



# CHANGES FROM OLD TECH PROTECT TO NEW ESURANCE TECH

APR Insurance is pleased to provide our latest and improved Information Technology insurance package policy for your client. To assist you and your client we have developed an insurance package that in addition to offering a much improved PI/PL package, we can now offer your client the following covers:-

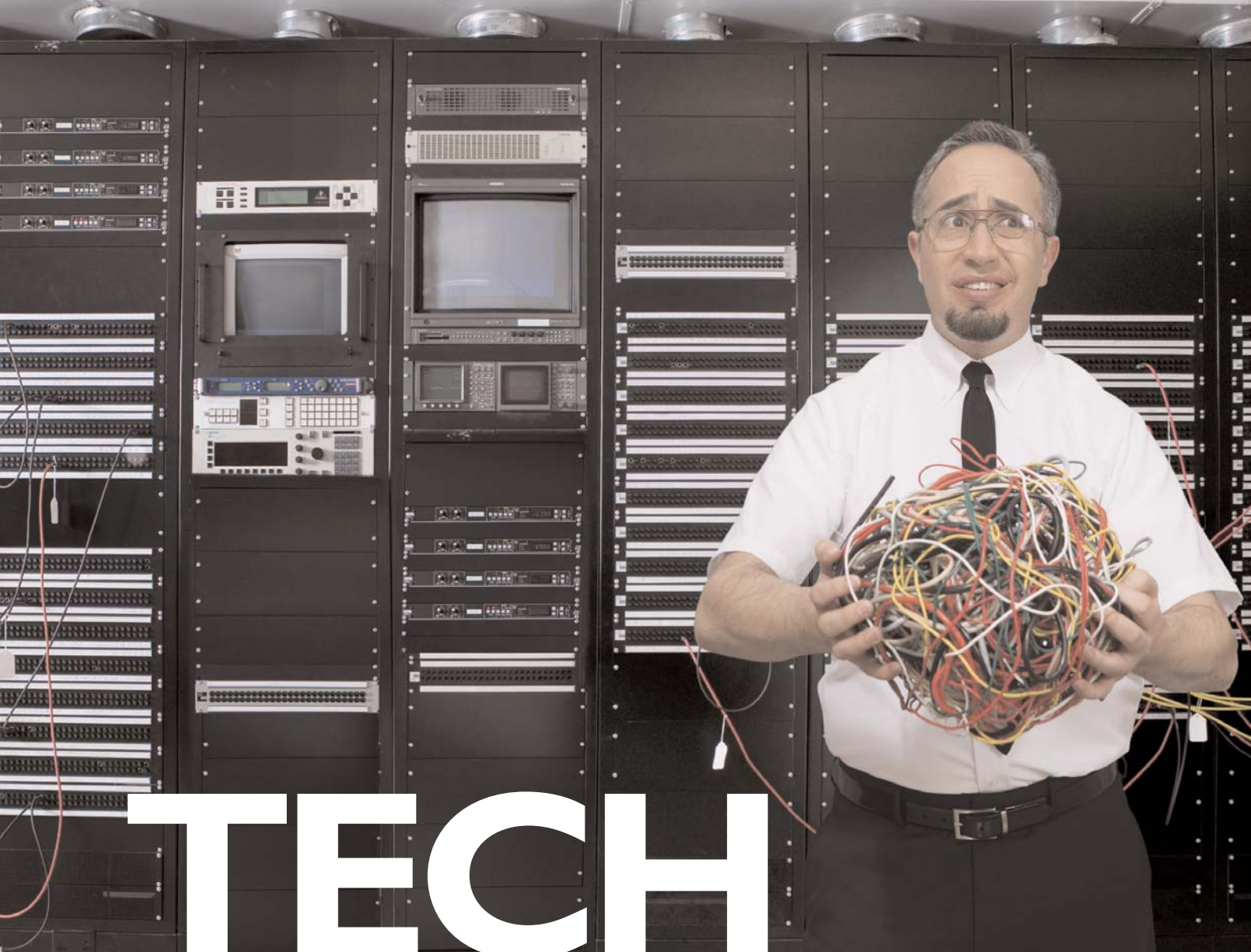
- Property Damage;
- Business Interruption; and
- Court Attendance costs

The following is a summary of the changes to our Professional Indemnity insurance policy which is attached.

CHANGE	FURTHER DETAILS
Name change from TechProtect™ to Esurance™ TECH	Part of our simplification of product range. Now all out technology-related products are part of the Esurance™ product suite.
PI cover set out more clearly	The PI cover provided is fully detailed in the insuring clauses whereas previously they just referred to “wrongful act” and the reader had to refer to the definitions section to find out what this meant.
Full civil liability cover now provided	Now clear cover if a suit is brought against the insured alleging a tort other than negligence (unless specifically excluded) or under a statute unrelated to negligence.
Explicit breach of contract cover	Separate insuring clause now providing clear cover for this increasingly significant exposure. Note, three new exclusions accompany this coverage: “Contractual fines and penalties”, “Failure to ensure feasibility of contracts” and “Failure to limit your liability”- please read these carefully. These replace the old contractual liability exclusion.
Virus & hacking cover added	Provides cover if an action is brought against the insured because they’ve spread a computer virus or have hacked into a third party’s systems

Please note: This is not a policy summary. Please refer to the attached policy wording for the full extent of coverage or refer to APR Insurance for clarification.

CHANGE	FURTHER DETAILS
Dishonesty of directors cover added	Previously just dishonesty of employees covered
Withheld fees cover added	We pay the insured's fees if, in seeking to recover those fees, the insured would attract a greater counter-claim from their client.
Bodily injury & property damage arising out of professional services now covered under PI not PL	This is a much cleaner way to divide the exposures between the coverage's since now all professional negligence claims are dealt with by the PI cover. This means we can offer the PI.PL package on a broader range of activities.
Court attendance costs cover added	We pay for the insured's time & expenses (including legal expenses) in attending an inquiry, arbitration hearing or other procedure relating their business.
Loss of research and development expenditure & project delay costs now covered under our business interruption protection	We recognise that professionals suffer business interruption in different ways to other sectors and this new cover reflects this.
Failure to take reasonable care exclusion deleted	Whilst we would only ever rely on this exclusion in extreme cases it was still very broad in its scope and therefore concerned brokers and their clients.
Product recall exclusion now does not apply to PI	Means we would now pay costs of recalling the insured's software due to sub-standard performance under the loss mitigation insuring clause.
Restitutionary damages & future profits exclusion deleted	A number of IT claims are for restitution (ie where the insured is order to pay the gains they have made from using another company's intellectual property illegally to that other company) so we have removed this off-misunderstood exclusion.
Continuous cover condition added	Means we will accept a claim under this policy that the insured knew about prior to the effective date but failed to notify under their previous APR/ Lloyd's policy through oversight.
Cover remains in place following non-disclosure if it was not deliberate &/or if deliberately committed by one insured it does not prejudice cover for other insureds	See innocent non-disclosure condition.
Clearer and fairer cancellation terms	Featuring: <ul style="list-style-type: none"> <li>• Insured can cancel at any time with 30 days notice.</li> <li>• Return premium simply calculated at pro-rata subject to 30% minimum earned.</li> </ul>



## INSURANCE FOR TECHNOLOGY COMPANIES

# Esurance™ TECH Policy Document

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## CFC Underwriting

CFC Underwriting Limited  
4th Floor Lloyd's Building  
12 Leadenhall Street  
London EC3V 1LP  
United Kingdom  
T: +44 0870 770 1002  
F: +44 0870 770 1005

E: [enquiries@cfcunderwriting.com](mailto:enquiries@cfcunderwriting.com)  
W: [www.cfcunderwriting.com](http://www.cfcunderwriting.com)

## PREAMBLE

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

The Sections of this policy are identified by the **BLUE LINES** across the page with **WHITE UPPER CASE PRINT**. Clause headings in **BLUE UPPER CASE PRINT** are for information only and do not form part of the cover given by this Policy. Other terms in **bold lower case print** are defined terms and have a special meaning as set forth in the **DEFINITIONS** section and elsewhere. Words stated in the singular shall include the plural and vice versa.

