



# OUR PRODUCT

The eHealth industry is poised for exponential growth due to a number of factors - from pressure to decrease healthcare costs to the rise of chronic diseases and an aging population. Because companies operating in this space often bridge both the healthcare and technology sectors, they are open to a wide range of emerging and traditional risks. That's why we developed a policy which addresses the eHealth industry's unique risk profile. Features include:



## **BODILY INJURY ARISING FROM CYBER EVENTS AND SYSTEM OUTAGES**

Healthcare providers are facing new threats to their patients as technology advancements continue to play a more crucial role in how healthcare is delivered, monitored and addressed. In addition to coverage for bodily injury arising out of any negligent act, our policy also provides affirmative coverage for bodily injury arising from cyber events and system outages.



## **AUTOMATIC COVERAGE FOR PHYSICIANS AND MEDICAL PRACTITIONERS**

The employee classification has become a subject of debate both at the federal and state levels. To eliminate confusion, our definition of 'employee' will automatically extend to physicians or medical practitioners offering services on your behalf.



## **TECHNOLOGY E&O**

The supply, development, installation and maintenance of technology has become a pivotal component in the transformation of healthcare delivery. Our policy provides a separate section for technology E&O as well as breach of contract.



## **PRODUCTS FAILING TO PERFORM COVER**

Wearable technology is playing a prominent role in today's healthcare, especially in the delivery model, which is bringing care to the patient wherever they are. Our policy provides coverage for financial loss for any tangible property that has been manufactured, altered, distributed or installed by your company, including wearables and self-monitoring healthcare devices.



## **CYBER AND PRIVACY**

Our cyber and privacy insuring clause has been tailored to address eHealth companies' specific cyber exposures. Not only do we include a separate section for extortion to address the growing threat of ransomware, but we also cover HIPAA-related fines, penalties and resolution agreements, as well as offer initial response services with a nil deductible.



## **GENERAL LIABILITY AND PROPERTY COVERS**

Our policy is a true one-stop-shop which also offers general liability – including products and completed ops and hired and non-owned auto – as well as commercial property cover.



AUSTRALIA  
CANADA  
IRELAND  
ISRAEL  
UNITED KINGDOM  
**UNITED STATES**  
REST OF WORLD

# HEALTHCARE eHEALTH

## POLICY DOCUMENT



## PREAMBLE

**IMPORTANT: COVERAGE TRIGGERS.** It is important for **you** to review this Policy carefully as the trigger for coverage, including when **you** must notify **us** of a claim, under each Section and Insuring Clause may differ.

This Policy is a contract of insurance between **you** and **us**. **Your** Policy contains all the details of the cover that **we** provide. This Policy consists of and must be read together with the Declarations page and any Endorsements. This Policy is not complete unless it is signed and a Declarations page is attached.

The sections of this Policy are identified by the blue lines across the page with white upper case print, these are for information purposes only and do not form part of the cover given by this Policy. Terms in bold upper case print are references to specific Insuring Clauses, Sections or Conditions. 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 will include the plural and vice versa.

In consideration of the **premium** and in reliance upon the information that **you** have provided to **us** prior to the commencement of this insurance, **we** agree to provide the cover as set out below:

## INSURING CLAUSES

### INSURING CLAUSE 1: PROFESSIONAL LIABILITY

#### SECTION A: BODILY INJURY

**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 **you** during the **period of the policy** arising out of **bodily injury** in the provision of **healthcare services** or **technology activities** as a result of any:

- a. negligent act, error or omission;
- b. **cyber event**;
- c. **system outage**;
- d. breach of any contractual term implied by law concerning necessary quality, safety or fitness, or **your** duty to use reasonable care and skill;
- e. loss or damage to any documents in paper format in **your** care, custody or control; or
- f. other act, error or omission giving rise to civil liability but not any breach of contract other than as specified above.

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

#### SECTION B: TECHNOLOGY 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 **you** during the **period of the policy** arising out of **technology activities** for any:

- a. negligent act, error, omission, misstatement or 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. loss or damage to any documents in paper format in **your** care, custody or control; or
- d. other act, error or omission giving rise to civil liability but not any breach of contract other than as specified above.

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

#### SECTION C: PRODUCTS FAILING TO PERFORM

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 **you** during the **period of the policy** arising out of a **product** failing to perform or function as intended as a result of any:

- a. negligent act, error, omission, misstatement or misrepresentation;
- b. breach of any contractual term implied by law concerning necessary quality, safe safety or fitness, or **your** duty to use reasonable care and skill;
- c. loss or damage to any documents in paper format in **your** care, custody or control; or
- d. other act, error or omission giving rise to civil liability but not any breach of contract other than as specified above.

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

#### SECTION D: INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND DEFAMATION

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 **you** during the **period of the policy** arising out of the provision of **healthcare services** or **technology activities** for any:

- a. infringement of any **intellectual property rights**, breach of any **intellectual property rights** license acquired by **you** or failure to attribute authorship or provide credit;
- b. act of passing-off, piracy or plagiarism or any misappropriation of content, concepts, format rights or ideas or breach of a contractual warranty relating to **intellectual property rights**;
- c. misappropriation of a trade secret;
- d. invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion, breach of confidence and commercial appropriation of name or likeness;
- e. breach of agreement, breach of confidentiality or promissory estoppel, in connection with the failure to maintain the confidentiality of a source or materials furnished by a source or the failure to portray a source or a subject in a certain light; or
- f. defamation, including but not limited to libel, slander, trade libel, product disparagement, injurious falsehood, emotional distress or outrage based on harm to the character or reputation of any person or entity.

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

### INSURING CLAUSE 2: CYBER AND PRIVACY

#### SECTION A: NETWORK SECURITY AND PRIVACY LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including the establishment of any consumer redress fund and associated expenses) as a result of any **claim** as a direct result of a **cyber event** first discovered by **you** during the **period of the policy**.



We also agree to pay on **your** behalf any fines, penalties and card brand assessments including fraud recoveries, operational reimbursements, non-cooperation costs and case management fees which **you** become legally obliged to pay as a direct result of a **payment card breach** first discovered by **you** during the **period of the policy**.

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

#### SECTION B: REGULATORY COSTS AND FINES

We agree to pay on **your** behalf **costs and expenses** and any fines or penalties resulting from a **regulatory investigation**, including any **regulatory investigation** in accordance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 or the Health Information Technology for Economic and Clinical Health Act (HITECH) of 2009, arising as a direct result of a **cyber event** first discovered by **you** during the **period of the policy**.

#### SECTION C: INCIDENT RESPONSE COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

- a. gain access to **our 24/7 cyber incident response hotline**;
- b. engage with **our cyber incident response team** who will coordinate the initial response;
- c. obtain initial advice and consultancy from **our cyber incident response team**, including threat intelligence in relation to the **cyber event**; and
- d. obtain initial remote support and assistance from **our cyber incident response team** to respond to the **cyber event**.

#### SECTION D: LEGAL, FORENSIC AND BREACH MANAGEMENT COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred as a direct result of a **cyber event** which is first discovered by **you** during the **period of the policy** to:

- a. obtain legal advice and draft **privacy breach** notices;
- b. notify any appropriate regulatory body, respond to and defend any **regulatory investigation** and pay any fines and penalties imposed on **you** as a direct result of the **regulatory investigation**;
- c. engage with an external IT security consultant to identify the source and scope of the **cyber event**, contain and remove any malware discovered on **your computer systems** and conduct a forensic investigation of **your computer systems** where reasonable and necessary or as required by law or a regulatory body (including a requirement for a PCI Forensic Investigator);
- d. engage with a crisis communications consultant to obtain specific advice in direct relation to the **cyber event**;
- e. print and post appropriate notices for any individual affected by the actual or suspected **cyber event** or to send e-mail notices or issue substitute notices; and
- f. provide credit monitoring services, identity monitoring services, identity restoration services or identity theft insurance as appropriate to affected individuals including setting up a call center to manage inbound and outbound calls in direct relation to the **cyber event**.

