

BROOKLYN IT PROFESSIONALS' INSURANCE

Policy 01.06.19



www.brooklynunderwriting.com.au

XL Insurance Company SE
trading as Brooklyn Underwriting
ABN: 36 083 570 441
Level 28, 123 Pitt Street
Sydney NSW 2000

BROOKLYN 
UNDERWRITING

TABLE OF CONTENT

Section 1 – Preamble.....	4
Section 2 – Professional Indemnity	5
Section 3 – Public And Products Liability	8
Section 4 – Product Recall Expense	10
Section 5 - Defence Costs And Expenses Applicable To All Sections Of The Policy, ...	11
Section 6 – Limits Of Indemnity Applicable To All Sections Of The Policy.....	12
Section 7 – Deductible Applicable To All Sections Of The Policy.	13
Section 8 – Exclusions Applicable To All Sections Of The Policy.....	14
Section 9 – Claims Conditions.....	17
Section 10 - General Conditions.....	18
Section 11 – Definitions	20

1. Introduction

Welcome to the Combined Information Technology Legal Liability Insurance Policy offered by XL Insurance Company SE, Australia branch, trading as Brooklyn Underwriting (Brooklyn) which sets out details of the cover We provide.

When We agree to insure You, We do so based on the information provided to Us by You or on Your behalf and subject to payment of the required premium.

We insure You in accordance with the terms and conditions of Your Policy. Your Policy consists of this document and any endorsement affixed (or intended to be affixed) to it, Your Schedule and Proposal. All of them should be read as if they were one document.

We only cover those parties shown in Your Schedule unless otherwise stated in the Policy as being a person or entity entitled to cover.

We cover You for the Period of Insurance shown on Your Schedule and the maximum amount We will pay under Your Policy will not exceed the Limit of Indemnity shown on Your Schedule.

It is important You read this document and the other documents that make up Your Policy carefully to ensure that You have appropriate protection.

Keep Your Policy in a safe place and ensure You read the following important Duty of Disclosure and Privacy information.

2. Your Duty of Disclosure

Before you enter into a contract of insurance 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 whether to accept the risk of the insurance and, if so, on what terms. You have this duty until we agree to insure you.

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate the contract.

This duty of disclosure applies until the contract is entered into (or renewed, extended, varied or reinstated as applicable).

Your duty however does not require disclosure of any matter:

- that diminishes the risk to be undertaken by us; or
- that is of common knowledge; or
- that we know or, in the ordinary course of our business as an insurer, ought to know; or
- as to which compliance with your duty is waived by us.

Non-disclosure

If you fail to comply with your duty of disclosure, we may be entitled to reduce our liability under the contract in respect of a claim, cancel the contract, or both.

If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning.

3. General Insurance Code of Practice

We are a signatory to the General Insurance Code of Practice. The Code aims to raise standards of practice and service in the insurance industry. It:

- promotes better communication between insurers and customers which will lead to better public understanding of insurance to allow customers to make informed choices, and
- outlines good standards of practice and service to be met by insurers to enhance their regulation for responding efficiently to their customers' needs

4. Claims Made – Section 2

Section 2 of this Policy operates on a Claims Made and Notified basis. This means that the Policy covers You for Claims made against You and notified to Us during the Period of Insurance.

The Policy does not provide cover in respect of:

- Civil Liability arising from an act, error or omission that occurred before the Policy's Retroactive Date specified in the Schedule;
- Claims made after the Period of Insurance expires even where the event giving rise to the Claim occurred during the Period of Insurance;
- Claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy;
- Claims made or threatened against You prior to the commencement of the Period of Insurance;
- Claims arising out of any facts or circumstances which were:
 - known to You prior to the inception of the Period of Insurance and which might give rise to a Claim, or Defence Costs and Expenses; or
 - notified under any insurance that was in force prior to the inception of the Period of Insurance;
 - Claims arising out of circumstances noted on the Proposal form for the current Period of Insurance or on any previous proposal form.

Where you give notice in writing to us of any facts that might give rise to a Claim against You as soon as reasonably practicable after you became aware of those facts but before the expiry of the Period of Insurance, you may have rights under Section 40 (3) of the Insurance Contracts Act 1984 to be indemnified in respect of any Claim subsequently made against You arising from those facts notwithstanding that the Claim is made after the expiry of the Period of Insurance. Any such rights arise under the legislation only. The terms of the Policy and the effect of the Policy is that you are not covered for Claims made against You after the expiry of the Period of Insurance.

Financial Claims Scheme

This Policy may be a protected Policy under Federal Government's Financial Claims Scheme (FCS), which is administered by APRA. The FCS may apply in the event that a general insurance company becomes insolvent. If the FCS applies a person who is entitled to make a claim under this Policy may be entitled to a payment under the FCS. Access to the FCS is subject to eligibility criteria. You may obtain further information about the FCS from www.fcs.gov.au and the APRA hotline on 1300 55 88 49.

SECTION 1 – PREAMBLE

In reliance on the Proposal and in consideration of You having agreed to pay the Premium, We agree to indemnify You in accordance with the provisions of this Policy.

SECTION 2 – PROFESSIONAL INDEMNITY

COVERAGE UNDER SECTION 2 OF THIS POLICY IS PROVIDED ON A CLAIMS MADE AND NOTIFIED BASIS.

2.1 Civil Liability

We agree, subject to the provisions of this Policy, to indemnify You against all civil liability arising from any Claim that is first made against You, and notified to Us during the Period of Insurance and arises from the provision by You or failure by You to provide professional services in respect of Your conduct of Your Business.

Automatic Extensions

For the sake of clarity, the coverage granted in 2.1. above includes the following automatic extensions of cover;

(a) Contractual Liability

An unintentional breach of a written contract with a Third Party arising from the provision of Your Information Technology Products and/or Information Technology Services.

(b) Consumer Protection Legislation and Similarly Intentioned Legislation

Subject to Exclusion 8.9. of this Policy, an unintentional breach of the Competition and Consumer Act 2010 (Commonwealth), Fair Trading Act 1987 (NSW), Fair Trading Act 1985 (Victoria) or similar legislation enacted in any State or Territory of the Commonwealth of Australia or New Zealand but only in so far as the unintentional breach arises from the provision of Your Information Technology Products and/or Information Technology Services.