**IMPORTANT: INSURING CLAUSE I** provides cover on a claims made basis. Under this **INSURING CLAUSE** a **claim** must be first made against the company named as the Insured in the Schedule or any **subsidiary** and notified to **us** during the **period of the policy** to be covered. This **INSURING CLAUSE** does not cover any **claim** arising out of any actual or alleged **wrongful act** occurring before the date specified as the Retroactive Date in the Schedule.

In consideration of the Premium and in reliance upon the information that **you** have provided to **us** prior to commencement of this insurance and which is deemed to form the basis of this insurance:

## INSURING CLAUSES

### INSURING CLAUSE I: PROFESSIONAL INDEMNITY

#### SECTION A: ERRORS & OMISSIONS

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against the company named as the Insured in the Schedule or any **subsidiary** and notified to **us** during the **period of the policy** arising out of any:

- a) negligent act, error or omission, negligent misstatement or negligent misrepresentation;
- b) breach of any contractual term implied by law concerning necessary quality, safety or fitness, or **your** duty to use reasonable care and skill;
- c) breach of warranty of authority, breach of duty, breach of trust, breach of confidence, misuse of information or breach of privacy;
- d) libel, slander or defamation;
- e) dishonesty of **your** directors, partners or **employees** provided that **we** maintain all rights of subrogation to recover such legal costs and expenses from any director, partner or **employee** if they are found guilty of such a dishonest act; or
- f) breach of the terms of the Trade Practices Act 1974 (Cth.) as well as any Fair Trading legislation of any State or Territory of Australia; or
- g) other act, error or omission giving rise to civil liability to **your clients** but not any breach of contract save as specified above;

committed by **you** or on **your** behalf in the course of **your business activities**. **We** will also pay **costs and expenses** on **your** behalf.

#### SECTION B: BREACH OF CONTRACT

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** by a **client** first made against the company named as the Insured in the Schedule or any **subsidiary** and notified to **us** during the **period of the policy** arising out of any **breach of client contract**. **We** will also pay **costs and expenses** on **your** behalf.

#### SECTION C: INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against the company named as the Insured in the Schedule or any **subsidiary** and notified to **us** during the **period of the policy** arising out of **your** infringement of any **intellectual property right** in the course of **your business activities**. **We** will also pay **costs and expenses** on **your** behalf.

#### SECTION D: LOSS OF DOCUMENTS

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against the company named as the Insured in the Schedule or any **subsidiary** and notified to **us** during the **period of the policy** arising out of destruction of, damage to, loss or mislaying of **your documents** or **documents** in **your** care, custody or control. **We** will also pay **costs and expenses** on **your** behalf.

#### SECTION E: COMPUTER VIRUS AND HACKING ATTACK

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against the company named as the Insured in the Schedule or any **subsidiary** and notified to **us** during the **period of the policy** as a direct result of:

- a) any **third parties'** financial losses arising directly from a **hacking attack** or **virus** that has emanated from or passed through **your** computer systems, or
- b) any **third parties'** financial losses arising directly from their inability to access **your** computer systems in the way in which **you** have authorised them to as a direct result of **your** computer systems' failure or impairment due to a **hacking attack** or **virus**, or
- c) any **third parties'** financial losses arising directly from the loss or theft of **your** data or data for which **you** are responsible or held to be responsible arising directly from a **hacking attack** or **virus**.

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

#### SECTION F: LOSS MITIGATION

**We** agree to pay any reasonable costs necessarily incurred by **you** with **our** prior written consent in respect of measures taken by **you** for the sole purpose of avoiding or mitigating a **claim** or potential **claim** for which **you** would be entitled to indemnity under **INSURING CLAUSE I** of this Policy had such measures not been taken.

#### SECTION G: PAYMENT OF WITHHELD FEES

**We** agree to pay **your withheld fees** with **our** prior written consent in the event that **your client** brings or threatens to bring a **claim** against **you** that would be covered under **INSURING CLAUSE I**, **SECTIONS A or B** for an amount greater than **your withheld fees** if **you** attempt to recover the **withheld fees** from them. Prior to payment of **your withheld fees** **you** must obtain written confirmation from **your client** that they will not bring a **claim** against **you** if **you**

agree not to pursue them for **your withheld fees** and provide it to us.

However, **we** will not make any payment on **your** behalf under any **SECTION** of this **INSURING CLAUSE** in respect of any **claim** arising directly or indirectly out of **injury** or **damage**:

- a) from **products** or **workmanship**; or
- b) that did not occur directly as a result of **your business activities**.

### INSURING CLAUSE 2: WEBSITE DAMAGE

**We** agree to reimburse **you** for **loss**, subject to **our** prior written agreement (such agreement not to be unreasonably withheld), which **you** incur in repairing, restoring or replacing **your** website as the direct result of any **hacking attack** or **virus** first discovered during the **period of the policy**. **We** will also pay **costs and expenses** on **your** behalf.

### INSURING CLAUSE 3: PROPERTY DAMAGE

**We** agree to reimburse **you** up to the **amount insured** shown in the Schedule for:

1. the cost of repairing **damage** occurring during the **period of the policy** to **your office**, including landlord's fixtures and fittings, walls, gates and fences, yards, car parks and pavements, piping, ducting, cables, wires and associated control gear and accessories on the premises and extending to the public mains but only to the extent of **your** responsibility;
2. **damage** occurring during the **period of the policy** to **contents** contained in **your office**;
3. **damage** occurring during the **period of the policy** to **contents** kept at the home of **your** directors, partners or **employees** in the course of **your business activities**;
4. **damage** occurring during the **period of the policy** to **contents** temporarily elsewhere, including while in transit;
5. the necessary and reasonable costs **you** incur following **damage** occurring during the **period of the policy** to glass which belongs to **you** or for which you are legally responsible for:
  - a) temporary boarding up;
  - b) repair of window frames or removal or replacement of fixtures and fittings in the course of replacing the glass;
  - c) replacement lettering or other ornamental work and alarm foil on glass;
6. **damage** occurring during the **period of the policy** to **money** held in the course of **your business activities**:
  - a) in the **office**, in transit or in a Bank Night Safe;
  - b) at the home of **your** directors, partners or **employees**;
7. **damage** occurring during the **period of the policy** to the personal belongings of **your employees** or visitors to the **office** provided they are not covered under any other insurance;
8. the reasonable cost of reconstituting the data **you** need to continue **your business activities** if **your** business records and electronic data have been lost or distorted as a direct result of **damage** covered under this **INSURING CLAUSE**;
9. the costs you incur to replace locks and keys necessary to maintain the security of **your office** or safes following theft of keys involving force and violence occurring during the **period of the policy**;
10. the amount of any rent for the **office** which **you** are legally obliged to pay for any period during which the **office** or any part of it is unusable as a result of **damage** covered under this **INSURING CLAUSE**.