#### SECTION E: EXTORTION

We agree to reimburse **you** for any ransom paid in response to an extortion demand first discovered by **you** during the **period of the policy** as a direct result of any threat to:



- a. introduce malware, or the actual introduction of malware, including Ransomware, into **your computer systems**;
- b. prevent access to **your computer systems** or data or any **third party** systems hosting **your** applications or data, including **cloud computing providers**;
- c. reveal **your** confidential information or confidential information entrusted to **you**; or
- d. damage **your** brand or reputation by posting false or misleading comments about **you** on social media sites.

#### SECTION F: SYSTEM DAMAGE AND RECTIFICATION COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred to repair and restore the data and application components of **your computer systems** that have been damaged as a direct result of a **cyber event** first discovered by **you** during the **period of the policy**.

For the purposes of this Section **we** will only reimburse the following elements of **your** financial loss:

- a. the additional cost of employing contract staff or overtime costs for **employees** to rebuild **your** data, including the cost of data re-entry or data re-creation;
- b. the additional cost of employing specialist consultants, including IT forensic consultants, to recover **your** data or applications; and
- c. the additional cost of employing specialist consultants or overtime costs for **employees** working within **your** IT department to reconstitute **your computer systems** to the position they were in immediately prior to the **cyber event**.

#### SECTION G: SYSTEM BUSINESS INTERRUPTION AND REPUTATIONAL HARM

We agree to reimburse **you** for **your** financial loss sustained during the **indemnity period** as a direct result of a **system outage** first discovered by **you** during the **period of the policy**.

This financial loss will only be covered where the **system outage** is a direct result of a **cyber event** and the **system outage** lasts for longer than the **time franchise**.

For the purposes of this Section **we** will only reimburse those elements of **your** financial loss that constitute **your actual loss sustained** and **additional expenditure** including the reasonable and necessary:

- a. additional costs of sourcing **your products** or services from alternative sources in order to meet contractual obligations to supply **your** customers;
- b. additional costs of employing contract staff or overtime costs for **employees** in order to continue providing **your technology activities**;
- c. additional costs of employing specialist consultants, including IT forensic consultants to diagnose the source of the **system outage**; and
- d. overtime costs for **employees** working within **your** IT department to diagnose and fix the source of the **system outage**.

We also agree to reimburse **you** for **your actual loss sustained** during the **reputational harm period** as a direct result of the loss of current or future customers caused by damage to **your** reputation as a result of a **cyber event** first discovered by **you** during the **period of the policy**.



## SECTION H: LOSS ASSESSMENT COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred to determine the amount of **your** financial loss following an interruption to **your technology activities** covered under **INSURING CLAUSE 2 (SECTION G only)**. We will only pay these costs where they are incurred with an independent expert agreed by the **claims managers**.

## INSURING CLAUSE 3: COMMERCIAL GENERAL LIABILITY

### SECTION A: BODILY INJURY AND PROPERTY DAMAGE 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 **bodily injury** or **property damage** first occurring during the **period of the policy**, except when it is caused directly by **healthcare services** or **technology activities**.

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

### SECTION B: PERSONAL AND ADVERTISING INJURY

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 **personal injury** or **advertising injury** first occurring during the **period of the policy**.

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

### SECTION C: PRODUCTS AND COMPLETED OPERATIONS 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 **bodily injury** or **property damage** first occurring during the **period of the policy** caused directly by any **product**.

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

### SECTION D: TENANTS' LEGAL 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 **property damage** to premises leased to, hired by, on loan to or held in trust by **you** or otherwise in **your** care, custody or control first occurring during the **period of the policy**.

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

### SECTION E: MEDICAL EXPENSES

We agree to pay **medical expenses** for **bodily injury** to a **third party** caused by an accident first occurring during the **period of the policy** in the course of **your business activities**, provided that:

- a. the **third party**, at the time of the accident, is not entitled to benefits under any workers' compensation or disability benefits law or similar law;
- b. the **medical expenses** are incurred and notified to **us** within one year of the date of the accident; and
- c. the **third party** submits to examination, at **our** expense, by physicians of **our** choice and as often as **we** reasonably require.

We will make these payments regardless of fault.



## SECTION F: EMPLOYEE BENEFITS 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** first made against **you** during the **period of the policy** arising out of any act, error or omission committed by **you** or on **your** behalf in the **administration** of **your employee benefit program**.

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

## SECTION G: NON-OWNED AND HIRED AUTOMOBILE 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 **bodily injury** or **property damage** occurring during the **period of the policy** in the course of **your business activities** resulting from the use or operation of any automobile that is not owned in whole or in part by the **insured** or licensed in the name of the **insured**.

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

## SECTION H: LIABILITY FOR DAMAGE TO HIRED OR LEASED AUTOMOBILES

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 **property damage** to an automobile leased to or hired by **you** from a **third party** occurring during the **period of the policy** in the course of **your business activities**.

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

## INSURING CLAUSE 4: COMMERCIAL PROPERTY

### SECTION A: PROPERTY DAMAGE

We agree to reimburse **you** for any reasonable sums necessarily incurred to repair or rebuild **your premises** as a direct result of damage to **your premises** first occurring during the **period of the policy**.

### SECTION B: CONTENTS DAMAGE

We agree to reimburse **you** for any reasonable sums necessarily incurred to repair or replace **your contents** that have been lost or damaged during the **period of the policy**.

### SECTION C: ADDITIONAL CONTENTS

We agree to reimburse **you** for any reasonable sums necessarily incurred to repair or replace:

- a. **contents** in transit, including by parcel post and courier;
- b. **contents** while at an exhibition site or in the custody of a sales representative;
- c. materials, machinery and equipment that **you** have been contracted by a **third party** to install, provided **you** are legally liable for the materials, machinery and equipment and they are not left unattended for more than 30 consecutive days;
- d. tools that are used in connection with **your business activities** at or away from the **premises**;
- e. stock that has been sold by **you** to a **third party** on a deferred payment plan, however, the maximum amount **we** will pay is the **limit of liability** or an amount equal to any unpaid balance, whichever is less; and
- f. **contents** that **you** have leased, rented, loaned or entrusted to a **third party** for up to a maximum period of 30 consecutive days;
- g. **contents** that **you** have hired or leased and are legally liable for;





- h. locks and keys, provided this is necessary to maintain the security of **your premises** or safes;
- i. patterns, models, molds, plans and designs that are used in connection with **your business activities**;
- j. any trailer, provided that it was unattached from, being attached to, or being detached from, a motor vehicle when the damage occurred; and
- k. outdoor signs located on the **premises**;

that have been lost or damaged during the **period of the policy**.

#### SECTION D: ADDITIONAL EXPENSES

We agree to reimburse **you** for any reasonable sums necessarily incurred:

- a. to make temporary repairs to, expedite permanent repairs for, or expedite permanent replacement of, **your premises** or **contents**;
- b. to remove any debris;
- c. to extract **pollutants** from land or water;
- d. for professional services including architects, surveyors and engineers;
- e. to establish the value of the damage to **your premises** or **contents**;
- f. to locate the source of any water or oil leak, including the repair of any subsequent damage as a direct result of locating the water or oil leak;
- g. to retrieve, restore or replace the data **you** need to continue **your business activities** if **your** business records and electronic data have been lost or corrupted;
- h. for rental payments **you** are legally obliged to pay during any period which **your premises** are unusable;
- i. for any fire department charges **you** incur;
- j. to re-charge fire extinguishing equipment;
- k. for security guard services to temporarily safeguard **your** damaged **premises**; and
- l. for a ransom paid for information directly leading to a conviction for any act of arson;

as a direct result of damage to **your premises** or **contents**, or the loss of **your contents**.

#### SECTION E: NEWLY ACQUIRED OR CONSTRUCTED PROPERTY

We agree to reimburse **you** for any reasonable sums necessarily incurred to repair or rebuild any additional premises acquired or constructed by **you** during the **period of the policy**, and to repair or replace **your contents** at these premises, as a direct result of damage to the additional premises or **contents** first occurring during the **period of the policy** provided that **you** give **us** written notice within 60 days of the acquisition or commencement of construction and agree to any additional **premium** and terms of coverage required by **us**.