(c) Intellectual Property Rights

An unintentional infringement of an Intellectual Property Right of a Third Party including any Claim made by a Third Party Licensee to whom You have licensed Your Information Technology Products or Information Technology Services and provided a warranty or indemnity in respect of Your ownership and/ or permission to license Intellectual Property Rights.

(d) Documents and Data

Unintentional damage, loss, mislaying or destruction of Documents and/or Data.

(e) Defamation

An unintentional libel, slander or defamation in the normal course of Your Business.

(f) Fraud & Dishonesty

We will indemnify those of You who are not knowingly involved in conduct to which Exclusion 8.8 and 8.16 applies.

2.2 Continuous Cover

We agree to indemnify You against any Claim that is first made against You during the Period of Insurance and is notified to Us during the Period of Insurance, that arises out of facts or circumstances which first became known to You prior to the Period of Insurance where:

- i) You held a similar Information Technology Liability policy without interruption from the time when the fact or circumstance could have been notified under the previous Policy until the time when the Claim, fact or circumstance is notified to Us: and
- ii) But for Your failure to notify the previous insurer of the facts or circumstances during the previous Period of Insurance, You would have been entitled to indemnity under the policy in effect during the previous Period of Insurance; and
- iii) But for Exclusion 8.23 You would be entitled to indemnity under this Policy; and
- iv) You have not committed or attempted to commit fraudulent non-disclosure or fraudulent misrepresentation.

We are only liable to indemnify You to the extent that We would have been liable to indemnify You under the provisions of this Policy. Further, We may reduce Our liability to You by the amount that fairly represents the extent to which We have been prejudiced as a result of the late notification.

2.3 Costs of Official Enquiries

We will indemnify You against legal costs and expenses incurred with Our prior written consent (which legal costs and expenses We deem to be reasonable and consent shall not be unreasonably withheld) for Your representation at any Official Enquiry (including disciplinary inquiry or coronial enquiry) of which You first became aware and notify to Us during the Period of Insurance. Our maximum liability under this Extension is limited to \$250,000 in the aggregate for the Period of Insurance, and shall form part of and not in addition to the Limit of Indemnity.

2.4 Claim Mitigation Costs

We agree to indemnify You against costs and expenses necessarily incurred in respect of any action to mitigate or rectify an error or omission that otherwise would be the subject of a Claim under this Section of the Policy.

However, We are only liable to indemnify You under this clause if:

- (i) The circumstances giving rise to the risk of a Claim are first discovered by You during the Period of Insurance and written notice is given to Us as soon as practicable; and
- (ii) You establish to Our reasonable satisfaction that

there is a probability that a Claim would be made and that You would be liable in the absence of You carrying out the mitigation or rectification; and

- (iii) The mitigation or rectification work is carried out prior to the issue of any practical completion, takeover or similar certificate required to be issued under Your contract with the Third Party.

Our maximum liability under this Extension is limited to \$200,000 in the aggregate for the Period of Insurance, and shall form part of and not in addition to the Limit of Indemnity.

2.5 Vicarious Liability

We agree to indemnify You for any Claim made against You for civil liability arising out of any actual or alleged conduct of any consultants, contractors, sub-contractors or agents for whose acts, errors or omissions You are legally liable,

No indemnity is provided for any consultant, contractor, sub-contractor or agent unless they are also a Contractor.

2.6 Joint Venture/Partnership Cover

We will indemnify You against any Claim, subject to the Limit of Indemnity, first made against You and notified to Us during the Period of Insurance caused by civil liability committed or alleged to have been committed in the conduct of Your Business as a joint venturer or partner provided always that such indemnity will not extend to any third party joint venture party or partner of Yours.

2.7 Court Attendance Costs

We agree to pay the reasonable costs incurred by You including loss of earnings up to \$1,000 per day for court attendance costs incurred by You if You are legally compelled to attend a civil proceeding as a witness in a Claim covered by this Policy. Our maximum liability under this Extension is limited to \$100,000 in the aggregate for the Period of Insurance, and shall form part of and not in addition to the Limit of Indemnity.

2.8 Data Recovery Expenses

We will pay Data Recovery Expenses subject to the Section 2 Deductible and Data Recovery Expenses sub-limit incurred by You as the direct result of an Unauthorised Security Event that first occurs during the Period of Insurance; provided that the Unauthorised Security Event is reported to Us within 15 business days of first being detected.

Our maximum liability under this Extension is limited to \$50,000 in the aggregate for the Period of Insurance, and shall form part of and not in addition to the Limit of Indemnity.

2.9 Run-Off Cover Until Expiry of Period of Insurance

We agree that in the event that You cease to exist or operate or become consolidated with, merged into or

acquired by any other entity either before or during the Period of Insurance, then the coverage provided under this Policy with respect to such person or entity shall continue until the expiry date of the Period of Insurance.

This Extension only applies in respect of Claims arising from any act, error or omission occurring prior to the effective date that You ceased to exist or operate or were consolidated with, merged into or acquired by another entity.

2.10 Heirs, Estates and Legal Representatives

The definition of You is extended to include your legal representatives, heirs, assigns or estates in the event of your death, incapacity, insolvency or bankruptcy but only to the extent that we would otherwise have been liable to indemnify You.

2.11 Previous Business

You may advise Us in the proposal that You require Us to indemnify:

- (a) a current principal, partner, director or Employee; or
- (b) a former principal, partner, director or Employee; or
- (c) a principal, partner, director or Employee that You intend to appoint, during the Period of Insurance in respect of their previous business. If You do so, We agree to indemnify them against all civil liability arising from any Claim that is first made against them during the Period of Insurance in respect of their conduct of the same profession as Your Business before they become Your principal, partner, director or Employee.

2.12 Public Relations Expenses

We will pay to You or on your behalf all Public Relations Expenses.

Our maximum liability under this Extension is limited to \$50,000 in the aggregate for the Period of Insurance, and shall form part of and not in addition to the Limit of Indemnity.