**We** also agree to pay:

- a) **costs and expenses** on **your** behalf;
- b) compensation as shown in the Schedule if any of **your** directors, partners or **employees** who are aged between 16 and 70 on the Inception Date shown in the Schedule suffers an **injury** in the course of **your business activities** in a robbery or attempted robbery and suffers:
  - i. death, **permanent total disablement**, **loss of a limb** or **loss of sight** as a direct result of the **injury** within one year of the date of its occurrence;

- ii. **temporary total disablement**. The compensation for **temporary total disablement** will be the amount shown in the Schedule per week, for a maximum of 104 weeks.

However, **we** will not pay compensation under more than one heading in the Schedule for the same **injury**.

### INSURING CLAUSE 4: BUSINESS INTERRUPTION – FLEXIBLE FIRST LOSS

**We** agree to reimburse **you** up to the **amount insured** shown in the Schedule for **your loss of income, costs and expenses, loss of research and development expenditure, project delay costs** and **outstanding debts** resulting solely and directly from an interruption to **your business activities** caused by:

1. **insured damage** to **your office** or **contents** or to any other property used by **you** at **your office**;
2. **insured damage** to property in the vicinity of **your office** which prevents or hinders **your** access to **your office**;
3. **insured damage** at the premises of one of **your** suppliers, other than a supplier of water, gas, electricity or telephone services;
4. failure in the supply of water, gas, electricity, or telephone services to **your office** for more than 24 consecutive hours caused by **insured damage** to any property;
5. **your** inability to use **your office** due to restrictions imposed by a public authority following:
  - a) a murder or suicide;
  - b) an occurrence of a notifiable human disease;
  - c) **injury** traceable to food or drink consumed at **your office**;
  - d) vermin or pests at **your office**.

### INSURING CLAUSE 5: PUBLIC LIABILITY

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of accidental **injury** or **damage** occurring during the **period of the policy** in the course of **your business activities**. **We** will also pay **costs and expenses** on **your** behalf.

However, **we** will not make any payment on **your** behalf under this **INSURING CLAUSE** in respect of any **claim**:

- a) which is covered under **INSURING CLAUSE 1**, or would be covered under **INSURING CLAUSE 1** but for the exhaustion of the **limit of liability** or **aggregate limit of liability** of **INSURING CLAUSE 1**;
- b) arising directly or indirectly out of any **product**; or
- c) arising directly or indirectly out of any **pollution**.

### INSURING CLAUSE 6: PRODUCTS LIABILITY

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of accidental **injury** or **damage** occurring during the **period of the policy** in the course of **your business activities** in connection with any **product**. **We** will also pay **costs and expenses** on **your** behalf.

However, **we** will not make any payment on **your** behalf under this **INSURING CLAUSE** in respect of any **claim**:

- a) which is covered under **INSURING CLAUSE 1**, or would be covered under **INSURING CLAUSE 1** but for the exhaustion of the **limit of liability** or **aggregate limit of liability** of **INSURING CLAUSE 1**;
- b) arising directly or indirectly out of any **pollution**.

### INSURING CLAUSE 7: POLLUTION LIABILITY

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of accidental **injury** or **damage** occurring during the **period of the policy** and caused by **pollution** in the course of **your business activities** on condition that such

**pollution:**

- 1) was the direct result of a sudden, identifiable, unintended and unexpected incident occurring in its entirety at a specific time and place during the **period of the policy**, and;
- 2) was not the direct result of **you** failing to take reasonable precautions to prevent such **pollution**,

provided always that all such **pollution** that arises out of one incident shall be considered for the purposes of this Policy to have occurred at the time such incident takes place.

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

However, **we** will not make any payment on your behalf under this **INSURING CLAUSE** in respect of any **claim**:

- a) which is covered under **INSURING CLAUSE 1**, or would be covered under **INSURING CLAUSE 1** but for the exhaustion of the **limit of liability** or **aggregate limit of liability** of **INSURING CLAUSE 1**; or
- b) arising directly or indirectly out of any **product**.

**INSURING CLAUSE 8: BRAND PROTECTION**

**We** agree to pay costs reasonably incurred with **our** prior written consent on the services of a public relations consultancy for the purpose of averting or mitigating damage to any of **your** brands caused by a **claim** or **loss** that is insured and that the Claims Managers have accepted under this Policy and that constitutes a **newsworthy event**.

The public relations consultancy shall be chosen by the Claims Managers who shall take into account the nature of the **claim** or **loss** and the cost and quality of the services that they can deliver, unless you have reasonable cause to request a different public relations consultancy and the Claims Managers and **you** mutually agree upon such a company.

**INSURING CLAUSE 9: COURT ATTENDANCE COSTS**

**We** agree to reimburse **you** up to the **amount insured** shown in the Schedule for **your** reasonable costs (including legal representation costs) incurred with the prior written consent of the Claims Managers to attend court or any arbitration or adjudication hearing or inquiry in connection with **your business activities**.

**HOW MUCH WE WILL PAY**

The maximum amount payable by **us** for all **claims, losses, damage and costs and expenses** shall not exceed the amounts shown in the Schedule in respect of each **INSURING CLAUSE** unless limited below.

Where more than one **claim** or **loss** arises from the same original cause or single source or event all such **claims** or **losses** shall be deemed to be one **claim** or **loss** and only one **limit of liability** shall be payable in respect of the aggregate of all such **claims** or **losses**.

Where cover is provided under multiple **SECTIONS** of **INSURING CLAUSE 1** only one Limit of Liability shall be payable in respect of that **claim**.

In respect of **INSURING CLAUSES 1, 5, 6 and 7** **we** may at any time pay to **you** in connection with any **claim** the amount of the **aggregate limit of liability** or **limit of liability** (after deduction of any amounts already paid). Upon such payment being made **we** shall relinquish the conduct and control of and be under no further liability in connection with such **claim** except for the payment of **costs and expenses** incurred prior to the date of such payment (unless the **aggregate limit of liability** or **limit of liability** is stated to be inclusive of **costs and expenses**).

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

- a) At our option, **we** will pay for any **damaged** property on the following basis:
  - i) for the **office**, the cost of rebuilding or replacing the **damaged** property;

- ii) for **contents**, the cost of repair or replacement as new.
- b) If, at the time the **damage** occurs, the **amount insured** is less than 80% of the total value of the **damaged** property, the amount **we** will pay will be reduced in the same proportion as the **amount insured** bears to the total value of the **damaged** property.
- c) The **amount insured** for the **office** and **contents** will be adjusted monthly in line with any increase in the consumer price index as published by the Australian Bureau of Statistics. **We** will not reduce the **amount insured** without **your** consent.

In respect of **INSURING CLAUSE 4** the amount **we** will pay will be:

- a) the difference between **your** actual **income** during the **indemnity period** and the **income** it is estimated **you** would have earned during that period or, if this is **your** first trading year, the difference between **your income** during the **indemnity period** and during the period immediately prior to the **loss**, less any savings resulting from the reduced costs and expenses **you** pay out of **your income** during the **indemnity period**; and
- b) any additional **costs and expenses**;
- c) any **project delay costs** during the **indemnity period**, including the total value of any milestone payments that were due in the **indemnity period** but will no longer be received by **you** either during the **indemnity period** or at any point in the future due to permanent termination of the project;
- d) any **research and development expenditure** irrevocably lost during the **indemnity period**; and
- e) any **outstanding debts**, provided **you** keep a record of all amounts owed to **you** and keep a copy of the record away from **your office**.