#### SECTION F: ORDINANCE OR LAW

We agree to reimburse **you** for the reasonable additional costs to repair or rebuild **your premises** to the minimum standards required to comply with the current building regulations and laws as a direct result of damage to **your premises** first occurring during the **period of the policy**



## INSURING CLAUSE 5: BUSINESS INTERRUPTION

### SECTION A: BUSINESS INTERRUPTION

We agree to reimburse **you** for **your actual loss sustained** during the **indemnity period** as a direct result of an interruption to **your business activities** caused by:

- a. damage to **your premises** or **contents**, other than damage causing failure in the supply of water, gas, electricity, telephone or internet to **your premises**;
- b. damage to the property of one of **your** suppliers, other than a supplier of water, gas, electricity, telephone or internet; or
- c. failure in the supply of water, gas, electricity, telephone or internet to **your premises** for more than 24 consecutive hours as a direct result of damage to **your premises** or the property of **your** supplier of water, gas, electricity, telephone or internet;

first occurring during the **period of the policy**.

### SECTION B: PREVENTION OR RESTRICTION OF ACCESS TO PREMISES

We agree to reimburse **you** for **your actual loss sustained** during the **indemnity period** as a direct result of an interruption to **your business activities** caused by:

- a. damage to **third party** property which prevents access to **your premises**; or
- b. prevention or restriction of access to **your premises** by order of any governmental or law enforcement agency;

first occurring during the **period of the policy**.

### SECTION C: RENTAL INCOME

We agree to reimburse **you** for **your actual loss sustained** during the **indemnity period** as a direct result of a reduction in **your rental income** caused by damage to **your premises** first occurring during the **period of the policy**.

### SECTION D: EXTRA EXPENSE

We agree to reimburse **you** for any reasonable sums over and above **your** normal operating expenses incurred to:

- a. mitigate an interruption to and continue **your business activities** during the **indemnity period**, provided that the costs are less than the expected **actual loss sustained** had these measures not been taken; and
- b. re-locate to alternative premises during the **indemnity period**, if **you** and **we** agree that it is not practicable or reasonable for **you** to repair or rebuild the damaged **premises**.

### SECTION E: NEWLY ACQUIRED OR CONSTRUCTED PROPERTY

We agree to reimburse **you** for **your actual loss sustained** during the **indemnity period** as a direct result of an interruption to **your business activities** caused by damage to any additional premises acquired or constructed by **you** during the **period of the policy**, provided that **you** give **us** written notice within 60 days of the acquisition or commencement of construction and agree to any additional **premium** and terms of coverage required by **us**.

### SECTION F: PROFESSIONAL FEES

We agree to reimburse **you** for any reasonable sums necessarily incurred for professional fees to establish the value of **your actual loss sustained** as a direct result of an interruption to **your business activities**.



## INSURING CLAUSE 6: LOSS MITIGATION

In respect of INSURING CLAUSE 1 only, **we** agree to reimburse **you** for any reasonable costs necessarily incurred by **you** with **our** prior written agreement (which will not be unreasonably withheld) in respect of measures taken by **you** for the sole purpose of mitigating a **claim** for which **you** would be entitled to indemnity under this Policy had these measures not been taken, provided that:

- a. the costs in respect of measures taken by **you** to mitigate the **claim** are less than the expected value of the **claim**; and
- b. the costs do not include any provision for salaries or other remuneration of **employees**, any provision for **your** loss of profit or any provision for **your** normal operating expenses.

## INSURING CLAUSE 7: REPUTATION AND BRAND PROTECTION

**We** agree to reimburse **you** for any reasonable sums necessarily incurred with **our** prior written agreement (which will not be unreasonably withheld) for the services of a public relations consultancy to avert or mitigate damage to **your** reputation or brand as a direct result of any media report that names **you** and publicizes an act or event that is the subject of a claim for which **you** are entitled to indemnity under this Policy.

## INSURING CLAUSE 8: COURT ATTENDANCE COSTS

**We** agree to reimburse **you** for any reasonable sums necessarily incurred by **you** with **our** prior written agreement (which will not be unreasonably withheld) to attend court or any tribunal, arbitration, adjudication, mediation or other hearing in connection with any claim for which **you** are entitled to indemnity under this Policy.

## HOW MUCH WE WILL PAY

The maximum amount payable by **us** in respect of each Section and each Insuring Clause will not exceed the **limit of liability**.

In respect of INSURING CLAUSES 1, 2 and 3, where cover is provided under multiple Sections, only one **limit of liability** will apply to that claim and this will be the highest **limit of liability** of the Sections under which cover is provided.

Where more than one claim under this Policy arises from the same original cause or single source or event, all of those claims will be deemed to be one claim and only one **limit of liability** will be payable.

**We** may at any time pay to **you** in connection with any **claim** the amount of the **limit of liability** (after deduction of any amounts already paid). Upon that payment being made **we** will relinquish the conduct and control of the **claim** and be under no further liability in connection with that **claim** except for the payment of **costs and expenses** incurred prior to the date of such payment (unless the **limit of liability** is stated to be inclusive of **costs and expenses**).

If **costs and expenses** are stated in the Declarations page to be in addition to the **limit of liability**, or if the operation of local laws require **costs and expenses** to be paid in addition to the **limit of liability**, and if a damages payment in excess of the **limit of liability** has to be made to dispose of any **claim**, **our** liability for **costs and expenses** will be in the same proportion as the **limit of liability** bears to the total amount of the damages payment.



In respect of **INSURING CLAUSE 4 (SECTIONS A and B only)**, the co-insurance percentage is 85%. This means that if the amount insured for each **building address** is less than 85% of the total cost to repair, replace or rebuild **your premises** or **contents** at that **building address**, the amount insured will be reduced in the same proportion that it bears to the co-insurance percentage amount.

Example for calculating under insurance:

- a. Total cost to repair, replace or rebuild all of **your premises** at building address 1 = \$500,000;
- b. 85% of \$500,000 = \$425,000;
- c. Amount insured for **premises** at building address 1 = \$400,000;
- d. Therefore if a \$450,000 loss occurs at the **premises** at building address 1, **we** would pay \$376,470;
- e. This has been calculated as the amount insured / co-insurance percentage amount of the total cost to repair, replace or rebuild x amount insured ( $\$400,000 / \$425,000 \times \$400,000 = \$376,470$ ).

If **we** pay to replace **your contents**, **we** will do so on a new for old basis.

## YOUR DEDUCTIBLE

**We** will only be liable for that part of each and every claim which exceeds the amount of the **deductible**. If any expenditure is incurred by **us** which falls within the amount of the **deductible**, then **you** will reimburse that amount to **us** upon **our** request.

Where more than one claim arises from the same original cause or single source or event all of those claims will be deemed to be one claim and only one **deductible** will apply.

Where cover is provided under multiple Sections or multiple Insuring Clauses only one **deductible** will apply to that claim and this will be the highest **deductible** of the Sections under which cover is provided.

## DEFINITIONS

1. "**actual loss sustained**" means

**your** income that, had the incident which gave rise to the claim not occurred, would have been generated directly from **your business activities** (less sales tax) during the **indemnity period**, less:

- a. actual income (less sales tax) generated directly from **your business activities** during the **indemnity period**; and
- b. any cost savings achieved as a direct result of the reduction in income.

2. "**Additional expenditure**" means

costs incurred by **you** as a direct result of the complete or partial failure of **your business activities** over and above **your** normal operating expenses where these costs are designed to minimize **your actual loss sustained** and maintain continuity of **your business activities**, subject to the costs incurred being less than the potential **actual loss sustained** during the **indemnity period** had the costs not been incurred.