2.13 Newly Acquired or Created Subsidiaries

We agree to indemnify any Subsidiary that You acquire or create during the Period of Insurance against civil liability for damages and awards of claimants' costs arising from any Claim first made against the Subsidiary up to the earlier of:

- (i) sixty (60) days after such acquisition or creation; or
- (ii) the expiry of the Period of Insurance;

In respect of the provision of or failure to provide professional services.

This Extension will only apply in respect of Claims against the Subsidiary arising from an act, error or omission occurring subsequent to the date of Your acquisition or creation of the Subsidiary.

For the purposes of this Extension, the definition of Subsidiary is extended to mean any entity that for the first time during the Period of Insurance, the insured either directly or indirectly:

- (a) controls the composition of the board of directors;
- (b) controls more than half of the voting power; or
- (c) holds more than half of the issued share capital. Should You require the policy to be extended to include cover for subsidiaries which is not automatically provided by this Extension, then You shall provide us with any additional information requested by Us to permit Us to evaluate the acceptability of the additional exposure. We shall have the right, but not the obligation, to offer cover for the acquired or created subsidiary on such additional terms, conditions, exclusions and additional premium as We may require.

Optional Extensions

2.14 Extended Contractual Liability

Notwithstanding Exclusion 8.17 (Assumed Contractual Liability), We agree to indemnify You against any Claim for civil liability made against you in connection with an indemnity and/or hold harmless provision of a contract, but only to the extent such civil liability arises from Your performance of Information Technology Services or provision of Information Technology Products.

2.15 Fidelity

We will indemnify You for Direct Financial Loss discovered and notified to Us during the Period of Insurance resulting from any dishonest, fraudulent or malicious act of any Employee or officer, whether committed alone or in collusion with others.

Our liability to indemnify You under this Extension is subject to the following:

- (a) We are not liable to indemnify You under this Extension if You personally committed or condoned any act, omission or breach excluded by Exclusion 8.8 Dishonesty;
- (b) You must bear any costs or expenses that You incur in establishing or substantiating the existence or amount of the Direct Financial Loss;
- (c) You must bear any Direct Financial Loss that You incur as a consequence of any act or omission occurring after the date that you discover, or have reasonable suspicion of, the dishonest, fraudulent, malicious or reckless act or omission;
- (d) All interrelated individual dishonest, fraudulent or malicious acts shall be deemed to constitute a single loss under this Extension.

Our maximum liability under this Extension is limited to \$250,000 in the aggregate for the Period of Insurance, and shall form part of and not in addition to the Limit of Indemnity.

2.16 Run-Off after Merger, Takeover or Sale

In the event of You being subject to a merger, takeover or sale during the Period of Insurance, then on application by You no later than 30 days after the merger, takeover or sale is completed or becomes effective, We may extend cover to apply in respect of Claims first made against You, or inquiries first commenced and involving You, for a period of up to 84 calendar months from the expiry date of the Period of Insurance but only for Claims that arise from acts, errors, omissions or other conduct occurring prior to the date of such merger, takeover or sale.

SECTION 3 – PUBLIC AND PRODUCTS LIABILITY

COVERAGE UNDER SECTION 3 OF THIS POLICY IS PROVIDED ON AN OCCURRENCE BASIS.

We agree, subject to the provisions of this Policy, to indemnify You against any Claim, subject to the Limit of Indemnity, for Personal Injury or Property Damage first occurring during the Period of Insurance caused by an Occurrence in the conduct of Your Business.

3.1 Implied Warranties & Conditions

Notwithstanding Exclusion 8.17 (Assumed Contractual Liability), We agree to indemnify You against any Claim for civil liability made against You for a breach of warranty or condition implied in a contract under common law and/or the terms of the Competition and Consumer Act (2010) (Commonwealth) or any similar Fair Trading legislation or equivalent legislation of any State or territory of Australia, in the performance of Information Technology Services or the provision of Information Technology Products

3.2 Joint Venture Cover

We will indemnify You against any Claim caused by an Occurrence in the conduct of Your Business as a joint venturer or partner provided always that such indemnity will not extend to any third party joint venture party or partner of Yours.

3.3 Limitation of Liability Contracts

Notwithstanding General Condition 10.2 (Subrogation) and Exclusion 8.17 (Assumed Contractual Liability), we recognise that in the performance of Information Technology Services or in the provision of Information Technology Products, You may enter into written commercial contracts or agreements with other parties which may exclude or limit the liability of such parties, and We agree that such agreements will not prejudice Your right to claim under the Policy.

3.4 Tenants Liability

Notwithstanding Exclusion 8.18, We will extend indemnity under this Section to any lessor with whom you have executed a signed and dated rental or lease agreement to conduct Your Business provided that no further, broader or wider cover will be granted to such lessor than would have been granted to You under this section if You had been found legally liable for Personal Injury or Property Damage arising from the conduct of Your Business at the rental or leased premises.

3.5 Vendors Liability

We agree to extend indemnity to Your vendor, with whom You have entered into a written contract for the distribution or sale of Your Information Technology Products, for any legal liability it has to pay as compensation to any person

or entity (other than You) provided that no cover will be afforded to the vendor for any modification, representation or warranty unauthorised by You.

Provided further that the insurance afforded to the vendor/s does not apply to:

- (a) Personal Injury or Property Damage for which the vendor/s are obligated to pay damages or by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages or compensation that the vendor/s would have in the absence of such contract or agreement.
- (b) any express warranty not authorised by You.
- (c) any physical or chemical change in Your products made intentionally by the vendor/s.
- (d) repackaging, unless packed solely for the purpose of inspection, demonstration, testing or the substitution of parts under instructions from You and then repackaged in the original container.
- (e) any failure to make such inspections, adjustments, tests or servicing as the Vendor/s have agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of Your products.
- (f) demonstration, installation, servicing or repair operations, except such operations performed at the Vendors premises in connection with the sale of Your Products.
- (g) Your Products which, after distribution or sale by You have been labelled or re-labelled or used as a container, part or ingredient of any thing or substance by or for the Vendor/s.
- (h) You or any organisation from whom You have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

3.6 Newly Acquired or Created Subsidiaries

We agree to indemnify any Subsidiary that You acquire or create during the Period of Insurance against civil liability for damages and awards of claimants' costs arising from any Claim first made against the Subsidiary up to the earlier of:

- (i) sixty (60) days after such acquisition or creation; or
- (ii) the expiry of the Period of Insurance;

In respect of the provision of or failure to provide professional services.