**YOUR DEDUCTIBLE**

**We** shall only be liable for that part of each and every **claim** or **loss** (which for the purpose of this clause shall be deemed to include all **costs and expenses** incurred) which exceeds the amount of the Deductible stated in the Schedule. Where more than one **claim** or **loss** arises from the same original cause or single source or event all such **claims** or **losses** shall be deemed to be

one **claim** or **loss** and only one Deductible will apply.

If any expenditure is incurred by **us** which by virtue of this clause is **your** responsibility then **you** shall reimburse such amount to **us** on **our** request or where possible **we** will deduct such amount from any payment **we** make to **you**.

## DEFINITIONS

1. **“Aggregate limit of liability”**  
means the maximum amount payable as stated in the Schedule by **us** in respect of all **claims** and **losses**.
2. **“Amount insured”**  
means the maximum amount payable by **us** as shown in the Schedule in respect of each of **INSURING CLAUSES 3** and **4**. The amount applies to each incident of **loss** or **damage** occurring during the **period of the policy** provided always that after the first incident of **loss** or **damage you** comply with **our** recommendations to prevent any further incidents of **loss** or **damage**.
3. **“Breach of client contract”**  
means **your** unintentional breach of a written contract relating to the performance of **your business activities** for a **client**.
4. **“Business activities”**  
means:
  - a) in respect of **INSURING CLAUSE I**, the Business Activities as stated in the Schedule.
  - b) in respect of all other **INSURING CLAUSES**, the Business Activities as stated in the Schedule and shall include, for the purpose of those Business Activities:
    - i) the ownership, repair and maintenance of **your** property or property **you** occupy;
    - ii) provision and management of canteen, social, sports and welfare organisations for the benefit of **your** directors, partners or **employees** and medical, fire fighting, and security services;
    - iii) attendance at conferences and tradeshows as either an exhibitor or visitor.
5. **“Claim”**  
means a demand received by **you** for money or services, including the service of suit or institution of arbitration proceedings. **“Claim”** shall also mean a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction).
6. **“Client”**  
means any **third party** with whom **you** have a formal written contract in place for the supply of **your business activities** in return for a fee.
7. **“Contents”**  
means the contents of **your office** used in connection with **your business activities** which are owned by **you** or for which **you** are legally responsible, including:
  - a) computer and ancillary equipment (including VDUs, keyboards, printers and software), television and video equipment, photographic, photocopying, surveying and telecommunications equipment;
  - b) documents, briefs, manuscripts, plans, business books, computers systems records and programs;
  - c) goods held in trust, stock and samples;
  - d) wines, spirits and tobacco kept for entertainment purposes;
  - e) works of art or precious metals;
  - f) fixed glass in windows, doors and fanlights, glass showcases, glass shelves, mirrors and sanitary fixtures and fittings;
  - g) heating oil for the **office** contained in fixed tanks in the open at the address shown in the Schedule;
  - h) tenant’s improvements, decorations, fixtures and fittings including, if attached to the building, external signs, aerials and satellite dishes;
  - i) pipes, ducting, cables, wires and associated control equipment at the address shown in the Schedule and extending to the

public mains.

**“Contents”** does not include **money** or the personal belongings of **your employees** or visitors to the **office**.

8. **“Costs and expenses”**  
means:
  - a) in respect of **INSURING CLAUSE I SECTIONS A - E**,
    - i) **your** legal costs and expenses in the defence or settlement of any **claim** made against **you**, and
    - ii) **your** legal costs and expenses in the defence of any criminal claim made against **you**, provided that **we** maintain all rights of subrogation to recover such legal costs and expenses from any director, partner or **employee** if they are found guilty of such a criminal act.
  - b) in respect of **INSURING CLAUSES 2, 3** and **4**, the costs and expenses incurred by **you** or on **your** behalf in establishing that **you** have sustained a **loss** or **damage** and the quantum of such **loss** or **damage** or the costs and expenses incurred by **you** or on **your** behalf in mitigating any such **loss** or **damage**.
  - c) in respect of **INSURING CLAUSE 3** only, the necessary and reasonable costs and expenses **you** incur to remove debris from the premises or the area immediately adjacent, following **damage** covered under this **INSURING CLAUSE**.
  - d) in respect of **INSURING CLAUSE 4** only, the necessary and reasonable additional costs and expenses **you** incur in order to continue **your business activities** during the **indemnity period**.
  - e) in respect of **INSURING CLAUSES 5, 6**, and **7**, **your** legal costs and expenses in the defence or settlement of any **claim** made against **you**.

Subject to all **costs and expenses** being incurred with the Claims Managers’ written consent (such consent not to be unreasonably withheld).

If **costs and expenses** are shown in the Schedule to be in addition to the **aggregate limit of liability** or **limit of liability** in respect of **INSURING CLAUSES 1** and **2** and **5** to **7**, and if a payment in excess of the amount of indemnity available hereunder has to be made to dispose of any **claim** or number of **claims**, **our** liability for such **costs and expenses** shall be such proportion thereof as the amount of indemnity available hereunder bears to the amount required to dispose of such **claim** or **claims**.

**Costs and expenses** are always included in the **amount insured** in respect of **INSURING CLAUSES 3** and **4**.

9. **“Damage/damaged”**  
means direct physical damage to, or destruction of, or loss of possession of, tangible property. In respect of **INSURING CLAUSES 1, 5, 6** and **7** **damage** does not include damage to or destruction of, or loss of possession of, or loss of use of, or corruption of, data.
10. **“Documents”**  
means deeds, wills, agreements, maps, plans, records, books, letters, certificates, forms, computer programmes or information stored, written or punched into card or tape or magnetic discs or tapes or any other data media and documents of any nature whatsoever, whether written, printed or reproduced by any other method (other than bearer bonds, coupons, banks notes, currency notes and negotiable instruments).
11. **“Employee”**  
means any:

- a) person under a contract of service or apprenticeship with the company named as the Insured in the Schedule, or any **subsidiary**,
- b) labour master and persons supplied by him,
- c) person employed by or supplied by labour-only sub-contractors,
- d) self employed person under the control of the company named as the Insured in the Schedule, or any **subsidiary**,
- e) person hired to or borrowed by the company named as the Insured in the Schedule, or any **subsidiary**,
- f) person undertaking study or work experience or youth training scheme with the company named as the Insured in the Schedule, or any **subsidiary**,

working for the company named as the Insured in the Schedule, or any **subsidiary** in connection with their **business activities**.

**Employee** does not include any director or partner of the company named as the Insured in the Schedule, or any **subsidiary**.