3. **"Administration"** means
- advising **employees**, including their dependents and beneficiaries, in respect of **your employee benefit program**;
  - handling records in respect of **your employee benefit program**; and
  - effecting enrolment or termination of any **employee's** participation in a plan included in **your employee benefit program**.
4. **"Advertising injury"** means
- oral or written publication of defamatory content;
  - oral or written publication of content that violates a person's right of privacy; or
  - infringement of copyright, trade dress, slogan or a **third party's** advertising idea;
- in **your** advertising or promotional material.
5. **"Approved claims panel providers"** means  
the approved claims panel providers stated in the Declarations page.
6. **"Bodily injury"** means  
death, bodily injury, mental injury, illness or disease.
7. **"Building address"** means  
a building address stated in the Commercial Property and Business Interruption Sub-limits Declarations page.
8. **"Business activities"** means  
the business activities stated in the Declarations page.
9. **"Claim"** means
- a written demand for compensation;
  - a written request for a retraction or a correction;
  - a threat or initiation of a lawsuit; and
  - in respect of **INSURING CLAUSE 2 (SECTION A only)**, a **regulatory investigation**;
- made against **you**.
10. **"Claims managers"** means  
the claims managers stated in the Declarations page.
11. **"Cloud computing provider"** means  
a **third party** that provides **you** with hosted computing services accessed across the internet or dedicated network links including infrastructure, platform, file storage and application level services.
12. **"Computer systems"** means  
all electronic computers including operating systems, software, hardware and all communication and open system networks and any data or websites wheresoever hosted, including cloud computing providers, off-line media libraries and data back-ups and mobile devices including but not limited to smartphones, iPhones, tablets or personal digital assistants.



13. "**Contents**" means

items that are used primarily in connection with **your business activities** and are not permanently attached to a building that **you** own or are legally responsible for, including:

- a. improvements made to the **premises** by **you** as a tenant, including decorating, flooring, internal fixtures and fittings, external signs, aerials and satellite dishes;
- b. computers and ancillary equipment (including monitors, keyboards, printers and software);
- c. television, video, photographic, photocopying, surveying and telecommunications equipment;
- d. goods held in trust, stock and samples;
- e. wines, spirits and tobacco kept for entertainment purposes;
- f. works of art or precious metals;
- g. valuable documents in paper format;
- h. heating oil contained in fixed tanks in the open at **your premises**;
- i. refrigeration, ventilation, cooking, dishwashing and laundry appliances;
- j. portable contents and contents while in transit; and
- k. cash, bank and currency notes, checks, bankers drafts, share and bond certificates, provided they are kept in a locked safe, in transit or at the home of an **employee**.

"**Contents**" also means the personal belongings of any **employee** or visitor whilst at **your premises**, provided they are not covered under any other insurance.

14. "**Continuity date**" means

the first date upon which cover was incepted with **us** stated as the continuity date in the Declarations page.

15. "**Costs and expenses**" means

- a. **third party** legal and professional expenses (including disbursements) reasonably incurred in the defense of **claims** or circumstances which could reasonably be expected to give rise to a **claim** or in quashing or challenging the scope of any injunction, subpoena or witness summons;
- b. any post judgment interest; and
- c. the cost of appeal, attachment and similar bonds including bail and penal bonds.

Subject to all costs and expenses being incurred with the **claims managers'** prior written agreement (which will not be unreasonably withheld).

16. "**Cyber event**" means

any actual or suspected unauthorized system access, electronic attack or **privacy breach**, including denial of service attack, cyber terrorism, hacking attack, Trojan horse, phishing attack, man-in-the-middle attack, application-layer attack, compromised key attack, malware infection (including spyware or Ransomware) or computer virus.

17. "**Cyber incident response hotline**" means

the cyber incident response hotline stated in the Declarations page.

18. "**Cyber incident response team**" means

the cyber incident response team accessible on the **cyber incident response hotline**.



19. **"Deductible"** means  
the amount stated as the deductible in the Declarations page.
20. **"Earth movement"** means  
any type of earth movement, including earthquake, subsidence, landslide, erosion or the expansion or contraction of soil.  
  
**Earth movement** does not mean any sinkhole collapse.
21. **"Employee"** means  
any **medical practitioner** and any employee, volunteer or contract employee of the **insured**.
22. **"Employee benefit program"** means  
the **insured's** insurance, pension or other benefit programs.
23. **"Expiry date"** means  
the expiry date stated in the Declarations page.
24. **"Flood"** means  
a. surface water, underground water, waves, tides, tidal waves, tsunamis or overflow of any body of water;  
b. mudslide or mudflow; or  
c. water or sewerage from a backed up sewer, sump, septic tank or drain.
25. **"Healthcare services"** means  
the supply by **you** or on **your** behalf of medical, clinical, mental or other similar healthcare professional services or treatments delivered by electronic means, including the examination, diagnosis, prognosis, treatment (including the prescription of drugs or therapy) or care of a patient.
26. **"Inception date"** means  
the inception date stated in the Declarations page.
27. **"Indemnity period"** means  
the period starting from:  
  
a. in respect of **INSURING CLAUSE 2**, the first occurrence of a **system outage**;  
b. in respect of **INSURING CLAUSE 5**, the:  
i. date the damage was first discovered;  
ii. date the prevention of access first occurred; or  
iii. initial 24 consecutive hours **you** have no water, gas, electricity, telephone or internet services has passed;  
  
and lasting for the indemnity period stated in the Declarations page.
28. **"Insured"** means  
a. the individual named as the insured in the Declarations page; or  
b. the entity named as the insured in the Declarations page and any **subsidiary**.



29. **"Intellectual property rights"** means

any intellectual property right including, but not limited to, copyright, trademark, trade dilution, trade dress, design rights, domain name rights, moral rights, service mark or service name, but not including patent.

30. **"Limit of liability"** means

if expressed in the Declarations page as:

- a. "limit of liability" or "amount insured", the maximum amount payable by **us** in respect of each claim; or
- b. "aggregate limit of liability" or "aggregate amount insured", the maximum amount payable by **us** in respect of all claims under this Policy.

31. **"Medical expenses"** means

reasonable and necessary expenses for:

- a. first aid administered at the time of an accident;
- b. medical, surgical, x-ray and dental services, including prosthetic devices; and
- c. ambulance, hospital, professional nursing and funeral services.

32. **"Medical practitioner"** means

any registered medical or healthcare practitioner, but only in respect of **healthcare services** or **technology activities** performed on behalf of the **insured**.

33. **"Payment card breach"** means

an actual or suspected unauthorized disclosure of payment card data stored or processed by **you** arising out of an electronic attack, accidental disclosure or the deliberate actions of a rogue **employee**.

"Payment card breach" does not mean a situation where payment card data is deliberately shared with or sold to a **third party** with the knowledge and consent of a **senior executive officer**.

34. **"Period of the policy"** means

the period between the **inception date** and the **expiry date** or until the Policy is canceled in accordance with **CONDITION 5**.

35. **"Personal injury"** means

- a. false arrest, detention or imprisonment;
- b. malicious prosecution; or
- c. wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies.

36. **"Pollutants"** means

any solid, liquid, gaseous, radiological or thermal irritant, toxic or hazardous substance, or contaminant including, but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste materials, including recycled, reconditioned or reclaimed materials.

37. **"Pollution"** means

the discharge, dispersal, release, migration, seepage or escape of **pollutants**.





38. "Premises" means

- a. the building;
- b. any completed extension to the building;
- c. any permanently installed machinery and equipment;
- d. any permanently attached fixtures and fittings;
- e. landlord's fixtures and fittings;
- f. retaining walls, outdoor walls, gates, fences, yards, car parks, roadways and pavements;
- g. trees, shrubs, plants and lawns;
- h. piping, ducting, cables, wires and accessories extending to the public mains that **you** are responsible for; and
- i. fixed glass in windows, doors, skylights, mirrors fixed to the building, glass showcases and shelves fixed to the building, sanitary fixtures and fittings and other fixed glass;

at the **building address**.

39. "Premium" means

the amount stated as the premium in the Declarations page and any subsequent adjustments.

40. "Privacy breach" means

an actual or suspected unauthorized disclosure of information arising out of an electronic attack, accidental disclosure or the deliberate actions of a rogue **employee**, including Personally Identifiable Information (PII), Protected Health Information (PHI) and payment card information.

"**Privacy breach**" does not mean a situation where information is deliberately shared with or sold to a **third party** with the knowledge and consent of a **senior executive officer**.

