50% of the issued voting shares of such entity.

### 5.26. Watercraft

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

### 5.27. We and/or Us and/or Our

We and Us or Our means Woodina acting on behalf of Certain underwriters at Lloyd's pursuant to a binding authority agreement.

## SECTION 6 GENERAL CONDITIONS

### 6.1 Alteration to Risk

The Insured must notify the Insurer in writing as soon as practicable of any material alteration to the risk during the Period of Insurance including:

- i. the Insured going into voluntary bankruptcy, receivership or liquidation; or

- ii. the Insured failing to pay debts as and when those debts become due; or
- iii. the Insured breaching any other obligation giving rise to the appointment of a receiver or the commencement of bankruptcy or winding up proceedings; or
- iv. Any material change in the nature of the Insured's Business.

The Insurer may not indemnify the Insured for any Claim if the Insured does not notify the Insurer in writing as soon as practicable of any material alteration to risk.

## 6.2 Assignment

The Insured must not assign this Policy or any rights under this Policy without the Insurers prior written consent by way of endorsement to this Policy.

## 6.3 Cancellation

- i. the Insured may cancel this Policy at any time by notifying the Insurer in writing.
- ii. The Insurer may cancel this Policy in accordance with the provisions of the Insurance Contracts Act 1984 (Commonwealth).
- iii. On cancellation of this Policy the Insurer will retain the monthly pro-rata proportion of the premium as at the date of notification of cancellation or the proposed cancellation date whichever is the later plus we will retain fifteen percent (15%) of that amount and the original administration fee on inception of this Policy.

## 6.4 Goods and Services Tax (GST)

The amount that the Insurer is liable to pay under this Policy will be reduced by the amount of any input tax credit that the Insured is or may be entitled to claim for the supply of goods or services covered by that payment.

If the Insured is entitled to an input tax credit for the premium, the Insured must inform the Insurer of the extent of that entitlement at or before the time the Insured makes a claim under this Policy.

The Insurer will not indemnify the Insured for any GST liability, fines or penalties that arise from or is attributable to the Insured's failure to notify the Insurer of the Insured's entitlement (or correct entitlement) to an input tax credit on the premium. If the Insured is liable to pay a Deductible under this Policy, the amount payable will be calculated after deduction of any input tax credit that the Insured is or may be entitled to claim on payment of the Deductible.



## 6.5 Governing Law and Jurisdiction

This Policy is governed by the laws of the Commonwealth of Australia and the State or Territory where this Policy is issued. Any disputes relating to interpretation shall be submitted to the exclusive jurisdiction of the Courts of Australia.

## 6.6 Insuring Clause Clarification

For the avoidance of doubt, the cover provided by the Insuring Clause of this Policy, includes but is not restricted to civil liability under the Trade Practices Act (1974), the Fair Trading Act 1987 (NSW), the Fair Trading Act 1985 (Victoria), Australian Securities and Investment Commission Act or similar legislation enacted by the other States or Territories of the Commonwealth of Australia or the Dominion of New Zealand.

## 6.7 Jurisdictional Limitation

The cover provided by this Policy shall extend to a Claim brought anywhere in the world except:

- i. any Claim brought within the territorial limits of the United States of America or the dominion of Canada or their territories or protectorates;
- ii. to enforce any judgement, order or award obtained in or determined under the laws of the United States of America or the dominion of Canada or their territories or protectorates.

## 6.8 Sanctions Limitation and Exclusion Clause

We shall not provide cover and We shall not be liable to pay any claim or 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 Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

## 6.9 Several Liability Notice

The liability of an Insurer under this contract of insurance is several and not joint with other Insurers party to this contract of insurance. An Insurer is liable only for the proportion of liability it has underwritten. An Insurer is not jointly liable for the proportion of liability underwritten by any other Insurer. Nor is an Insurer otherwise responsible for any liability of any other Insurer that may underwrite this contract of insurance.

## 6.10 Subrogation

- i. Where the Insurer has paid a Claim (including Defence Costs) amount under this Policy the Insurer will become entitled to any rights of the Insured against any party in relation to the Claim or loss, to the extent of the Insurers payment.

- ii. The Insured, at its own cost, must assist the Insurer and provide information as the Insurer may reasonably require to exercise their rights of subrogation. This may include providing and signing statements and other documents and the giving of evidence, among other things.

## SECTION 7 CLAIMS CONDITIONS

### 7.1 Territory

The indemnity provided by this Policy shall extend to the conduct of the Insured's Business by the Insured anywhere in the world, except within the territorial limits of the United States of America or the dominion of Canada or their respective territories or protectorates.

### 7.2 Notification

the Insured shall notify Woodina of any Claim or loss as soon as practicable and within the Period of Insurance.