- 12. **“Hacking attack”**  
means any malicious or unauthorised electronic attack including but not limited to any fraudulent electronic signature, brute force attack, phishing, denial of service attack, that has been initiated by any **third parties** or by any **employees** and that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of computer systems, software and ancillary equipment.
- 13. **“Income”**  
means **your** total income from **your business activities**.
- 14. **“Indemnity period”**  
means the period beginning at the date of the **damage**, or the date the restriction is imposed, and lasting for the period during which **your income** or expenditure is affected as a result of such **damage** or restriction, but for no longer than the number of months shown in the Schedule.
- 15. **“Injury”**  
means death, bodily injury, mental injury, illness or disease of or to any person.
- 16. **“Insured damage”**  
means **damage** to property provided that:
  - a) the **damage** is covered under **INSURING CLAUSE 3**; or
  - b) an insurer has paid the claim, or has agreed to pay the claim, under any other insurance covering such **damage**.
- 17. **“Intellectual property right”**  
means any intellectual property right including but not limited to trademarks, trade secrets, broadcasting rights, domain names, metatags and copyrights but does not include patents.
- 18. **“Limit of liability”**  
means the maximum amount payable by **us** as stated in the Schedule in respect of each **claim** or **loss**.
- 19. **“Loss of a limb”**  
means loss by physical separation of a hand at or above the wrist, of a foot at or above the ankle, and includes total and irrecoverable loss of use of a hand, arm or leg.
- 20. **“Loss of sight”**  
means total and irrecoverable loss of sight.
- 21. **“Loss”**  
means direct financial loss sustained by **you**.

In respect of **INSURING CLAUSE 2**, **loss** means only those

costs that **you** incur as a result of the use of external consultants, contractors or advisers. For the avoidance of doubt, **loss** does not include the salaries of **your employees** or **your** office expenses or any payments that **you** have paid or agreed to pay as part of any service or maintenance contract.

- 22. **“Money”**  
means cash, bank and currency notes, cheques, travellers’ cheques, postal orders, money orders, crossed bankers’ drafts, current postage stamps, savings stamps and certificates, trading stamps, gift tokens, customer redemption vouchers, company sales vouchers, credit card counterfoils, travellers tickets and contents of franking machines, all belonging to **you**.
- 23. **“Newsworthy event”** means an event that has been publicised through any media channel, including television, print media, radio or electronic networks, including the internet, electronic mail, and the World Wide Web.
- 24. **“Office”**  
means the office space (including any outbuildings) **you** occupy at the address shown in the Schedule located in a building built of brick, stone or concrete and roofed with slate, tiles, concrete, metal, asbestos or any other non-combustible material.
- 25. **“Outstanding debts”**  
means any of **your** outstanding debts exclusive of Goods and Services Tax (GST), which **you** are unable to recover as a direct result of **insured damage** to **your** accounting records.
- 26. **“Period of the policy”**  
means the period between the Inception Date shown in the Schedule and the Expiry Date shown in the Schedule or until the Policy is cancelled in accordance with **CONDITION 9** of this Policy.
- 27. **“Permanent total disablement”**  
means disablement which entirely prevents the **injured** person from attending to his business or occupation for twenty-four calendar months and at the expiry of that period being beyond hope of improvement.
- 28. **“Project delay costs”**  
means any additional costs and expenses incurred by **you** as a direct result of a delay to a project, including the interest charges incurred from any reasonable loan required as a result of a delayed milestone payment.
- 29. **“Pollution”**  
means pollution or contamination of the atmosphere, or of any water, land, buildings or other tangible property.
- 30. **“Product”**  
means any tangible property (including containers, packaging, labelling or instructions, but explicitly excluding any software, data, or source code) after it has left **your** custody or control which has been manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered, processed, cleaned, renovated or repaired by **you** or on **your** behalf in the course of **your business activities**.
- 31. **“Research and development expenditure”**  
means **your** expenditure on research and development less the cost of reusable materials consumed for the purposes of the research and development.
- 32. **“Subsidiary”**  
means any company which the company named as the Insured in the Schedule controls through:
  - a) holding 50% or more of the voting rights, or

- b) having the right to appoint or remove 50% or more of its board of directors; or
  - c) controlling alone, pursuant to a written agreement with other shareholders or members, 50% or more of the voting rights therein.
33. **“Temporary total disablement”**  
means disablement which entirely prevents the **injured** person from attending to his business or occupation.
34. **“Third party”**  
means any person or company who is not a director, partner or **employee** of the company named as the Insured in the Schedule or any **subsidiary**.
35. **“Virus”**  
means any malicious software code including but not limited to any logic bomb, Trojan horse or worm that has been introduced by any **third parties** or by any **employees** and that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of computer systems, software and ancillary equipment.
36. **“We/our/us”**  
means the Underwriters named in the Schedule.
37. **“Withheld fees”**  
means any contractually due fee that **your client** refuses to pay

**you**, but excludes any part of the fee that represents **your** profit or mark-up or liability for taxes.

38. **“Workmanship”**  
means any physical workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection therewith) by **you** or on **your** behalf, or from **your** supervision of such workmanship.
39. **“Wrongful act”**  
means any act or event the subject of **INSURING CLAUSE I** of this Policy for which **you** have purchased coverage.
40. **“You/your”**  
means:
- a) the company named as the Insured in the Schedule, or any **subsidiary**, and
  - b) any past, present or future **employee**, director or partner of the company named as the Insured in the Schedule or any **subsidiary**, and
  - c) the officers, committees and members of **your** canteen, social, sports, medical, fire fighting, security services and welfare organisations for legal liabilities incurred in their respective capacity as such.

## EXCLUSIONS

**We** will not

- a) make any payment on **your** behalf for any **claim**, or
- b) incur any **costs and expenses**, or
- c) reimburse **you** for any **loss, damage**, legal expenses, fees or costs sustained by **you**

### EXCLUSIONS RELATING TO OTHER INSURANCES:

1. **Marine and aviation**  
arising directly or indirectly from the ownership, possession or use by **you** or on **your** behalf of any aircraft, hovercraft, offshore installation, rig, platform or watercraft.
2. **Motor**  
arising directly or indirectly from the ownership, possession or use by **you** or on **your** behalf of any motor vehicle or trailer other than **injury** or **damage**:
  - a) 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;
  - b) occurring beyond the limits of any carriageway or thoroughfare and caused by the loading or unloading of any motor vehicle or trailer;
  - c) arising out of the use of any motor vehicle or trailer temporarily in **your** custody or control for the purpose of parking;

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

3. **Product guarantee**  
for costs incurred in the repair, alteration, reinstatement, inspection, reconditioning or replacement of any **product** or part thereof and any financial loss consequent upon the necessity for such repair, alteration, reinstatement, inspection,

reconditioning or replacement, other than in respect of **INSURING CLAUSE I** when **you** are legally obliged to pay these sums to a **client**.

4. **Product recall**  
arising directly or indirectly from the recall of any **product** or part thereof except for **claims** made under **INSURING CLAUSE I** where **you** are legally liable for these costs to a **third party** as the direct result of a **wrongful act** committed or alleged to have been committed by **you**.
5. **Employment practices**  
arising out of or resulting from any employer-**employee** relations, policies, practices, acts, omissions, any actual or alleged refusal to employ any person, or misconduct with respect to **employees**.
6. **Directors' and Officers'**  
arising out of any personal liability incurred by **your** directors or officers when they are acting in that capacity or managing **you**, or arising from any statement, representation or information regarding **your** business contained within any accounts, reports or financial statements.
7. **Employers' liability**  
arising directly or indirectly out of **injury** to **your** directors, officers, partners or **employees**.

### EXCLUSIONS RELATING TO THE CONDUCT OF YOUR BUSINESS:

8. **Circumstances known at inception**  
arising out of any circumstances or occurrences which could give rise to a **claim, loss** or **damage** under this Policy of which **you** are aware, or ought reasonably to be aware, prior to the Inception Date of this Policy, whether notified under any other insurance or not.

