



ASR | Underwriting
Agencies

Policy Wording

CYBER LIABILITY

ASR Underwriting Agencies ABN 84 113 542 233 AFSL 291522



ASR Underwriting Agencies

This Policy	3
How to make a complaint.....	4
Section 1: Insuring clause	6
Section 2: Your losses	6
Section 3: Claims made against you.....	6
Section 4: Defence costs and expenses.....	7
Section 5: Our limit of liability.....	7
Section 6: Exclusions	7
Section 7: Important Conditions	11
Section 8: Claims conditions.....	13
Section 9: Definitions.....	13
Section 10: Governing Law and Disputes Clause	17
Section 11: Interpretation.....	17

ASR Underwriting Agencies Pty Ltd
ABN 84 113 542 233 AFSL 291522
25 Main St Beenleigh Qld 4207
PO Box 491 Beenleigh Qld 4207
Ph 07 34423333 Fax 07 38076839
Email enquiries@asruw.com.au
Website <http://www.asruw.com.au>

Version:
01062018

Effective:
01/06/2018

This Policy

This **policy** is an important document. The **policy** wording and **schedule** together set out the cover provided, the amount insured and the terms and conditions of **your** insurance. Please read it carefully and keep it in a safe place.

Your Insurance Broker has arranged this **policy** for **you**. If **you** have any questions about **your** cover, please contact **Your** Insurance Broker for assistance.

Claims Made Policy

This **policy** is a **claims** made and notified **policy**. This means that the **policy** only covers **claims** or **your losses** first made or sustained by or against **you** during the **period of insurance** and notified to **us** in writing during the **period of insurance**. The **policy** does not provide cover for any **claims** or **losses** made or sustained by or against **you** during the **period of insurance** if at any time prior to the commencement of the **period of insurance** **you** were aware of facts which might give rise to those **claims** or **losses** being made against **you**.

Section 40(3) of the *Insurance Contracts Act 1984* provides that where the insured gives notice in writing to the insurer during the **period of insurance** of facts that might give rise to a **claim** or **loss** against the insured, the insurer cannot refuse to pay a **claim** or **loss** which arises out of those facts, by reason only that the **claim** or **loss** is made after the **period of insurance** has expired.

Your duty of disclosure

Section 21 of the *Insurance Contracts Act 1984* provides that before **you** enter into a contract of general insurance with an insurer, **you** have a duty to disclose to the insurer every matter that **you** know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, upon what terms. **You** have the same duty to disclose those matters to the insurer before **you** renew, extend, vary or reinstate a contract of general insurance.

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

- That diminishes the risk to be undertaken by the insurer;
- That is of common knowledge;
- That **your** insurer knows, or in the ordinary course of its business, ought to know;
- As to which compliance with **your** duty of disclosure is waived by the insurer.

Non-disclosure

If **you** fail to comply with **your** duty of disclosure, **we** may be entitled to reduce **our** liability under the contract in respect of a **claim** or **loss**, or **we** may cancel the contract. If **your** non-disclosure is fraudulent, **we** may also have the option of avoiding the contract from its beginning.

Alteration to risk and deregistration

The **policy** requires **you** to notify us within twenty one days of any material change in the nature of **your business**, or any act of insolvency or bankruptcy of **you**. The **policy** requires **you** to give immediate notice of the cancellation, suspension, termination or imposition of conditions in respect of **your** statutory registration. **Claims** or **losses** arising from conduct which occurs subsequent to the cancellation, suspension or termination of **your** statutory registration, licence, certification or authorisation under any relevant legislation or industry code of practice governing **your business** is excluded from indemnity under the **policy**.

Limited liability

This **policy** provides that all **claims** and **losses** covered are subject to the **policy's limit of indemnity** which is specified in the **policy schedule**. **Defence costs and expenses**, and other costs covered by this **policy** are included within the **limit of indemnity**.

Policy Cancellation

In the event of **policy** cancellation by **you**, **our** cancellation rates will apply. We may cancel this policy at any time in accordance with the provisions of the *Insurance Contracts Act 1984*.

Waiver of Rights of Subrogation

The **policy** provides that **you** must not, without **our** prior written consent, enter into any contract or agreement which exclude, limits or prejudices a right of recovery which **you** may have in respect of any **claim** or **loss** covered under this **policy**. Further, **you** must not do anything or fail to do anything which exclude, limits or prejudices **our** rights of subrogation.