41. "Product" means

any tangible property that has been manufactured, altered, distributed or installed by **you** or on **your** behalf, including wearable and self-monitoring healthcare devices.

42. "Property damage" means

direct physical damage to, destruction of, loss of possession or loss of use of tangible property.

43. "Regulatory investigation" means

a formal hearing, official investigation, coroner's inquest, examination, inquiry, legal action or any other similar proceeding initiated by a governmental, regulatory, law enforcement, professional or statutory body.

44. "Rental income" means

- a. the anticipated gross rental income from tenant occupancy of **your premises**;
- b. the amount of all charges which are the legal obligation of the tenants, which would otherwise be **your** obligation;  
and
- c. the fair rental value of any portion of **your premises** which is occupied by **you**.



45. **"Reputational harm period"** means  
the period starting from when the **cyber event** is first discovered and lasting for the period stated as the reputational harm period in the Declarations page.
46. **"Retroactive date"** means  
the retroactive date stated in the Declarations page.
47. **"Senior executive officer"** means
- the individual named as the insured in the Declarations page; or
  - board members, C-level executives, medical directors, in-house lawyers and risk managers of the entity named as the insured in the Declarations page.
48. **"Subsidiary"** means  
any entity which the entity named as the insured in the Declarations page has majority ownership on or before the **inception date**.
49. **"System outage"** means  
a degradation in the performance of **your computer systems** which renders them incapable of supporting their normal business function.
50. **"Technology activities"** means  
means the supply by **you** or on **your** behalf of technology products or services, including but not limited to software development, software installation and maintenance, hardware design, hardware installation and maintenance, data processing, internet services, data and application hosting, computer systems analysis, consulting, training, programming, systems integration, IT support and network management.
51. **"Third party"** means  
any individual or entity other than **you**.
52. **"Time franchise"** means  
the number of hours stated as the time franchise in the Declarations page.
53. **"We/our/us"** means  
the Underwriters stated in the Declarations page.
54. **"You/Your"** means  
the **insured, employees** and **senior executive officers** solely acting in the normal course of **your business activities**.

## EXCLUSIONS

We will not make any payment under this Policy:

### EXCLUSIONS RELATING TO CYBER AND PRIVACY

In respect of **INSURING CLAUSE 2** only:



#### 1. **Betterment**

which results in **you** being in a better financial position or **you** benefitting from upgraded versions of **your computer systems** as a direct result of the event which gave rise to the claim under this policy.

However, in the event of a hacking attack, malware infection or computer virus, when rebuilding **your computer systems** we will pay the additional costs and expenses incurred to install a more secure and efficient version of the affected **computer system**, provided that the maximum amount we will pay is 25% more than the cost that would have been incurred to repair or replace the original model or license. Under no circumstances will we pay the cost of acquiring or installing **computer systems** which did not form a part of **your computer systems** immediately prior to the incident which gave rise to the claim.

#### 2. **Core internet infrastructure failure**

arising directly from a failure, material degradation or termination of any core element of the internet, telecommunications or GPS infrastructure that results in a regional, countrywide or global outage of the internet, including a failure of the core DNS root servers, satellite network or the IP addressing system or an individual state or non-state actor turning off all or part of the internet.

#### 3. **Power failure**

arising directly or indirectly from any failure in the power supply, including that caused by any surge or spike in voltage, electrical current or transferred energy.

#### 4. **Property and hardware costs**

for any tangible property repair or replacement including the cost of repairing any hardware or replacing any tangible property or equipment that forms part of **your computer systems**.

However, where repairing or replacing hardware or tangible property or equipment is a more practical and cost effective solution than installing new firmware or software onto **your** existing components, we will pay the **costs and expenses** required to do so.

#### 5. **Regular hours staff costs**

for normal salary and bonus costs paid to **employees** or **senior executive officers** working their regular, contracted hours.

#### 6. **Theft of funds**

for theft of money or financial assets in any format, including but not limited to cash, bank notes, electronic currency, customer account balances, and stock or bond certificates.

In respect of **INSURING CLAUSE 2, SECTIONS F and G**:

#### 7. **Business interruption liability**

for that part of any **claim** that constitutes actual or alleged liability to a **third party**, or legal costs in the defense of any **claim**, including customer compensation.

### **EXCLUSIONS RELATING TO COMMERCIAL GENERAL LIABILITY**

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

#### 8. **Employers' liability**

arising directly or indirectly out of **bodily injury** to **employees**.



## 9. Faulty workmanship

for the cost to repair or replace, including any ensuing financial loss:

- a. that part of any property that has been damaged by **you**, or a **third party** operating on **your** behalf, during its construction, distribution or installation;
- b. that part of any property as a direct result of faulty workmanship by **you**, or a **third party** operating on **your** behalf, during its construction or installation; or
- c. any undamaged property that contains any **product**, unless the **product** which the property contains has been damaged as a direct result of a sudden, unintended and unexpected incident after it has left **your** care, custody or control.

## 10. Financial loss

arising directly or indirectly out of **third party** financial loss, other than **third party** financial loss directly resulting from **bodily injury, personal injury, advertising injury or property damage**.

## 11. 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.

## 12. Marine and aviation

arising directly or indirectly from the ownership, possession or use by **you** or on **your** behalf of any watercraft in excess of 10 meters in length or any aircraft, drone, hovercraft, watercraft, offshore installation, offshore rig or offshore platform.

## 13. Property in your care, custody or control

arising directly or indirectly out of damage to **third party** property which is in **your** care, custody or control.

However, this Exclusion will not apply to **INSURING CLAUSE 3 (SECTIONS D and H only)**.

In respect of **INSURING CLAUSE 3, SECTION B**:

## 14. Content advertised prior to the continuity date

arising directly or indirectly out of any advertisement that was first published prior to the **continuity date**.

In respect of **INSURING CLAUSE 3, SECTION F**:

## 15. Benefit laws

arising directly or indirectly out of **your** failure to comply with the mandatory provisions of any law concerning workers' compensation, unemployment insurance, social security, disability benefits or pension benefits.

## 16. Employee benefit program advice

arising directly or indirectly from advice given to any person to participate or not to participate in any plan included in **your employee benefit program** or the failure of any investment to perform as represented by **you**.



## EXCLUSIONS RELATING TO COMMERCIAL PROPERTY

In respect of **INSURING CLAUSE 4** only:

### 17. Excluded property

for the costs to repair, replace or rebuild:

- a. the foundations of the **premises**;
- b. the foundations of any structure, machinery or boiler contained inside of the **premises** if they are below the lowest basement floor or ground level if there is no basement;
- c. underground pipes, flues or drains;
- d. power transmission or feeder lines; or
- e. land or growing crops.

## EXCLUSIONS RELATING TO ALL INSURING CLAUSES

### 18. Advertising injury

directly or indirectly out of **advertising injury**.

However, this Exclusion will not apply to **INSURING CLAUSE 3 (SECTION B)** only).

### 19. 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 other than:

- a. where specifically covered under **INSURING CLAUSE 2** for which **you** have purchased cover; or
- b. any covered portion of any **claim** based on **your** alleged unauthorized use of a **third party's** trademark.

### 20. Asbestos

arising directly or indirectly out of the manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos or asbestos fibers or dust.

### 21. Associated companies

- a. in respect of any **claim** made by any company, firm or partnership in which the **insured** has greater than a 15% executive or financial interest, unless the **claim** emanates from an independent **third party**;
- b. in respect of any **claim** made by any company, firm, partnership or individual which has greater than a 15% executive or financial interest in the **insured**, unless the **claim** emanates from an independent **third party**;
- c. arising out of or resulting from any of **your** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the **insured**; or
- d. in respect of any **claim** made by or on behalf of the **insured** against a **third party**.

### 22. Auto

arising directly or indirectly from the ownership, possession or use by **you** or on **your** behalf of any motor vehicle or trailer other than **bodily injury** or **property damage**:

- a. caused by the use of any tool or equipment 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; or
- d. occurring beyond the limits of any carriageway or thoroughfare and caused by the use of any unlicensed vehicle, including but not limited to snowmobiles and all-terrain vehicles, in the course of **your business activities**;

provided always that **we** will not make any payment 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.