9. **Computer failure**  
in respect of **INSURING CLAUSES 3** and **4** only, arising directly or indirectly from loss or distortion of **your** data or **damage to your** electrical or mechanical plant resulting from a failure of **your** computer or ancillary equipment (including VDUs, keyboards, printers or software), television or video equipment, photographic, photocopying, surveying or telecommunications equipment. However, we will reimburse you up to the **amount insured** for damage occurring during the **period of the policy to your office** computer and ancillary equipment, but only if **your office** computer and ancillary equipment are subject to a manufacturer's guarantee or a maintenance contract providing free parts and labour in the event of a breakdown.
10. **Contractual fines and penalties**  
for fines and penalties arising from **your** breach of contract, including any liquidated damages, service credits or associated penalties arising from **your** failure to perform under a service level agreement.
11. **Failure to ensure feasibility of contracts**  
arising from any contract where before entering into or amending the contract **you** failed to take reasonable steps to ensure that **you** could fulfil all **your** obligations in accordance with the terms of the contract.
12. **Failure to limit your liability**  
arising from any contract where **you** have assumed any liability where **you** have failed to limit this in **your** contract where it was reasonable for **you** to have done so.
13. **Hazardous devices**  
arising directly or indirectly from any **product** which with **your** knowledge is intended for incorporation into the structure, machinery or controls of any aircraft, other aerial device, military vehicle, hovercraft, waterborne craft or any medical equipment.
14. **Injury or damage to employees**  
arising directly or indirectly out of **injury** to or **damage** suffered by **your** directors, partners, or **employees**.
15. **Legal Action**  
where action for damages is brought in a court of law outside the territories specified in the Schedule, or where action is brought in a court of law within those territories to enforce a foreign judgement whether by way of Reciprocal Agreement or otherwise.
16. **Limiting recovery rights**  
arising directly or indirectly out of **your** failure to take reasonable steps to ensure that **our** rights of recovery against any **third party** are not unduly restricted or financially limited by a specific term in any contract or agreement.
17. **Maintenance of your property**  
arising from **damage to your** property or **office** caused directly or indirectly by misuse, inadequate or inappropriate maintenance, faulty workmanship, defective design, the use of faulty materials or whilst being cleaned, worked on or maintained.
18. **Patents**  
arising out of the actual or alleged infringement of any patent or inducing the infringement of any patent.
19. **Retroactive Date**  
in respect of **INSURING CLAUSE 1** only, arising out of any event or actual or alleged **wrongful act** occurring before the date specified as the Retroactive Date in the Schedule.
20. **Unjust enrichment**  
in respect of **INSURING CLAUSE 1** only, for that part of any

**claim** that results in **you** being in a better financial position as a direct result of **your wrongful act** than **you** would have been if **you** had not committed the **wrongful act**.

21. **Wilful or dishonest acts of directors**  
in respect of **INSURING CLAUSES 1, 2, 8** and **9** only, arising out of any wilful, malicious, reckless or dishonest act or omission by any director, partner or officer of the company named as the Insured in the Schedule or any **subsidiary**, unless such person had already ceased to be a director, partner or officer of the company named as the Insured in the Schedule and all **subsidiaries** at the time of their first wilful, malicious, reckless or dishonest act or omission, or unless specifically covered under **INSURING CLAUSE 1 SECTION A (e)**. We will not provide any cover for any director, partner or officer of the company named as the Insured in the Schedule or any **subsidiary** who commits, condones or ignores any dishonesty.

#### GENERAL INSURANCE EXCLUSIONS:

22. **Antitrust**  
for or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive advertising unless insurable under the applicable law.
23. **Asbestos**  
arising directly or indirectly or resulting from or contributed to by the manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos, or asbestos fibres or dust.
24. **Associated companies**
  - a) in respect of any **claim** made by any company firm or partnership in which the company named as the Insured in the Schedule has an executive or financial interest; or
  - b) in respect of any **claim** made by any company firm partnership or individual which has an executive or financial interest in the company named as the Insured in the Schedule or any **subsidiary**, unless such **claim** emanates from an independent **third party**; or
  - c) arising out of or resulting from any of **your** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organisation, corporation, company or business other than that of the company named as the Insured in the Schedule or any **subsidiary**; or
  - d) in respect of any **claim** made by or on behalf of the company named as the Insured in the Schedule or any **subsidiary**.
25. **Cumulative trauma disorders**  
other than in respect of **INSURING CLAUSE 1**, arising directly or indirectly from cumulative trauma disorders, repetitive strain injuries, musculoskeletal disorders, Occupational Overuse Syndrome, Repetitive Motion Injury, Upper Extremity Musculoskeletal Disorder, work-related upper limb disorders including, but not limited to, Carpal Tunnel Syndrome, Cubital Tunnel Syndrome, Tenosynovitis, Tendonitis, Epicondylitis or Thoracic Outlet Syndrome.
26. **Electromagnetic fields**  
directly or indirectly arising out of, resulting from or contributed to by electromagnetic fields, electromagnetic radiation, electromagnetism, radio waves or noise.
27. **Fines**  
for fines, penalties, civil or criminal sanctions and for punitive, multiple or exemplary damages unless insurable under the applicable law.

28. **Flood**  
in respect of **INSURING CLAUSES 3 and 4** only, caused by flood, including waves, tides, tidal waves, or the rising of, the breaking out, or the overflow, of any body of water whether natural or manmade, but this **EXCLUSION** does not apply to:
- ensuing **loss** or **damage** which results directly from fire, explosion, smoke or leakage from fire protective equipment; or
  - ensuing **damage to contents** while in transit.
29. **Insolvency**  
arising out of or relating directly or indirectly from **your** insolvency or bankruptcy. Furthermore, no coverage is provided under **INSURING CLAUSE 4** if **you** become insolvent or bankrupt.
30. **Land or water**  
arising directly or indirectly from **damage** to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by **you** or otherwise in **your** care, custody or control.
31. **Miscellaneous property exclusions**  
in respect of **INSURING CLAUSES 3 and 4** only, arising directly or indirectly from:
- wear and tear, inherent defect, rot, vermin or infestation, or any gradually operating cause;
  - dryness or humidity, being exposed to light or extreme temperatures, unless the **damage** is caused by storm or fire;
  - coastal or river erosion;
  - a rise in the water table;
  - theft from an unattended vehicle unless the stolen item is out of sight;
  - frost, other than **damage** due to water leaking from burst pipes forming part of the permanent internal plumbing provided the **office** is occupied and in use;
  - arising directly or indirectly from unexplained loss or disappearance or inventory shortage of your property;
  - a **hacking attack** or **virus**.
32. **Nuclear**  
arising directly or indirectly from or contributed to by:
- ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
  - the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
33. **Pollution**  
arising from **damage to your** property or **office** caused by **pollution** except **damage** (which is not otherwise excluded) which is caused by:
- pollution** which itself results from **damage** covered under **INSURING CLAUSE 3**; or
  - damage** which would otherwise be covered under **INSURING CLAUSE 3** which itself was caused by **pollution**.
34. **Toxic Mould / Fungus**  
other than in respect of **INSURING CLAUSES 3 and 4**, arising directly or indirectly from any loss, **injury, damage, costs** or expenses, including, but not limited to, losses, **damage, costs** or expenses related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by:
- any **fungus, mould, mildew** or yeast, or

- any **spore** or toxins created or produced by or emanating from such **fungus, mould, mildew** or yeast, or
- any substance, vapour, gas, or other emission or organic or inorganic body or substance produced by or arising out of any **fungus, mould, mildew** or yeast, or
- any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbours, nurtures, or acts as a medium for any **fungus, mould, mildew** yeast, or **spore** or toxins emanating therefrom,

regardless of any other cause, event, material, product or building component that contributed concurrently or in any sequence to that loss, **injury, damage, cost** or expense.