This Extension will only apply in respect of Claims against the Subsidiary arising from an act, error or omission occurring subsequent to the date of Your acquisition or creation of the Subsidiary.

For the purposes of this Extension, the definition of Subsidiary is extended to mean any entity that for the first time during the Period of Insurance, the insured either directly or indirectly:

- (a) controls the composition of the board of directors;
- (b) controls more than half of the voting power; or
- (c) holds more than half of the issued share capital.

Should You require the policy to be extended to include cover for subsidiaries which is not automatically provided by this Extension, then You shall provide us with any additional information requested by Us to permit Us to evaluate the acceptability of the additional exposure. We shall have the right, but not the obligation, to offer cover for the acquired or created subsidiary on such additional terms, conditions, exclusions and additional premium as We may require.

SECTION 4 – PRODUCT RECALL EXPENSE

4.1 Product Recall Expense

We will indemnify You in respect of Product Recall Expense incurred by You during the Period of Insurance, if Your Information Technology Products are recalled from the market or from use, whether in response to a regulatory order or otherwise, because it has become reasonably anticipated that they may cause Personal Injury or Property Damage due to a defect in your Information Technology Products.

Product Recall Expense which is not incurred in the circumstances and due solely to the considerations set out above is not covered. Nor is there any cover for Product Recall Expense where Your Information Technology Products are known or are reasonably anticipated to have a propensity to cause Personal Injury or Property Damage arising from:

- (a) an inherent or inevitable degradation, degeneration or corruption; or
- (b) any characteristic of which You knew or ought reasonably to have known at the commencement of the Period of Insurance.

Our maximum liability under this Extension is limited to \$250,000 in the aggregate for the Period of Insurance, and shall form part of and not in addition to the Limit of Indemnity.

Exclusions 8.1 and 8.22 do not apply to cover under this Section.

SECTION 5 - DEFENCE COSTS AND EXPENSES APPLICABLE TO ALL SECTIONS OF THE POLICY.

5.1 General

We will indemnify You against Defence Costs and Expenses in addition to the Limit of Indemnity:

- (a) that We incur; or
- (b) that You incur with Our written consent.

5.2 Advancement of Defence Costs and Expenses

We agree to pay Defence Costs and Expenses before final disposition of a Claim:

- (a) where We give You written confirmation that We will indemnify You against the Claim; or
- (b) where We take over and conduct proceedings in respect of the Claim under Claims Condition 9.2. In any other case, We may pay Defence Costs and Expenses before final disposition of a Claim at our discretion.

5.3 Reimbursement of Defence Costs and Expenses Advanced

If We subsequently refuse to indemnify You under the Policy, You must reimburse Us for any Defence Costs and Expenses that We paid in advance.

5.4 Inquiry Costs

We agree to indemnify You for Inquiry Costs up to an amount not exceeding \$500,000 in the aggregate for the Period of Insurance, which shall be part of and not in addition to the Limit of Indemnity.

SECTION 6 – LIMITS OF INDEMNITY APPLICABLE TO ALL SECTIONS OF THE POLICY.

6.1 Limits of Indemnity

Our liability under this Policy to You will not exceed the Limit of Indemnity and is the maximum amount payable by Us for:

- any one Claim; and
- all Claims in the Period of Insurance covered under Section 2; and
- all Claims in the Period of Insurance covered under Section 3 arising out of Your Products
- after the Deductible has been deducted.

6.2 Reinstatement of the Policy Limit – Applicable to Section 2 Only

We agree to one reinstatement of the Limit of Indemnity under Section 2 in respect of any subsequent Claims which are totally unrelated to any previously notified Claim. If there is extra insurance in excess of the Limits of Indemnity of this Policy, then the Limit of Indemnity is only reinstated for so much of the liability (otherwise covered by this Policy) which is not covered by the extra insurance.

6.3 One Claim

If the one originating source results in more than one Claim, then all such Claims constitute one Claim and therefore one Deductible and Limit of Indemnity will apply.

6.4 Claims – Different Sections

We have no liability under Section 3 in relation to any Claim for which You have complete or partial indemnity under Section 2.

SECTION 7 – DEDUCTIBLE APPLICABLE TO ALL SECTIONS OF THE POLICY.

You are liable for the first part of each and every Claim up to the Deductible. Our liability commences after the Deductible has been deducted from the amount of the Claim. The Deductible does not apply to Defence Costs and Expenses unless otherwise specified in the Schedule.

SECTION 8 – EXCLUSIONS APPLICABLE TO ALL SECTIONS OF THE POLICY.

General Exclusions

We will not be liable for any Claim for, in relation to, arising directly or indirectly from or made or brought by:

8.1 Refunds and Recalls

The recall, removal, repair, alteration, replacement or re-instatement of any of Your Information Technology Products or Information Technology Services, but this General Exclusion 8.1 does not apply to a Claim for refund of the purchase price of Your Information Technology Products or Information Technology Services that do not perform as intended.

8.2 Fines and Penalties

Taxes, fines or other penalties including exemplary, special, multiple, liquidated or punitive damages;

8.3 Fees and Trading Debts

Your own fees and disbursements and/or any trading debts of Yours;

8.4 Insolvency

Your insolvency or bankruptcy;

8.5 Avionics

The supply of Information Technology Products or Information Technology Services directly or indirectly to the Avionics Industry;

8.6 Pollution and Nuclear Risk

- (a) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants into or upon real or personal property, the atmosphere, any water course or body of water or any enforcement, action or proceeding in connection with the containment, clean up, removal, treatment or monitoring of such pollutants of seepage, pollution or contamination howsoever occurring; or
- (b) ionising radiation or the contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel; or
- (c) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
- (d) nuclear weapons material;

8.7 USA and Canada

the supply, or failure to supply, Information Technology Products or Information Technology Services to the United States of America or Canada, or a Claim which is made in or determined pursuant to the law of the

United States of America or the Dominion of Canada or their territories or protectorates; or patent or trademark infringement in the United States of America or Canada, or a Claim which is determined pursuant to the law of the United States of America or the Dominion or Canada or their territories or protectorates; or arising out of the enforcement of judgments, orders or awards obtained within or determined pursuant to the law of the United States of America or the Dominion of Canada or their territories or protectorates.