However, this Exclusion will not apply to **INSURING CLAUSE 3 (SECTIONS G and H only)**.

### 23. Bodily injury

in respect of **INSURING CLAUSES 1 (SECTIONS B and C only)** and **2**, arising directly or indirectly out of **bodily injury**.

However, this Exclusion will not apply to **INSURING CLAUSE 2 (SECTION A only)** for any **claim** as a direct result of mental injury or emotional distress.

### 24. Breach of contract

arising directly out of any breach of contract.

However, this Exclusion will not apply to:

- a. **INSURING CLAUSE 1**; or
- b. **INSURING CLAUSE 3 (SECTION B only)** if liability would have attached in the absence of that contract.

### 25. Catastrophe perils

in respect of **INSURING CLAUSES 4 and 5**, arising:

- a. directly or indirectly out of **earth movement** or **flood**, except for:
  - i. ensuing financial loss or **property damage** which results directly from fire, explosion, smoke or leakage from fire protective equipment; or
  - ii. ensuing **property damage** while in transit;
- b. directly out of windstorm, including any windstorm which is given a name by the National Hurricane Center, or hail, regardless of any other cause or event that contributes concurrently or in any sequence to the financial loss or **property damage**; or
- c. directly or indirectly out of rain, snow, sand or dust, whether driven by wind or not, if that financial loss or **property damage** would not have occurred but for the windstorm or hail.

### 26. Chargebacks

for any credit card company or bank, wholly or partially, reversing or preventing a payment transaction.

However, this Exclusion will not apply to **INSURING CLAUSE 2 (SECTION A only)**.



**27. Collection of private data without consent**

arising directly or indirectly from **your** actual or alleged failure to obtain agreement from any private individual before collecting, storing or processing any of their personal information, including but not limited to internet search history and internet browsing habits.

**28. Cyber events**

arising directly or indirectly out of any **cyber event**.

However, this Exclusion will not apply to **INSURING CLAUSES 1 (SECTION A only) and 2**.

**29. Directors and officers liability**

arising out of any personal liability incurred by **your senior executive 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.

**30. Employment practices liability**

arising out of or resulting from:

- a. any employer-employee relations, policies, practices, acts, omissions, any actual or alleged refusal to employ any person, or misconduct with respect to **employees**;
- b. any acts or omissions committed by **you** which are in breach of, or are alleged to be in breach of, any terms and conditions of an employment contract, whether express or implied; or
- c. any actual or alleged theft or misappropriation of any trade secret by an **employee** from a former employer of theirs.

**31. Equipment breakdown**

in respect of **INSURING CLAUSES 4 and 5**, arising directly from the breakdown, explosion or collapse of any electrical or mechanical equipment including air conditioning, refrigeration, boiler, computer and communication equipment.

**32. ERISA**

based upon the Employment Retirement Income Security Act of 1974, and any amendment thereto, or any rules or regulations promulgated thereunder.

**33. Excluded causes**

in respect of **INSURING CLAUSES 4 and 5**, arising directly or indirectly from:

- a. wear and tear, an inherent defect, rot, vermin, infestation, ground heave, subsidence, landslip or any other gradually operating cause; or
- b. frost, other than **property damage** due to water leaking from burst pipes forming part of the permanent internal plumbing provided the **premises** are occupied and in use.

**34. Extended warranty**

arising directly or indirectly out of any extended warranty agreement, unless liability would have attached in the absence of that agreement.



### 35. Failure to register

if **you** were not registered or licensed by the appropriate State to provide **healthcare services** at the time the incident which gave rise to the claim took place.

### 36. Insolvency

arising out of or relating directly or indirectly to **your** insolvency or bankruptcy, or the insolvency or bankruptcy of any **third party**. However, **your** insolvency will not relieve **us** of any of **our** legal obligations under this contract of insurance where this insolvency does not give rise to a **claim** under this Policy.

### 37. Intellectual property rights and defamation

arising directly or indirectly out of defamation or any infringement of **intellectual property rights**.

However, this Exclusion will not apply to **INSURING CLAUSES 1 (SECTION D only) or 3 (SECTION B only)**.

### 38. Known claims and circumstances

arising out of any actual or suspected **cyber event, claim** or circumstance which might give rise to a **claim** which a **senior executive officer** was aware of, or ought reasonably to have been aware of, prior to the **continuity date**, including any claim or circumstance notified to any other insurer.

### 39. Legal action

where an action for damages is brought in a court of law outside the legal action territories stated in the Declarations page, or where an action is brought in a court of law within those territories to enforce a judgment outside of those territories whether by way of reciprocal agreement or otherwise.

### 40. Liquidated damages, service credits and penalty clauses

for liquidated damages or service credits, or arising out of penalty clauses unless **you** would have been liable in the absence of any contract stipulating the liquidated damages or service credits or penalty clauses.

### 41. Loss of economic value

for the reduction in economic or market value (including loss of potential future sales) of any of **your** intellectual property assets.

### 42. Misleading advertising

arising directly or indirectly from any advertisement, promotion or **product** description that is actually or alleged to be false or misleading.

However, this Exclusion will not apply to **INSURING CLAUSES 2 (SECTION A only) and 3 (SECTION B only)**.

### 43. Nuclear

arising directly or indirectly from or contributed to by:

- a. ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component.





#### 44. Other insurance

for which **you** are entitled to indemnity under any other insurance except for:

- a. any additional sum which is payable over and above the other insurance where that insurance has been declared to **us**, or
- b. any contribution that **we** are obliged to make by law and that contribution will be in proportion to the indemnity available under the Policies.

#### 45. Patent infringement

arising directly or indirectly out of the actual or alleged infringement of any patent or inducing the infringement of any patent.

#### 46. Payment card industry related fines, penalties and assessments

for fines, penalties and card brand assessments, including fraud recoveries, operational reimbursements, non-cooperation costs and case management fees which **you** become legally obliged to pay **your** acquiring bank or payment processor as a direct result of a **payment card breach**.

However, this Exclusion will not apply to **INSURING CLAUSE 2 (SECTION A only)**.

#### 47. Personal injury

arising directly or indirectly out of **personal injury**.

However, this Exclusion will not apply to **INSURING CLAUSE 3 (SECTION B only)**.

#### 48. Pollution

arising directly or indirectly out of **pollution**.

However, this Exclusion will not apply to:

- a. **INSURING CLAUSE 1** for the provision of **healthcare services** or **technology activities** by **you** to a patient who has suffered **bodily injury** as a result of **pollution**; or
- b. **INSURING CLAUSE 4**.

#### 49. Product recall

for the costs to withdraw, recall, dispose, remove, repair, adjust, alter, recondition, replace, reinstate any **product** or part of a **product**.

However, this Exclusion will not apply to **INSURING CLAUSE 1** where **you** are legally liable for those costs as the direct result of any act, error or omission committed by **you**.

#### 50. Products liability

arising directly out of any **bodily injury** or **property damage** caused directly by any **product**.

However, this Exclusion will not apply to **INSURING CLAUSE 3 (SECTION C only)**.

#### 51. Property damage

in respect of **INSURING CLAUSES 1 and 2**, arising directly or indirectly out of **property damage**.

**52. Retroactive date**

in respect of **INSURING CLAUSES 1 and 3 (SECTION F only)**, arising out of any actual or alleged incident occurring, in whole or in part, on or before the **retroactive date**.

**53. RICO**

for any actual or alleged violations of the Racketeer Influenced and Corrupt Organization Act and any subsequent amendments to this Act.

**54. Sanctions**

to the extent that the provision of such cover or payment will expose **us** to any sanction, prohibition or restriction under the United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, Canada, the European Union, United Kingdom or United States of America.

**55. Securities violations**

for any actual or alleged violation of any laws or regulations relating to the offer or sale of securities.

**56. Seizure of illegal property**

arising from an order by a public or government authority which deprives **you** of the use or value of **your** property or arising from acts of contraband or illegal transportation or illegal trade.