For the purposes of this **EXCLUSION** the following definitions are added to the Policy:

**Fungus** includes, but is not limited to, any plants or organisms belonging to the major group Fungi, lacking chlorophyll, and including **moulds, rusts, mildews, smuts** and mushrooms.

**Mould** includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and **fungi** that produced moulds.

**Spore** means any dormant or reproductive body produced by or arising from or emanating out of any **fungus, mould, mildew, plants, organisms** or microorganisms.

35. **Trade debt**  
arising out of or in connection with any trading losses or trading liabilities incurred by any business managed or carried on by **you**, or any loss of **your** profit arising from the loss of any client, account or business.
36. **War and terrorism**  
directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the **claim, loss** or **damage**:
- war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
  - any **act of terrorism**.

For the purpose 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.

This **EXCLUSION** also excludes **claims, losses, damage, costs** and **expenses** of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to a) or b) above.

This **EXCLUSION** does not apply to any **claim** or **loss** arising directly from a **hacking attack** or **virus**.

## CONDITIONS

I. **What you must do in the event of a claim or loss**

Should **you** become aware of any **claim, loss or damage** or of any situation that could give rise to a **claim or loss** or should an allegation, complaint or **claim** be made or intimated against **you**, the following obligations must be complied with by **you**:

- a) **You** must not admit liability for or settle or make or promise any payment in respect of any **claim, loss or damage** which may be covered under this Policy. Neither must **you** incur any **costs or expenses** in connection with such a **claim, loss or damage** without **our** written consent.  
However, **you** should arrange for any urgent repairs following **damage** covered under **INSURING CLAUSE 3** to be done immediately. Before any other repair work begins **we** have the right to inspect **your damaged** property. **We** will notify **you** if **we** intend to do this.
- b) The Claims Managers, as specified in the Schedule, must be notified as soon as is reasonably possible if during the **period of the policy**
  - i) **you** suffer any **loss or damage** that could be covered by this Policy or any allegation, complaint or **claim** is made or intimated against **you**, whether verbal or made in writing.
  - ii) **you** become aware of the intention of any person to make a complaint or allegation or **claim** against **you**, whether verbal or in writing. Once notice has been made to **us**, **we** will regard any subsequent **claim** that may arise as notified under this Policy.
  - iii) **you** become aware of an action of **yours** that could give rise to a **loss, allegation, complaint or claim** being made or intimated against **you**. Once notice has been made **we** will regard any subsequent **claim** that may arise as notified under this Policy.
  - iv) **you** discover reasonable cause for suspicion of fraud or dishonesty whether this could give rise to a claim under this Policy or not and **we** shall not be liable under this Policy for any **claim or loss** sustained in consequence of any fraudulent or dishonest act or omission committed after the date of such discovery.

**We** have nominated the Claims Managers to accept notice on **our** behalf.

Due to the nature of the coverage offered by this Policy, any unreasonable delay by **you** in notifying the Claims Managers of (i), (ii), (iii) or (iv) above could lead to the size of the **claim, loss or damage** increasing or to **our** rights being restricted. **We** shall not be liable for that portion of any claim that is due to any unreasonable delay in **you** notifying the Claims Managers of any **claim, loss or damage** in accordance with this clause.

- c) **We** will expect **you** to provide **us** with full and accurate information about any matter that **you** notify to **us** under **your** obligations set out above. Once notice has been made **you** must give the Claims Managers all the assistance and information that is reasonably required. **You** must follow their advice and do anything that they reasonably require **you** to do to avoid, minimise, settle or defend any **claim, loss or damage**.

If **you** think a crime has been committed **you** must report it to the appropriate law enforcement authorities. **You** must also permit the Claims Managers and any other parties that are appointed by the Claims Managers to notify the appropriate law enforcement authorities of any **claim, loss or damage** where this action is deemed necessary, and **you** must comply with the advice given by such authorities.

If any of **your** computer or ancillary equipment is lost or stolen while it is temporarily removed from the **office**, **we** will not make any payment unless **you** report the loss to the police within 48 hours after **you** become aware of it.

2. **Continuous cover**

If **you** have neglected, through error or oversight only, to report a **claim** made against **you** during the period of a previous renewal of this Policy issued to **you** by **us**, then provided that **you** have maintained uninterrupted insurance of the same type with **us** since the expiry of that earlier Policy, then, notwithstanding **EXCLUSION 8**, **we** will permit the matter to be reported under this Policy and will indemnify **you**, provided that:

- a) the indemnity will be subject to the applicable **aggregate limit of liability** or **limit of liability** of the earlier Policy under which the matter should have been reported or the **aggregate limit of liability** or **limit of liability** of the current Policy, whichever is the lower;
- b) **we** may reduce the indemnity entitlement by the monetary equivalent of any prejudice which has been suffered as a result of the delayed notification.
- c) the indemnity will be subject in addition, to all of the terms, **CONDITIONS, DEFINITIONS** and **EXCLUSIONS**, other than the **aggregate limit of liability** or **limit of liability**, contained in this current Policy.

3. **Fraudulent claims**

If **you** notify us of any claim knowing that claim to be false or fraudulent in any way, **we** shall have no responsibility to pay that claim to the extent that it was fraudulent.

4. **Agreement to pay claims**

**We** have the right (but not the obligation) to take control of and conduct in **your** name the investigation settlement or defence of any **claim**. **We** shall also pay on **your** behalf **costs and expenses** incurred with **our** prior written consent (subject to the Limits of Liability shown in the Schedule) provided that **we** shall not:

- a) pay for the **costs and expenses** of any part of a **claim** that is not covered by this Policy.
- b) incur any **costs and expenses** in the defence of any **claim** unless there is a reasonable prospect of success, taking into account the commercial considerations of the costs of defence.

**We** shall always endeavour to settle any **claim** through negotiation, mediation or some other form of alternative dispute resolution and shall pay on **your** behalf the amount so agreed by **us** and the claimant. If **we** cannot settle by such means, **we** shall pay the amount which **you** are found liable to pay either in court or through arbitration proceedings, subject always to the Limit of Liability shown in the Schedule.

If **you** refuse to consent to a settlement that **we** recommend and that the claimant will accept, then **you** must then defend, investigate or settle the **claim** at **your** own expense. As a consequence of **your** refusal, **our** liability for any **claim** shall not be more than the amount that **we** could have settled the **claim** had **you** consented, plus any **costs and expenses** incurred prior to the date of such refusal.

5. **Innocent non-disclosure**

**We** will not seek to avoid the Policy or reject any **claim** on the grounds of:

- a) a failure to comply with the duty of disclosure in the terms of the Insurance Contracts Act 1984; or
- b) misrepresentation, or

- c) a failure to comply with any terms or **CONDITIONS** of this Policy,

except where the non-disclosure, misrepresentation or non-compliance was reckless or fraudulent or **you** failed to conduct a full enquiry prior to providing the information that forms the basis of this insurance. In the event that **we** seek to avoid the Policy or reject any **claim** on this basis the burden of proving otherwise rests solely with **you**.