Notice of any Claim or loss shall be given to Woodina in writing and forwarded to:

The Claims Manager  
Woodina Underwriting Agency Pty Ltd  
PO Box 12745  
George Street  
Brisbane Qld 4003

Or Email: [claims@woodina.com.au](mailto:claims@woodina.com.au)

It is the Insured's responsibility to ensure such notification has been forwarded to and received by Woodina.

### 7.3 Co-operation

- i. The Insured shall, at their own cost, frankly and honestly provide the Insurer with all information and assistance required by the Insurer or the lawyers and investigators and others appointed by the Insurer in relation to any Claim or loss. Any unreasonable failure to comply with this obligation may entitle the Insurer to deny cover for the Claim or loss, in whole or part.
- ii. The Insured shall, at its own cost, do all things reasonably practicable to minimise the Insured's liability in respect of any Claim or loss.

### 7.4 Legal Defence and Settlement

- i. Unless otherwise agreed, the Insurer shall have the right to assume, in the name of

the Insured, the legal defence of any Claim covered under this Policy. The Insurer shall have the right to appoint the lawyers that will defend and represent the Insured in respect of any Claim.

- ii. The Insurer shall have full discretion in managing any negotiation or proceeding as to the resolution of such Claim and the Insurer shall be entitled to settle a Claim if they so choose.
- iii. The Insured agrees not to admit liability for or settle any Claim or loss, make any admission, offer any payment or assume any obligation in connection with any Claim or loss, or incur any Defence Costs in connection with any Claim, without the Insurers written consent.
- iv. The Insurer shall not be liable for any settlement, Defence Costs, admission, offer, payment or assumed obligation made, incurred or entered into without their written consent.
- v. If the Insurer is of the opinion that a Claim will not exceed the Deductible they may require the Insured to conduct the defence of the Claim. If the Defence Cost and/or any other payment exceed the Deductible then the Insurer will pay the amount in excess of the Deductible.

#### 7.5 Insured's Right to Contest

In the event that the Insurer recommends settlement of a Claim and the Insured does not agree to the settlement of the Claim, and the Insured decides to contest the Claim, the Insurer's liability shall not exceed the amount for which the Claim could have been settled, and Defence Costs incurred, up to the date when the Claim could have been settled.

#### 7.6 Senior Counsel

The Insurer shall not require the Insured to contest a Claim unless a Senior Counsel (agreed upon by the Insured and the Insurer) advises that the Claim should be contested, taking into account all likely Defence Costs, prospects of successfully defending the Claim and the damages and costs likely to be recovered by the third party claimant.

The costs of Senior Counsel's advice shall be regarded as part of the Defence Costs.

#### 7.7 Non-Imputation

Where the Insured comprises of more than one person or entity and any of the entities:

- i. failed to comply with the duty of disclosure under the Insurance Contracts Act 1984;
- ii. made a misrepresentation to the Insurer before this Policy was entered into; or
- iii. failed to comply with a term of this Policy;

The right of another person or entity to indemnity under this Policy shall not be prejudiced as a result provided that the other person or entity:

- a) acted in good faith in the performance of their duties and obligations both under this Policy and at law;
- b) was entirely innocent of, had no prior knowledge of, or did not have reasonable cause to have knowledge of the relevant conduct; (for the purposes of this clause, knowledge imputed to a person by reason of partnership or otherwise is to be disregarded); and
- c) notifies the Insurer in writing of all facts known to them as soon as is reasonably practicable upon becoming aware of the relevant conduct.

This clause shall not operate to increase the Limit of Indemnity as stated in the Policy Schedule.

#### 7.8 Other Insurance

To the extent permitted by the Insurance Contracts Act 1984, this Policy will only cover loss to the extent that the amount of such loss is in excess of any Limit of Indemnity or cover available to the Insured in respect of that loss under any other policy entered into by the Insured.

To the extent permitted by the Insurance Contracts Act 1984, this Policy will only cover loss to the extent that the amount of such loss is in excess of any Limit of Indemnity or cover available to the Insured in respect of that loss under any other policy effected on behalf of the Insured or under which the Insured is a beneficiary (but not a policy to which the preceding paragraph applies).

Neither of the two paragraphs immediately above applies to such other insurance that is written only as specific excess insurance over the Limit of Indemnity provided in this Policy.

If such other insurance is provided by the Insurer, or any other member company, associate or affiliate, and it covers a loss covered by this Policy in respect of a Claim or Enquiry, the Limit of Indemnity under this Policy in respect of that Claim or enquiry shall be reduced by any amount paid by the Insurer (or member company, associate or affiliate) under such other insurance.