**57. Sexual misconduct**

arising directly or indirectly out of:

- a. any unwelcome conduct, physical acts, gestures or spoken or written words of a sexual nature, including, but not limited to, sexual intimacy (even if consensual), sexual molestation, sexual assault, sexual battery, sexual abuse, sexual harassment, sexual exploitation or any sexual act;
- b. the negligent employment, supervision, hiring, training or retention of a person for whom **you** are or were at any time responsible and who commits sexual misconduct as defined by a) above;
- c. **your** negligent reporting, or **your** failure to report, to the proper authorities the conduct of a person for whom **you** are or were at any time responsible and who commits sexual misconduct as defined by a) above; or
- d. any sexual discrimination;

as proven by final adjudication, arbitral tribunal or written admission by **you**.

**58. Toxic mold**

arising directly or indirectly from the toxic properties of any fungus, mold, mildew or yeast.

**59. Uninsurable fines**

for fines, penalties, civil or criminal sanctions, and for multiple, punitive or exemplary damages, unless insurable by law.

**60. Unjust enrichment**

for that part of any **claim** that results in **you** being in a better financial position as a direct result of **your** act, error or omission than **you** would have been if **you** had not committed the act, error or omission.



However, this Exclusion will not apply to any refund of any fee, other than the part of the fee that represents **your** profit or mark-up or liability for taxes.

**61. Unlawful surveillance**

in respect of any actual or alleged eavesdropping, wiretapping, or unauthorized audio or video recording committed by **you** or by a **third party** on **your** behalf with the knowledge and consent of **your senior executive officers**.

**62. Unsolicited communications**

arising directly or indirectly from any actual or alleged violation of:

- a. the CAN-SPAM Act of 2003 or any subsequent amendments to that Act;
- b. the Telephone Consumer Protection Act (TCPA) of 1991 or any subsequent amendments to that Act; or
- c. any other law, regulation or statute relating to unsolicited communication, distribution, sending or transmitting of any communication via telephone or any other electronic or telecommunications device.

However, this Exclusion will not apply to **INSURING CLAUSE 2 (SECTION A)** only).

**63. Vacant premises**

in respect of **INSURING CLAUSES 4** and **5**, resulting from **premises** left vacant for more than 60 consecutive days.

**64. War and terrorism**

arising directly or indirectly out of:

- a. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or mounting to an uprising, military or usurped power;
- b. any act or threat of force or violence by an individual or group, whether acting alone or on behalf of or in connection with any organization 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; or
- c. any action taken in controlling, preventing, suppressing or in any way relating to a. or b. above.

However, this Exclusion does not apply to a **cyber event** affecting **your computer systems** or a **cloud computing provider's** systems.

**65. Willful or dishonest acts of senior executive officers**

arising directly or indirectly out of any willful, criminal, malicious or dishonest act, error or omission by a **senior executive officer** as determined by final adjudication, arbitral tribunal or written admission.

## CONDITIONS

**1. What you must do in the event of a claim or cyber incident**

If any **senior executive officer** becomes aware of any incident which may reasonably be expected to give rise to a claim under this Policy **you** must:



- a. notify the **claims managers** (in respect of cyber incidents, a telephone call to **our** cyber incident response line or confirmed notification via **our** cyber incident response app will constitute notification) as soon as is reasonably practicable and follow their directions. However, in respect of **INSURING CLAUSES 1 and 3 (SECTION F only)** this notification must be made no later than the end of the applicable extended reporting period; and
- b. not admit liability for or settle or make or promise any payment or incur any **costs and expenses** without **our** prior written agreement (which will not be unreasonably withheld).

If **you** discover a **cyber event you** may only incur costs without **our** prior written consent within the first 72 hours following the discovery and any **third party** costs incurred must be with a company forming part of the **approved claims panel providers**. All other costs may only be incurred with the prior written consent of the **claims managers** (which will not be unreasonably withheld).

## 2. Additional insureds

**We** will indemnify any **third party** as an additional insured under this Policy, but only in respect of sums which they become legally obliged to pay (including liability for claimants' costs and expenses) as a result of a **claim** arising solely out of an act committed by **you**, provided that:

- a. **you** contracted in writing to indemnify the **third party** for the **claim** prior to it first being made against them; and
- b. had the **claim** been made against **you**, then **you** would be entitled to indemnity under this Policy.

Before **we** indemnify any additional insured they must:

- a. prove to **us** that the **claim** arose solely out of an act committed by **you**; and
- b. fully comply with **CONDITION 1** as if they were **you**.

Where **we** indemnify a **third party** as an additional insured under this Policy, this Policy will be primary and non-contributory to the **third party's** own insurance, but only if **you** and the **third party** have entered into a contract that contains a provision requiring this.

Where a **third party** is treated as an additional insured as a result of this Condition, any **claim** made by that **third party** against **you** will be treated by **us** as if they were a **third party** and not as an insured.

## 3. Agreement to pay claims (duty to defend)

**We** have the right and duty to take control of and conduct in **your** name the investigation, settlement or defense of any **claim**. **We** will not have any duty to pay **costs and expenses** for any part of a **claim** that is not covered by this Policy.

**You** may ask the **claims managers** to consider appointing **your** own lawyer to defend the **claim** on **your** behalf and the **claims managers** may grant **your** request if they consider **your** lawyer is suitably qualified by experience, taking into account the subject matter of the **claim**, and the cost to provide a defense.

**We** will endeavor to settle any **claim** through negotiation, mediation or some other form of alternative dispute resolution and will pay on **your** behalf the amount **we** agree with the claimant. If **we** cannot settle using these means, **we** will pay the amount which **you** are found liable to pay either in court or through arbitration proceedings, subject to the **limit of liability**.



We will not settle any **claim** without **your** consent. If **you** refuse to provide **your** consent to a settlement recommended by **us** and elect to continue legal proceedings in connection with the **claim**, any further **costs and expenses** incurred will be paid by **you** and **us** on a proportional basis, with 50% payable by **us** and 50% payable by **you**. As a consequence of **your** refusal, **our** liability for the **claim**, excluding **costs and expenses**, will not be more than the amount for which the **claim** could have been settled.

#### 4. Calculation of business interruption losses

In respect of **INSURING CLAUSES 2 (SECTION G only)** and **5**, in the event of a claim for any financial loss sustained by **you**, **you** must provide the **claims managers** with **your** calculation of the financial loss including.

- a. how the loss has been calculated and what assumptions have been made; and
- b. supporting documents including account statements, sales projections and invoices.

If **we** are unable to agree with **your** calculation, **we** will appoint an independent expert agreed between **you** and **us** which will be paid for by **us**. If an independent expert cannot be agreed upon, one will be appointed by an arbitrator mutually agreed between **you** and **us** whose decision will be final and binding.

Once an independent expert has been appointed, their calculation of any financial loss sustained by **you** will be final and binding.

#### 5. Cancellation

This Policy may be canceled with 30 days written notice by either **you** or **us**.

If **you** give **us** notice of cancellation, the return **premium** will be in proportion to the number of days that the Policy is in effect. However, if **you** have made a claim under this Policy there will be no return **premium**.

If **we** give **you** notice of cancellation, the return **premium** will be in proportion to the number of days that the Policy is in effect.

**We** also reserve the right of cancellation in the event that any amount due to **us** by **you** remains unpaid more than 60 days beyond the **inception date**. If **we** exercise this right of cancellation it will take effect from 14 days after the date the written notice of cancellation is issued.

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

#### 6. Continuous cover

If **you** have neglected, through error or oversight only, to report an incident discovered by **you** that might give rise to a claim under this Policy 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, **we** will permit the matter to be reported under this Policy and **we** will indemnify **you**, provided that:

- a. the indemnity will be subject to the applicable limit of liability of the earlier Policy under which the matter should have been reported or the **limit of liability**, 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; and
- c. the indemnity will be subject to all of the terms and conditions of this Policy, other than a. above.



## 7. Cross liability and severability

In respect of **INSURING CLAUSE 3** only, where there is more than one entity insured under this Policy, and subject to the **limit of liability**, any **claim** made by one insured entity against another insured entity will be treated as if they are a **third party** and knowledge possessed by one insured entity will not be imputed to any other insured entity.