Privacy Collection Statement

We are bound by the obligations of the Privacy Act 1988 (as amended) regarding the collection, use, disclosure and handling of personal information.

We collect personal information about **you** and about other individuals to enable **us** to provide **you** with relevant products and services, to assess **your** application for insurance and, if a contract is entered, to enable **us** to provide, administer, and manage the **policy**, and to investigate and handle any claims under the **policy**. **We** may disclose personal information **we** collect to third parties (who may be located in the United Kingdom and other countries outside Australia). These include the insurer, lawyers, claims adjusters, and others appointed by **us** in providing relevant products and services. **We** may also disclose **your** information to people listed as co-insured on the **policy** and to **your** agents. By providing **your** personal information to **us**, **you** consent to **us** making these disclosures.

If **you** do not provide all or part of the information required, **we** may not be able to provide **you** with **our** products and services, consider **your** application for insurance, administer the **policy**, assess or handle claims under the **policy**. **Your** Duty of Disclosure may require **you** to provide personal information to **us**.

When **you** provide **us** with personal information about other individuals, **we** rely upon **you** to have made them aware of that disclosure, and to ensure that they are aware of the matters set out in this Privacy Statement and have consented to the disclosure.

Further information about collection, use, disclosure and handling of personal information is set out in our Privacy Policy. To obtain a hard copy of our Privacy Policy or to request access to or correction of or to update personal information, please contact **us**.

General Insurance Code of Practice

We and underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. A copy of the Code can be obtained from www.codeofpractice.com.au.

This **policy** and the **schedule** are Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any **claims** or **losses** adjusted outside Australia.

How to make a complaint

If **you** wish to make a complaint, **you** can do so at any time by referring the matter to **us** at:

ASR Underwriting Agencies Pty Ltd
25 Main St Beenleigh Qld 4207
PO Box 491 Beenleigh Qld 4207
Ph 07 34423333 Fax 07 38076839
Email enquiries@asruw.com.au

If **you** remain dissatisfied **you** can refer **your** complaint to the Complaints Team at Lloyd's. The address for the Complaints Team at Lloyd's is:

Lloyd's Underwriters' General Representative in Australia
Level 19, 1 O'Connell Street, Sydney NSW 2000
Telephone Number: (02) 8298 0700
Facsimile Number: (02) 8298 0788

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 processes for resolution. Details are available from Lloyd's underwriters' General Representative in Australia at the address above.

Definitions

Apart from in the various headings, words appearing in bold type in the **policy** have specific meanings attached to them, such as "**you**" and "**us**". When reading the **policy** please make sure that **you** refer to the various definitions to ensure that **you** understand what is being said.

How to notify a claim or loss

You shall notify **us** as soon as practicable within the **period of insurance** or at the latest within 21 days of receipt of any **claim, loss, breach, privacy investigation, or illegal threat** covered under sections 2 & 3 of this **policy**.

Payment of premium

You undertake that the **premium** will be paid in full to **us** within 30 days of inception of this **policy** (or, in respect of instalment premiums, when due).

If the **premium** due under this **policy** has not been paid to **us** by the 30th day from the inception of this **policy** (and, in respect of instalment premiums, by the date they are due) **we** shall have the right to cancel this **policy** by notifying **you** via **your** broker in writing. In the event of cancellation, **premium** is due to **us** on a pro rata basis for the period that **we** are on risk but the full **policy premium** shall be payable to **us** if there is a loss or a notification of a **claim or circumstance** prior to the date of termination which later gives rise to a valid claim under this **policy**.

We will give **you** not less than 14 days prior notice of cancellation via **your** broker. If **premium** due is paid in full to **us** before the notice period expires, notice of cancellation shall automatically be revoked. If not, the **policy** shall automatically terminate at the end of the notice period.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

Service of suit

In the event of a dispute arising under this **policy**, underwriters at **your** request will submit to the jurisdiction of any competent court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such court.

Any summons notice or process to be served upon underwriters may be served upon:

ASR Underwriting Agencies Pty Ltd
PO Box 491
Beenleigh Qld 4207

who has authority to accept service and to cause an appearance to be filed on behalf of underwriters, and who is directed at **your** request to give a written undertaking to **you** that it will cause an appearance to be filed on behalf of underwriters.