8.8 Dishonesty

- (a) dishonest, fraudulent, malicious, or reckless act, error, omission, representation or other conduct; or
- (b) any wilful violation or wilful breach of any statute or regulation, by You or Your consultants or sub-contractors where such act, error, omission, representation, other conduct, violation or breach is established by judgment or other final adjudication except as provided by Section 2.1 (f) of this Policy;

8.9 Restrictive Trade Practices,

Unconscionable Conduct and Resale Price Maintenance any allegation of an infringement or breach of Parts IV (Restrictive Trade Practices), IVA (Unconscionable Conduct) or VIII (Resale Price Maintenance) of the Trade Practices Act 1974 (Cth) or similar legislation;

8.10 War

any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection or military or usurped power;

8.11 Workers Compensation and Employment Practices

- (a) Personal Injury to any Employee or Contractor;
- (b) imposed by any Workers' Compensation Law; or
- (c) any law relating to Employment Practices;

8.12 Terrorism

Death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with Terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

8.13 Asbestos

Loss or losses directly or indirectly arising out of, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity;

8.14 Motor Vehicle

The ownership, maintenance, operation, possession, use, loading or unloading by You or on Your behalf 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 You under any policy of compulsory liability insurance had You complied with Your obligations pursuant to such law;

8.15 Own Property Damage

Damage to property owned, leased, hired by, under hire purchase, on loan or rented to You or otherwise in Your care, custody or control other than:

- (a) Vehicles not owned by You or used in the course of Your Business, whilst within a free car park provided by You for the use of customers, visitors or Employees;
- (b) Your Employees' property; and
- (c) Other property (not owned by You) temporarily in Your possession but indemnity in respect of this clause (c) is limited to \$250,000 for the Period of Insurance.

In respect of (a), (b) and (c), no indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which You are or have been working.

8.16 Reckless and Wilful Act

- (a) For any act, error, omission, representation or conduct committed or alleged to have been committed by You with a reckless disregard for its consequences; or
- (b) For any wilful breach of any contract, statute or duty of care owed by You;

8.17 Assumed Contractual Liability

Any liability assumed pursuant to a written contract including by warranty or guarantee whereby You assume liability above and beyond the liability that would have arisen at common law within the jurisdiction of the Commonwealth of Australia from the provision of Your Information Technology Products and/or Information Technology Services;

8.18 Non Information Technology Products

and/or Information Technology Services The provision or supply of non Information Technology Products and/or Information Technology Services unless noted under Your Business in the Schedule;

8.19 Aircraft and Watercraft

arising out of the ownership, possession or use by You or on Your behalf of Aircraft or Watercraft;

8.20 Related Entities

an Entity insured by this Policy;

8.21 Known Defects

the provision or supply of Information Technology Products or Information Technology Services You knew or ought to have known were defective or incapable of fulfilling the essential purpose they were intended to perform as specified, guaranteed or warranted by You;

8.22 Product Recall – Known Defects

the withdrawal, inspection, repair, modification, replacement and loss of use of Information Technology Products or of any property of which such Information Technology Products form a part if such Information Technology Products or property are withdrawn from the market or from use because of any known defect or deficiency therein or any defect of which You knew or in the ordinary course of business ought to have known.

Additional Exclusions Applicable to Section 2

We will not be liable for, in relation to or arising, directly or indirectly from, or in any way connected with:

8.23 Prior Claims and circumstances

- (a) any Claim first made or threatened against You prior to the commencement of the Period of Insurance;
- (b) any Claims arising out of facts or circumstances which were:
 - (i) Known to You prior to the inception of the Period of Insurance and which might give rise to a Claim, or Defence Costs and Expenses; or
 - (ii) Notified under any insurance that was in force prior to the inception of the Period of Insurance; or
- (c) claims arising out of circumstances noted on the Proposal form for the current Period of Insurance or on any previous proposal form.

8.24 Retroactive Date

any act, error or omission occurring in whole or in part prior to the Retroactive Date;

8.25 Subsidiaries

any claim against:

- (a) a current Subsidiary; or
- (b) a former Subsidiary; or
- (c) a Subsidiary that You acquire or create during the Period of Insurance, in respect of any act, error or omission committed or alleged to have been committed by the Subsidiary either:
 - (i) Before You acquire or create the Subsidiary; or
 - (ii) After the Subsidiary ceases to be your Subsidiary.

8.26 Management Liability

You acting in the capacity of a director, officer or manager in a corporate entity.

8.27 Sanction Limitation and Exclusion

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Australia, United Kingdom or United States of America.

SECTION 9 – CLAIMS CONDITIONS

9.1 Notification

You must notify Us of any Claim made against You during the Period of Insurance as soon as practicable after the Claim is made and no later than the end of the Period of Insurance. You must give notice of any Claim, loss or other matter in writing, and send it to

**Claims Manager
Brooklyn Underwriting
Level 28, 123 Pitt Street
Sydney NSW 2000
t: (02) 8270 1790
e: privacyaustralia@axaxl.com**

9.2 Conduct of Proceedings

We may elect at any time to take over and conduct in Your name any proceedings in relation to which We:

- (a) Have advanced Defence Costs and Expenses to You; or
- (b) Are liable to indemnify You under this Policy.

9.3 Settlement of Claims

You must not incur any Defence Costs and Expenses, settle any Claim, make any admission, offer or payment or otherwise assume any contractual obligations with respect to any Claim without Our prior written consent.

We are not liable to indemnify You in respect of any Defence Costs and Expenses, settlement, admission, offer or payment or assumed obligation unless We give Our written consent. However, We must not withhold consent unreasonably.