## 8. Establishing loss of contents

If **you** make a claim under this Policy for loss of **contents**, **you** must reasonably establish how and when the incident took place. This may include confirmation that the incident was reported to the appropriate law enforcement authorities and details of any investigation they undertook.

## 9. Extended reporting period

An extended reporting period of 60 days following the **expiry date** will be automatically granted at no additional premium. This extended reporting period will cover, subject to all other terms, conditions and exclusions of this Policy:

- a. **claims** first made against **you** during the **period of the policy** and reported to **us** during this extended reporting period;
- b. **cyber events** first discovered by **you** during the **period of the policy** and reported to **us** during this optional extended reporting period; and
- c. circumstances that a **senior executive officer** became aware of during the **period of the policy** and reported to **us** during this optional extended reporting period.

No claim will be accepted by **us** in this 60 day extended reporting period if **you** are entitled to indemnity under any other insurance, or would have been entitled to indemnity under such insurance but for its exhaustion.

## 10. Optional extended reporting period

If **we** or **you** decline to renew or cancel this Policy then **you** will have the right to have issued an endorsement providing an optional extended reporting period for the duration stated in the Declarations page which will be effective from the cancellation or non-renewal date. This optional extended reporting period will cover, subject to all others terms, conditions and exclusions of this Policy:

- a. **claims** first made against **you** and reported to **us** during this optional extended reporting period but only in respect of any **claim** arising out of any act, error or omission committed prior to the date of cancellation or non-renewal;
- b. **cyber events** first discovered by **you** during the **period of the policy** and reported to **us** during this optional extended reporting period; and
- c. circumstances that a **senior executive officer** became aware of during the **period of the policy** and reported to **us** during this optional extended reporting period.

The right to the optional extended reporting period will not be available to **you** where cancellation or non-renewal by **us** is due to non-payment of the **premium** or **your** failure to pay any amounts in excess of the applicable **limit of liability** or within the amount of the applicable **deductible** as is required by this Policy in the payment of claims.

At the renewal of this Policy, **our** quotation of different **premium**, **deductible**, limits of liability or changes in policy language will not constitute non-renewal by **us**.



#### 11. Fraudulent claims

If **you** notify **us** of any claim knowing it to be false or fraudulent in any way, **we** will have no responsibility to pay that claim, **we** may recover from **you** any sums paid in respect of that claim and **we** reserve the right to terminate this Policy from the date of the fraudulent act. If **we** exercise this right **we** will not be liable to return any **premium** to **you**. However, this will not affect any claim under this Policy which has been previously notified to **us**.

#### 12. Innocent non-disclosure

**We** will not seek to avoid the Policy or reject any claim on the grounds of non-disclosure or misrepresentation except where the non-disclosure or misrepresentation was reckless or deliberate.

#### 13. Maintenance of employee automobile liability insurance

It is a condition precedent to indemnity under **INSURING CLAUSE 3 (SECTIONS G and H only)** that all **employees** who operate an automobile in the course of **your business activities** will maintain in full force and effect for the **period of the policy** primary automobile liability insurance in an amount equal to, or greater than, the minimum primary automobile liability limits required in the state of registration of the automobile. If **you** make a **claim** under **INSURING CLAUSE 3 (SECTIONS G and H only)** and the **employee** has failed to meet these requirements then this Policy will only respond to provide excess coverage as though the requirements had been met, whereby **you** agree to pay all sums within and up to the required minimum limit.

#### 14. Mergers and acquisitions

If **you** acquire an entity during the **period of the policy** whose annual revenue does not exceed 20% of the **insured's** annual revenue, as stated in its most recent financial statements, cover is automatically extended under this Policy to include the acquired entity as a **subsidiary**.

If **you** acquire an entity during the **period of the policy** whose annual revenue exceeds 20% of the **insured's** annual revenue, as stated in its most recent financial statements, cover is automatically extended under this Policy to include the acquired entity as a **subsidiary** for a period of 45 days.

**We** will consider providing cover for the acquired entity after the period of 45 days if:

- a. **you** give **us** full details of the entity within 45 days of its acquisition; and
- b. **you** accept any amendment to the terms and conditions of this Policy or agree to pay any additional **premium** required by **us**.

In the event **you** do not comply with a. or b. above, cover will automatically terminate for the entity 45 days after the date of its acquisition.

Cover for any acquired entity is only provided under this Policy for any act, error or omission committed on or after the date of its acquisition.

No cover will be automatically provided under this Policy for any acquired entity:

- a. whose business activities are materially different from **your business activities**;
- b. that has been the subject of any lawsuit, disciplinary action or regulatory investigation in the 3 year period prior to its acquisition; or



- c. that has experienced a **cyber event** in the 3 year period prior to its acquisition, if the **cyber event** cost more than the highest **deductible** of this Policy.

If during the **period of the policy you** consolidate, merge with or are acquired by another entity then all coverage under this Policy will terminate at the date of the consolidation, merger or acquisition unless **we** have issued an endorsement extending coverage, and **you** have agreed to any additional **premium** and terms of coverage required by **us**.

#### 15. Our rights of recovery

If **we** make any payment under this Policy then **you** must maintain all of **your** rights of recovery in respect of this payment against any **third party** and make these available to **us** where possible.

**We** will not exercise any rights of recovery against **employees**, unless this is in respect of any fraudulent or dishonest acts or omissions as proven by final adjudication, arbitral tribunal or written admission by **you**.

Any recoveries will be applied in proportion to the amounts paid by **you** and **us** in relation to the claim under this Policy.

#### 16. Prior subsidiaries

Should an entity cease to be a **subsidiary** after the **inception date**, cover in respect of the entity will continue as if it was still a **subsidiary** during the **period of the policy**, but only in respect of an act, error, omission or event occurring prior to the date that it ceased to be a **subsidiary**.

#### 17. Process for paying privacy breach notification costs

Any **privacy breach** notification transmitted by **you** or on **your** behalf must be done with **our** prior written consent. **We** will ensure that notification is compliant with any legal or regulatory requirements and contractual obligations. No offer must be made for financial incentives, gifts, coupons, credits or services unless with **our** prior written consent which will only be provided if the offer is commensurate with the risk of harm.

**We** will not be liable for any portion of the costs **you** incur under **INSURING CLAUSE 2 (SECTION D)** only that exceed the costs that **you** would have incurred had **you** gained **our** prior written consent. In the absence of **our** prior written consent **we** will only be liable to pay **you** the equivalent cost of a notification made using the most cost effective means permissible under the governing law.

#### 18. Waiver of subrogation

Notwithstanding **CONDITION 15**, **we** agree to waive **our** rights of recovery against any **third party** if, prior to the claim or incident which **you** reasonably expected to give rise to a claim, **you** entered into a contract that contains a provision requiring **you** to do this.

#### 19. Choice of law and service of suit

In the event of a dispute between **you** and **us** regarding this Policy, the dispute will be governed by the laws of the State of the United States of America shown as the choice of law stated in the Declarations page. **We** agree, at **your** request, to submit to the jurisdiction of a court of competent jurisdiction within the United States of America.

Nothing in this Condition constitutes or should be understood to constitute a waiver of **our** rights to commence an action in any court of competent jurisdiction in the United States of America, to move an action to a United States District Court, or to





seek a transfer of a case to another court as permitted by the laws of the United States of America or the laws of any State of the United States of America.

It is further agreed that service of process in such suit may be made upon the law firm stated in the Declarations page and that in any suit instituted against **us**, **we** will abide by the final decision of such court or of any appellate court in the event of an appeal. The law firm stated in the Declarations page is authorized and directed to accept service of process on **our** behalf in any such suit and, at **your** request, to give a written undertaking to **you** that they will enter a general appearance on **our** behalf in the event such suit is instituted.

Additionally, in accordance with the statute of any state, territory or district of the United States which makes such a provision, **we** hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as **our** true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by **you** arising out of this Policy. The law firm stated in the Declarations page is hereby designated as the firm to whom the above mentioned officer is authorized to mail such process or a copy thereof.