If a suit is instituted against underwriters, underwriters will abide by the final decision of any such court or any competent appellate court.

Our Agreement

Section 1: Insuring clause

We shall cover **you** for **claims** and **losses** up to the **limit of indemnity** shown in the **policy schedule** including claimants' costs and expenses, first made against or sustained by **you** in the course of **your business** within the **territorial limits** during the **period of insurance** and notified to **us** in writing, for;

Section 2: Your losses

2.1. Breach of personal data

Your loss arising after the **retroactive date** where **you** discover or suspect a **breach** has occurred. **We** shall cover;

- a. **Breach forensic costs;**
- b. Legal fees incurred by **you** to manage the response to the **breach**;
- c. Costs **you** incur to notify each affected **data subject** of the **breach**;
- d. Costs **you** incur in notifying any regulatory body, including the Office of the Australian Information Commissioner of the breach where **you** are required to do so by law or regulation;
- e. Costs **you** incur to use a third party call centre to answer enquires from affected **data subjects**, following notification of the **breach** to such **data subjects**; and
- f. **Credit monitoring costs;**

provided that they are incurred with **our** prior written agreement. **We** will not cover you for any **loss** which arises as a result of any **breach** caused by a supplier of **yours**.

2.2. Hacker damage

Your loss after the **retroactive date**, caused by a **hacker**:

- a. damaging, destroying, altering, corrupting, or misusing **your computer system, programmes** or data **you** hold electronically, or any **programmes** or data for which **you** are responsible; or
- b. copying or stealing any **programme** or data **you** hold electronically or for which **you** are responsible;

we will pay all the reasonable and necessary expenses incurred with **our** prior written consent in replacing or repairing **your computer system, programmes** or data **you** hold electronically to the same standard and with the same contents before it was damaged, destroyed, altered, corrupted, copied, stolen or misused.

2.3. Cyber extortion

The cost of a ransom demand if **you** receive an **illegal threat** from the third-party or, if the demand is for goods or services, their market value at the time of the surrender, provided that **you** can demonstrate to **us** that:

- a. the ransom was paid, or the goods or services were surrendered, under duress;
- b. before agreeing to the payment of the ransom or the surrender of goods or services, **you** made all reasonable efforts to determine that the **illegal threat** was genuine and not a hoax; and
- c. an individual within the definition of **you** agreed to the payment of the ransom or the surrender of the goods or services.

We will also pay:

- a. the fees of **our** appointed consultant, incurred by **you** with **our** prior written consent, for advising **you** on the handling and negotiation of the ransom demand; and
- b. the amount of any stolen ransom, where such theft occurs at or in transit to the agreed location for payment of the ransom.
- c.

Section 3: Claims made against you

3.1. Privacy infringement claim

If, after the **retroactive date** specified in the **schedule**:

- a. any party brings a **claim** against **you** for **your** actual or alleged:

- i. breach, violation or infringement of any right to privacy, consumer data protection law, or other legal protection for **personal data**;
 - ii. breach of duty to maintain the security or confidentiality of **personal data**;
 - iii. breach of any duty of confidence, including in respect of any commercial information; or
 - iv. breach of any contractual duty to maintain the security or confidentiality of **personal data**, or
- b. **you** are the subject of a **privacy investigation**;
- we** will pay:
- a. the amount agreed by **you** and **us** through good faith negotiation, mediation or some other form of alternative dispute resolution to settle a **claim** or the amount to satisfy a judgment or arbitration award against **you**;
 - b. any **regulatory award**; and
 - c. **privacy forensic costs, privacy investigation costs** and **defence costs**.

Section 4: Defence costs and expenses

4.1. Defence costs and expenses, privacy forensic costs, privacy investigation costs and **credit monitoring costs** which are included within the **limit of indemnity**.

Section 5: Our limit of liability

5.1 Our total liability

Our total liability under this **policy** shall not exceed the **limit of indemnity** stated in the **policy schedule** for:

- a. Any one **claim, loss, breach, privacy investigation, and illegal threat** or;
- b. All **claims, losses, breaches, privacy investigations, and illegal threats** arising out of or in connection with the same originating cause or source or
- c. All losses for which indemnity is available, including all **defence costs and expenses, privacy forensic costs, privacy investigation costs** and **credit monitoring costs** arising out of or in connection with the same originating cause or source.