9.4 Co-Operation

You must:

- (a) Give Us and Our investigators and legal representatives all information and assistance that We or they reasonably require; and
- (b) Co-operate fully with Us and Our investigators and legal representatives in any proceedings in relation to which We are liable to indemnify You under this Policy.

9.5 Mitigation

You must use all due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability, Defence Costs and Expenses or loss in respect of which We are liable to indemnify You under this Policy.

9.6 Senior Counsel

(a) General

Neither We nor You may require the other to contest any Claim unless Senior Counsel advises that the Claim should be contested. In formulating his or her advice, Senior Counsel must take into consideration the damages and

costs which are likely to be recovered by the plaintiff, the likely Defence Costs and Expenses and Your prospects of successfully defending the Claim.

(b) Appointment of Senior Counsel

For the purpose of (a), We may nominate a Senior Counsel. If We nominate a Senior Counsel, You must notify Us whether or not You approve of Our nominee as soon as practicable. If We cannot agree with You upon Senior Counsel within a reasonable time, Senior Counsel will be such person as the President of the New South Wales Bar Association appoints.

(c) Costs of Senior Counsel's Opinion

The cost of Senior Counsel's opinion under this Claims Condition is included in the Defence Costs and Expenses.

(d) Meaning of 'Senior Counsel' For purposes of this Claims Condition, 'Senior Counsel' means a practising barrister who is entitled to practise as a Queens Counsel or Senior Counsel in Australia or New Zealand.

9.7 Election to Contest

If We recommend settlement in respect of any Claim and You do not agree to settlement, You may elect to contest the Claim. However, Our liability in connection with the Claim is then limited to the amount We recommend in settlement plus Defence Costs and Expenses incurred with Our consent up to the date We recommend settlement to You.

SECTION 10 - GENERAL CONDITIONS

10.1 Alteration to Risk

You must notify Us as soon as practicable of any material alteration to risk during the Period of Insurance including:

- (a) if You submit to voluntary bankruptcy, receivership or liquidation; or
- (b) if You fail to pay debts; or
- (c) if You breach any other obligation giving rise to the appointment of a receiver, bankruptcy, or winding up proceedings; or
- (d) any material change in the nature of Your Business.

10.2 Subrogation

If We make a payment under this Policy, We are subrogated to all Your rights of contribution, indemnity or recovery. You must always act to secure and preserve Your rights of contribution, indemnity and recovery, and must do all things and execute all Documents to enable Us to sue in your name for such contribution, indemnity or recovery.

10.3 Assignability

You must not assign this Policy, or any of Your rights under this Policy, without Our prior written consent.

10.4 Cancellation

(a) Your Right to Cancel the Policy

You may cancel this Policy at any time by notifying Us in writing.

(b) Our Right to Cancel the Policy

We may cancel this Policy in accordance with section 60 of the Insurance Contracts Act 1984 (C'wealth).

(c) Effect of Cancellation

On cancellation, We agree to refund to You a pro rata less 10% proportion of the Premium, based upon the expired portion of the Period of Insurance.

10.5 Severability and Non - Imputation

Where more than one Entity is insured under this Policy:

- (a) failure by one of them to comply with the duty of disclosure under the Insurance Contracts Act 1984 (C'wealth); or
- (b) misrepresentation by one of them to Us before this Policy commences; or
- (c) failure by one of them to comply with any provision of this Policy,

Does not prejudice the right of any other to indemnity under this Policy. However, this clause only applies if:

- (a) the other Entity is innocent of, and has no knowledge of, such conduct; and
- (b) as soon as practicable after becoming aware of the conduct, the other Entity notifies Us of all facts relating to such conduct.

10.6 Governing Law and Jurisdiction

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

10.7 GST

GST Notice

This policy has a GST provision in relation to premium and our payment to you for claims. It may have an impact on how you determine the amount of insurance you need. Please read it carefully. Seek professional advice if You have any queries about GST and Your insurance.

Limit of Indemnity

All monetary limits in this Policy do not include an amount for GST, but may be increased for GST in some circumstances (see below). You should have regard to the impact of GST when calculating how much You insure for, and obtain tax advice where required.

Claims settlements – Where We agree to pay

Despite the other provisions of this insurance, Our liability to pay You, We will have regard to the items below:

- Where You are liable to pay an amount for GST in respect of an acquisition relevant to Your Claim (such as services to repair a damaged item insured under the Policy), and We agree to pay the claim, We will pay for the GST amount.
- If Your Limit of Indemnity is not sufficient to cover Your loss, We will only pay the GST amount that relates to Our settlement of Your Claim. We will reduce the GST amount we pay for by any input tax credits to which You are or would be entitled on a relevant acquisition.
- We will reduce the GST amount We pay for by the amount of any input tax credits to which You are or would be entitled.
- Where We make a payment under this Policy as compensation instead of payment for a relevant acquisition, We will reduce the amount of the payment by the amount of any input tax credit that You would have been entitled to had the payment been applied to a relevant acquisition.

We will (where relevant) pay You on your Claim by reference to the GST exclusive amount of any supply made by Your business which is relevant to Your Claim.

Disclosure - input tax credit entitlement

If You register, or are registered, for GST You are required to tell Us Your entitlement to an input tax credit on Your premium. If you fail to disclose or understate Your entitlement, You may be liable for GST on a Claim We may pay. This Policy does not cover You for this GST liability, or for any fine, penalty or charge that You may be liable for due to Your failure to disclose or a misstatement made by You in relation to Your entitlement to an input tax credit for the premium.

'GST', 'input tax credit', 'acquisition', 'supply', 'tax invoice' and 'adjustment note' have the meaning given in the A New Tax System (Goods and Services Tax) Act 1999.

10.8 Cross Liability (Applicable to Section 3 only)

Where You comprise more than one party, each of You is considered as a separate Entity and the expressions 'You' and 'Your' apply to each party as if a separate Policy had been issued to each of the parties but Our aggregate liability is limited to the Limit of Indemnity as noted in the

Policy Schedule.