However, where more than one company is named as the Insured in the Schedule **we** agree that in the event that **we** seek to reject any **claim** on the basis of this **CONDITION** because of the actions or inactions of one of the companies named as the Insured in the Schedule it shall not prejudice the right of any other company named as the Insured in the Schedule to indemnity under this Policy; provided always that such other Insured shall:

- i) be entirely innocent of and have had no prior knowledge of such non-disclosure, misrepresentation or non-compliance; and
- ii) advise **us** in writing as soon as reasonably practicable upon becoming aware of such non-disclosure, misrepresentation or non-compliance.

#### 6. Your duty to advise us of changes

If **you** become aware that any of the information that **you** have given **us** in the Application Form or elsewhere in connection with **your** proposal for this insurance has materially changed then **you** must advise **us** as soon as is practicable. In this event, **we** reserve the right to amend the terms, conditions or premium of the Policy.

#### 7. Risk management conditions

If **we** attach any additional conditions to **your** Policy regarding any risk survey or risk management timetable or any other similar conditions then it is **your** responsibility to ensure that these conditions are complied with by the deadlines shown in the conditions.

#### 8. Our rights of recovery

If any payment is made under this Policy in respect of a **claim, loss or damage** and there is available to **us** any of **your** rights of recovery against any other party then **we** maintain all such rights of recovery. **We** shall not exercise these rights against any past, present or future **employee**, director or partner of the company named as the Insured in the Schedule or any **subsidiary**, unless such payment is in respect of any wilful, malicious or dishonest acts or omissions.

**You** must do nothing to impair any rights of recovery. At **our** request **you** will bring proceedings or transfer those rights to **us** and help **us** to enforce them. Any recoveries shall be applied as follows:

- a) first, to **us** up to the amount of **our** payment on your behalf including **costs and expenses**;
- b) then to **you** as recovery of **your** Deductible or other amounts paid as compensation or costs and expenses.

#### 9. Cancellation

This Policy may be cancelled

- a) by **you**, if **you** give **us** 30 (thirty) days written notice, or
- b) by **us**, in accordance with the relevant provisions of the Insurance Contracts Act 1984, or
- c) should any amount in default not be paid within 14 (fourteen) days of the due date shown in the Debit Note that accompanies this Policy, **we** shall have the right to notify **you** in writing of cancellation of the Policy after 14 (fourteen) additional days should the amount in default not be paid by that date. Any such cancellation shall take effect from the Inception Date of the Policy so that **we** shall have no liability

under the Policy whatsoever.

If **you** give **us** notice of cancellation in accordance with a) above, the earned Premium shall be computed at pro rata to the number of days that the Policy is in effect subject to a minimum amount of thirty percent (30%) of the Premium; provided that the Premium shall be deemed fully earned if any **claim, loss or damage** has been notified under this Policy.

If **we** give **you** notice of cancellation in accordance with b) above, the Premium shall be computed at pro rata to the number of days that the Policy is in effect.

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

#### 10. Prior Subsidiaries

In respect of **INSURING CLAUSE 1, 2 and 8** only, should an entity cease to be a **subsidiary** after the Inception Date of this Policy, cover in respect of such entity shall continue as if it was still a **subsidiary**, until the termination of this Policy, but only in respect of any **claim or loss** that arises out of any act, error or omission committed by that entity prior to the date that it ceased to be a **subsidiary**.

#### 11. Mergers and acquisitions

During the **period of the policy**, if the company named as the Insured in the Schedule or any **subsidiary**:

- a) purchases assets or acquires liabilities from another entity in an amount greater than ten percent (10%) of the assets of the company named as the Insured in the Schedule as listed in its most recent financial statement; or
- b) acquires another entity whose annual revenues are more than ten percent (10%) of the annual revenues of the company named as the Insured in the Schedule for their last completed financial year;

then **you** shall have no coverage under this Policy for any **claim, loss or damage** that arises directly or indirectly out of the purchased or acquired entity unless the company named as the Insured in the Schedule gives **us** written notice prior to the purchase or acquisition, obtains **our** written consent to extend coverage to such additional entities, assets or exposures, and agrees to pay any additional premium required by **us**.

If during the **period of the policy** the company named as the Insured in the Schedule consolidates or merges with or is acquired by another entity, then all coverage under this Policy shall terminate at the date of the consolidation, merger or acquisition unless **we** have issued an endorsement extending coverage under this Policy, and the company named as the Insured in the Schedule has agreed to any additional premium and terms of coverage required by **us**.

#### 12. Dispute resolution

This Policy does not comply with the Insurance Council of Australia's General Insurance Code of Practice. Any enquiry or complaint relating to this insurance should be referred to:

The Managing Director  
CFC Underwriting Ltd  
12 Leadenhall Street  
London EC3V 1LP  
United Kingdom

Telephone Number: +44 870 770 1002

Facsimile Number: +44 870 770 1005

Email: enquiries@cfcunderwriting.com

in the first instance. If this does not resolve the matter or **you** are not satisfied with the way a complaint has been dealt with,

**you** should contact:

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21  
Angel Place  
123 Pitt Street  
Sydney NSW 2000  
Telephone Number: (02) 9223 1433  
Facsimile Number: (02) 9223 1466

If **your** dispute remains unresolved **you** may be referred to the Financial Ombudsman Service Limited under the terms of the General Insurance Code of Practice. For other disputes **you** will be referred to other proceedings for resolution. Details are

available from Lloyd's Underwriters' General Representative in Australia at the address above.

Notwithstanding the above, at **your** request **we** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia and the dispute shall be determined in accordance with the law and practice applicable in such Court. Any summons, notice or process to be served upon **us** may be served upon Lloyd's General Representative in Australia, at the address above, who has authority to accept service and to enter an appearance on **our** behalf, and who is directed at **your** request to give a written undertaking to **you** that he will enter an appearance on **our** behalf.

# TECH



## INSURANCE FOR TECHNOLOGY COMPANIES



### CFC Underwriting

CFC Underwriting Limited  
4th Floor Lloyd's Building  
12 Leadenhall Street  
London EC3V 1LP  
United Kingdom  
T: +44 0870 770 1002  
F: +44 0870 770 1005  
E: [enquiries@cfcunderwriting.com](mailto:enquiries@cfcunderwriting.com)  
W: [www.cfcunderwriting.com](http://www.cfcunderwriting.com)

## PREMIUM PAYMENT CLAUSE

**You** undertake that the Premium and Policy Administration Fee will be paid in full to CFC Underwriting Ltd within 60 days of the Inception Date (or if incepted retrospectively, this 60 day period will be extended to represent 60 days from the date of instruction).

If the Premium and Policy Fee due under this Policy have not been paid to CFC Underwriting Ltd by the 60<sup>th</sup> day after the Inception Date (or if incepted retrospectively, this 60 day period will be extended to represent 60 days from the date of instruction) then **we** shall have the right to cancel this Policy by providing **you** with 14 days prior notice of cancellation in writing via **your** broker.

If the Premium and Policy Fee are paid in full to CFC Underwriting Ltd before the notice period expires, notice of cancellation shall be revoked. If not, the Policy shall automatically terminate at the end of the notice period.

In the event of cancellation, the Policy Fee is due in full and the Premium is due on a pro rata basis for the period that the Policy was in force. In the event that any **claims, losses** or circumstances that may lead to a **claim** are notified to **us** then the Premium is due in full.

**SUBJECT OTHERWISE TO THE TERMS AND CONDITIONS OF THE POLICY**