The aggregate limit stated in the **schedule** is the most **we** will pay for all **claims, losses, breaches, privacy investigations, and illegal threats** arising from all claim(s), against you during the policy period regardless as to whether a claim, occurrence or action gives rise to indemnity under more than one section of this policy. If the **schedule** is silent, the aggregate limit will be the **limit of indemnity**.

5.2 Policy excess

The **policy excess** stated in the **policy schedule** applies in respect of:

- a. Each and every **claim, loss, breach, privacy investigation, illegal threat** or;
- b. All **claims, losses, breaches, privacy investigations, illegal threats** arising out of or in connection with the same originating cause or source, or
- c. All losses for which indemnity is available, including all **defence costs and expenses, privacy forensic costs, privacy investigation costs** and **credit monitoring costs** arising out of or in connection with the same originating cause or source;

falling to be dealt with under the insuring clause. **Our limit of indemnity** is over and above the **policy excess**.

Section 6: Exclusions

We will not cover **you** for any liability directly or indirectly due to;

6.1. Assumed duty or obligation

any duty, obligation or liability incurred, entered into or assumed by **you** which is not incurred, entered into or assumed in the normal conduct of **your business**.

6.2. Contractual terms and warranties

- a. any express agreement, warranty, indemnity, waiver or guarantee;
- b. any warranty or agreement providing a greater liability or a longer period of liability than that given under the original contract and to which such warranty or agreement is supplemental.

6.3. Credit monitoring costs

credit monitoring costs unless:

- a. arising from a **breach** of a **data subject's** National Insurance number, driver's licence number or other government issued identification number that can be used, in combination with other information, to open a new financial account; or
- b. **you** are required by any law or regulation to provide credit monitoring or credit protection services.

6.4. Death and bodily injury

death, bodily injury, psychological injury, emotional distress or anguish, shock, sickness, disease or death sustained by any person, unless such damage arises solely because of defamation or breach of privacy covered under clause 3.1 Privacy information claim.

6.5. Defamatory statements

any statement **you** knew, or ought reasonably to have known, was defamatory at the time of publication.

6.6. Directors and officers

any breach by **you** of a personal duty owed solely in the capacity of a member, director, secretary or officer of a body corporate.

6.7. Dishonesty

any fraudulent, dishonest, malicious or criminal conduct intended to cause harm to another person or business, or any knowing or wilful violation of a law, whether committed by you or committed by another whose conduct or violation of the law you have ratified or actively condoned or any act you knew, or reasonably ought to have known at the time you performed it, would give rise to a **claim**, loss, breach, privacy investigation, or illegal threat to **your business**.

6.8. Fines and penalties

taxes, fines or penalties, punitive, aggravated, multiple, exemplary or other non-compensatory damages.

6.9. Hack by an individual

any individual **hacker** that falls within the definition of **you** or **persons responsible to you**.

6.10. Insolvency

your insolvency or the insolvency of **your** suppliers or sub-contractors.

6.11. Investment and financial

- a. Depreciation or loss of investments when the depreciation or loss is as a result of any fluctuations in any financial, stock or commodity markets when such fluctuation is outside the influence or control of **you**.
- b. Any actual or alleged dealings of any nature by which it is sought to affect the price of, or market in, any shares or debentures of any company or commodity or currency, or of any negotiable instrument, other than dealings carried out in accordance with the laws, rules and regulations applicable to such dealings.
- c. Any regulated activities as defined by the Australian Securities and Investments Commission, as amended from time to time.

6.12. Intellectual property, patent or trade secrets

theft or infringement, misappropriation or disclosure of any intellectual property, patent or trade secret.

6.13. Jurisdiction

any **claim** brought (or the enforcement of any judgment or award entered against **you**) in the courts of the United States of America or Canada or their dominions or protectorates or territories in which it is contended that the laws of the United States of America or Canada should apply.

6.14. Land, Buildings and transport

from the ownership, possession or use by **you** of land, buildings, property (mobile or immobile), aircraft, watercraft, vessels or by vehicles, whether mechanically propelled or otherwise.