Any Claim made by You in respect of Personal Injury to any Person who is or was an Employee or deemed Employee of any one or more of You under the Policy or persons to whom the Policy extends (regardless of the basis of their Liability) will be subject to a Deductible Each and Every Occurrence as specified in the Policy Schedule.

SECTION 11 – DEFINITIONS

- 11.1 **Accidental** means unexpected or unintentional.
- 11.2 **Aircraft** means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.
- 11.3 **Avionics Industry** means any business involved in the design, inspection, supervision, manufacture, supply, assembly and/or construction of any aircraft, space craft, missile or the guidance and control systems of any such items.
- 11.4 **Claim** means:
- (a) a written or verbal demand by a Third Party for compensation or damages; or
 - (b) a civil proceeding brought by a Third Party for recovery of compensation or damages,
- 11.5 **Contractor** means an individual or Entity that is providing Information Technology Products or Information Technology Services on Your behalf pursuant to a written contract between You and the Contractor.
- 11.6 **Data means** any information stored electronically, magnetically or electro-magnetically on a hard drive or portable media.
- 11.7 **Data Recovery Expense** means the reasonable, actual expenses in excess of Your normal operating expenses approved by Us and directly related to the replacement, restoration or recreating of any Documents or Data stored on Your computer systems that is lost or corrupted during the Period of Insurance. If the Documents or Data cannot be replaced, restored or recreated, the Data Recovery Expense will be the actual expense incurred in reaching that determination.
- 11.8 **Deductible** means the sum specified as such in the Schedule.
- 11.9 **Defence Costs and Expenses** means reasonable costs, charges, fees (including legal counsels' fees and experts' fees) and expenses incurred in defending, investigating or monitoring a Claim and costs of appeal.
- 11.10 **Direct Financial Loss** means the physical loss of currency belonging to You or in Your care, custody or control, sustained by You directly as a result of dishonest, fraudulent or malicious act.
- It does not mean:
- (i) Costs, fees or expenses of prosecuting or defending any demand, claim or legal proceeding resulting from a Direct Financial Loss covered by this Policy;
 - (ii) Costs, fees or other expenses in establishing the existence or amount of any Direct Financial Loss;
 - (iii) Salary, wages, commissions, fees, bonuses, promotions, awards, profit-sharing, superannuation or any other remuneration of any Employee or officer; complete or partial non-payment under any credit arrangement;
- (v) Interest or other indirect or consequential loss;
- (vi) Any financial loss sustained, whilst in the care, custody control of any financial institution or armoured security company.
- 11.11 **Discovered** means when an officer first becomes aware of facts which would cause a reasonable person to believe that a direct financial loss has been or is likely to be incurred, even though the exact amount or details of the direct financial loss are not known at the time of discovery.
- 11.12 **Documents** means all documents that relate to Your Business including but not limited to written, printed or computer records and electronic data material but not including any currency, and whether Your property or not but which are in Your personal control, or the control of any other person with whom You have lodged, deposited or entrusted such Documents.
- 11.13 **Employee** means any person that You employ under a contract of service or apprenticeship during or prior to commencement of the Policy.
- 11.14 **Employment Practices** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination (sexual or otherwise) in respect of employment by You.
- 11.15 **Entity** means any corporation, trust, partnership, joint venture or natural person.
- 11.16 **Limit of Indemnity** means the amount stated, under the respective heading, in the Limits of Indemnity section of the Schedule.
- 11.17 **Information Technology Products** means computer equipment designed, specified, manufactured, installed, supplied, repaired or marketed by You 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 as listed in the Schedule
- 11.18 **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 as listed in the Schedule
- 11.19 **Intellectual Property Right** means a statutory right, conferred within the Territory, in or to any patent, trademark, copyright or design (including in respect of semiconductor topographies) or a right in confidential information or trade secrets, claimed by any party other than You.
- 11.20 **Inquiry** means:
- (i) An investigation, examination or inquiry by any professional body of which You are a member, or external official person or body having legal authority to conduct an investigation, including a Royal Commission, into Your Business and for which
 - (a) The notice or process requiring You to attend or to produce documents or answer questions is first served during the period of cover;
 - (b) You are identified in writing during the period of cover by such authorised person or body as a target of the investigation, examination or inquiry.
 - (ii) A raid on, or on-site visit to, You which first takes place during the Period of Insurance by a regulator, government body or any other external official person or body having legal authority to conduct an investigation into the provision of Your Business and which involves You in the production, review, copying or confiscation of documents or an interview; or
 - (iii) A public announcement relating to (ii) above made by the authority performing the raid or on-site visit.

It is not necessary that a Claim is made against You. However, inquiry does not include:

 - (iv) Any of (i), (ii) or (iii) above that relates to an industry event or practice and not specifically to Your Business;
 - (v) Routine regulatory supervision, inspection or compliance reviews;
 - (vi) Any inquiry conducted in the United States of America or Canada or any of its territories or possessions.
- 11.21 **Inquiry Costs** means all reasonable legal costs and expenses for which You are legally liable and which are incurred by You, with our prior consent (such consent not to be unreasonably delayed or withheld), for legal representation in connection with, preparation for, attendance at or compliance with an inquiry.
- 11.22 **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 You.
- 11.23 **Official Enquiry** means any legal or quasi legal process enquiring whether You have breached any relevant professional code of conduct administered by any overseeing professional association
- 11.24 **Period of Insurance** means the period specified in the Schedule.
- 11.25 **Personal Injury** means:
- (a) Bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
 - (b) False arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution and humiliation;
 - (c) Libel, slander, defamation of character or invasion of right of privacy;
 - (d) Assault and battery not committed by You or at Your direction unless committed for the purpose of preventing or eliminating danger to persons or property.
- 11.26 **Policy** means:
- (a) All provisions of this document;
 - (b) All information contained in the Proposal, Schedule and other documents attached to them from time to time; and
 - (c) All endorsements issued from time to time for incorporation in this document,

all of which shall be read together and constitute the contract of insurance between Us and You.
- 11.27 **Pollutants** means:
- (a) Any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapour, soot, fumes, acids, alkalis and chemicals; and
 - (b) Any waste materials, including materials to be recycled, reconditioned or reclaimed; and
 - (c) Any other air emission, odour, waste, water, oil, oil products, infectious or medical waste, asbestos, asbestos products or any noise emission.
- 11.28 **Premium** means the amount specified as such in the Schedule.
- 11.29 **Products** means Information Technology Products and Information Technology Services (after they have ceased to be in Your physical possession or under Your control) manufactured or deemed to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, repaired, serviced, treated, sold, supplied (including services) or distributed by You (including any container other than a Vehicle);
- 11.30 **Product Recall Expense** means reasonable and necessary costs personally and directly incurred by You, in respect of:
- (a) Communications including radio and television announcements and printed advertisements;

- (b) The cost of shipping Information Technology Products from any purchaser, distributor or user to the place or places designated by You;
- (c) The cost of hire of necessary, additional persons other than Your regular employees;
- (d) Remuneration paid to Your regular, hourly Employees at basic rates for necessary straight time or overtime, if required;
- (e) Expenses incurred for transportation and accommodation of Employees where necessary;
- (f) The extra expense for rent or hire of additional warehouse or storage space;
- (g) The disposal or destruction of Your Information Products recalled, but only when such costs are incurred exclusively for the purpose of recalling Your Information Technology Products or property of which they form a part, because of an Occurrence.

It does not include the actual value of Your Information Technology Products themselves, or of any property of which they form a part, or any legal liability to pay damages or compensation of any sort to any other Entity.

11.31 **Property Damage** means:

- (a) Physical damage to, loss of or destruction of property including the loss of use thereof or resulting there from; or
- (b) 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.

11.32 **Proposal** means all documentation and information provided by You or on Your behalf in the course of proposing for this cover.

11.33 **Public Relations Expenses** means:

all reasonable payments incurred by You with Our prior written consent (such consent not to be unreasonably delayed or withheld) for public relations, crisis management or legal services reasonably required to prevent or minimise adverse or negative publicity as a direct result of a Claim or inquiry covered by this policy.

It does not mean or include:

- (i) Your overheads, staff remuneration or management time;
- (ii) Compensation or other payments made to customers, clients or potential claimants;
- (iii) Fines or penalties; or
- (iv) The costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief.

11.34 **Related Entity** means any Entity which:

- (i) Employs or employed staff engaged in Your Business; or

- (ii) Provides or provided administration, nominee or like services to Your Business, but only in respect of such Entity acting or having acted in the course of Your Business.

11.35 **Retroactive Date** means the date specified in the Schedule.

11.36 **Schedule** means the schedule affixed to this document and any other documents attached to it.

11.37 **Shrink Wrap Licence** means a non negotiated written contract in which standard conditions relating to the use of Information Technology Products or Information Technology Services are imposed and which is legally enforceable.

11.38 **Subsidiary** means:

- (a) Any Entity in which You own or control, directly or indirectly, in any combination, more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors; or
- (b) Any Entity deemed to be Your subsidiary under any applicable legislation, law or Australian Accounting Standard.

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

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

Terrorism also includes any action taken to control, prevent, suppress, retaliate against, or respond to the above action.

11.40 **Territory** means the territory specified in the Schedule.

11.41 **Third Party** means any Entity:

- (a) Under Section 2 - excluding You unless the Claim is for an entitlement to contribution in relation to a Claim by a Third Party which is not You;
- (b) Under Section 3 - including You.

11.42 **Third Party Licensee** means:

A Third Party to whom You have licensed Your Information Technology Products pursuant to a

legally enforceable, written contract (including a Shrink Wrap Licence).

11.43. **Unauthorised Security** Event means with respect to Documents and Data; Your systems or websites; any systems or websites You maintain or control for others for a fee; or any systems or websites maintained by any party or enterprise performing outsourced services for You under contract:

1. Unauthorized access to, unauthorized use of, tampering or introduction of malicious code into Documents or Data or systems;
2. Unauthorised accidental loss or release of Documents or Data;
3. Repetitively accessing a website that is under control of You, with the intent to deny others access to such website or with the intent to cause such website's functionality to fail, including what is commonly referred to as denial of service attacks.

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

11.45 **We / Our / Us** means XL Insurance Company SE, Australia branch, trading as Brooklyn Underwriting

11.46 **Workers' Compensation Law** means any law relating to compensation for personal injury to employees.

11.47 **You or Your(s)** means:

- (a) The person, partnership, company or other entity specified in the Schedule;
- (b) Any Subsidiary Companies listed in the Schedule
- (c) Where You are a partnership or limited liability partnership, any person who is a partner at any time during the Period of Insurance;
- (d) Any person who is a director of You during the Period of Insurance;
- (e) Any person who is an Employee of You during the Period of Insurance;
- (f) Prior Corporate entities through which You previously traded, in the course of the conduct of the Your Information Technology Services;
- (g) Any officer, committee or member of the canteen, social, sports, first aid/medical, fire fighting and employee welfare organisations of Yours; and
- (h) Any Contractor who is engaged by You pursuant to a written Contract that is signed and dated by You and the Contractor and specifies the Information Technology Products or Information Services to be provided or supplied by the Contractor. No coverage is granted for Claims arising from Contractors where the scope of work agreed has not been

reduced to a written contract.

(i) Any person who, at the commencement of the policy, is a former partner, director or employee of any person or entity referred to in subparagraphs (c),(d),(e) or (g) of this definition

(j) Any person or company where parties referred to in 11.47(a) or 11.47(b), are obligated by virtue of a written contract to provide insurance as is afforded by this Policy, but only to the extent required by such contract and subject to the terms and conditions of this policy.

11.48 **Your Business** means:

- (a) Your business specified in the Schedule which is
- (b) Conducted in the Territory specified in the Schedule, but which is
- (c) Limited to Your supply of Information Technology Products and Information Technology Services
- (d) Any premises which You as owner, tenant or mortgagee in possession use for that purpose in the course of the normal conduct of Your Business.

XL Insurance Company SE
trading as Brooklyn Underwriting
ABN: 36 083 570 441
Level 28, 123 Pitt Street
Sydney NSW 2000

BROOKLYN 
UNDERWRITING