6.15. Liability to employees

any employment dispute directly or indirectly based upon, attributable to or in consequence of bodily injury, mental injury, sickness, disease or death or any breach of any obligations owed by **you** as an employer for discrimination, harassment, unfair treatment or unfair dismissal or failure to promote any **employee**.

6.16. Media liability

media liability made by any person or entity, including but not limited to **employees** or **persons responsible to you**.

6.17. Nuclear

- a. Loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting from or arising from or any consequential loss, or
- b. Any legal liability of whatever nature;

directly or indirectly caused by or contributed by or arising from;

- i. Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or
- ii. The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

6.18. Payment Card Industry (PCI) charges

any liability for charges, fines, penalties, levies, costs, expenses, assessments, contractual damages or imposition of liabilities of any nature arising as a result of **your** failure to comply with PCI Data Security Standards due to a breach, including any sums in relation to card reissuance or fraudulent transactions.

6.19. Professional duties

any liability arising from a breach of a professional duty made by any individual or entity with whom **you** have provided professional advice or professional services.

6.20. Pollution

actual, alleged or threatened pollution, seepage, contamination, discharge, dispersal, release or escape of any solid, liquid, gaseous, or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, bacteria, fumes, acids, alkalis, chemicals and waste or any actual or alleged advice given or services performed in relation to any irritant or contaminant, including but not limited to testing, monitoring, treatment, containment, cleaning up, neutralising or detoxification thereof.

6.21. Prior knowledge of claims and circumstances

- a. **claims** or **losses breaches, privacy investigations, or illegal threats** of any kind covered under this **policy** (including **defence costs and expenses, privacy forensic costs, privacy investigation costs and credit monitoring costs**) first made, threatened, intimated or sustained against **you** prior to the **period of insurance**;

- b. any situation or **circumstance** of which **you** first became aware prior to the **period of insurance** or which **you** ought reasonably to have been aware of prior to the **period of insurance** which may give rise to a liability under this **policy** and which was known or ought to have been known by **you** prior to the **period of insurance**.

6.22. Products

you or **persons responsible to you** having supplied, manufactured, constructed, altered, repaired, treated, sold, recalled, fabricated, distributed, installed or maintained any goods or products.

6.23. Property Damage

based upon or attributable to damage to property (except data covered under clause 2.2 Hacker damage).

6.24. Reckless conduct

any conduct committed by **you** in reckless disregard of another person's or business' rights.

6.25. Related parties

any **claim** brought by any person or entity within the definition of **you** or any party with a financial, executive or managerial interest in **you**, including any parent company or any party in which **you** have a financial, executive or managerial interest. This exclusion does not apply to a **claim** based on a liability to an independent third-party directly arising out of **your business**.

6.26. Routine privacy investigations

any privacy investigation arising from any routine regulatory supervision, enquiry or compliance review, any internal investigation or any investigation into the activities of **your** industry which is not solely related to an alleged breach of privacy by **you**.

6.27. Seizure and confiscation

any confiscation, requisition, expropriation, appropriation, seizure or destruction of property by or under the order of any government or public or local authority, or any order by such authority to take down, deactivate or block access to **your computer system**.

6.28. Service providers

any failure or interruption of service provided by an internet service provider, telecommunications provider, **cloud provider** but not including the hosting of hardware and software that **you** own, or other utility provider.

6.29. Territorial limits

any **claim** or **loss, breaches, privacy investigations, illegal threats**, and interruptions including **defence costs and expenses, privacy forensic costs, privacy investigation costs** and **credit monitoring costs** brought outside the **territorial limits**, including proceedings brought within the **territorial limits** to enforce a judgment or award, or which are based on a judgment or award from outside the **territorial limits**.

6.30. Trading debts

any **claim** arising from or directly or indirectly attributable to any trading debt or trading loss or any guarantee or undertaking given by **you** for a debt or performance of any obligation by a third party.

6.31. War and terrorism

any **claim** or **loss, breaches, privacy investigations, illegal threats**, and interruptions arising from or directly or indirectly attributable to war, invasion, acts of foreign enemies, riot, hostilities, **terrorism**, or war like operations whether declared or not, civil war, rebellion, revolution, insurrection, civil commotion amounting to an uprising, military or usurped power (regardless of any other cause or event contributing to the liability) and/or any action taken in controlling, preventing or suppressing the aforementioned risks.

This exclusion also applies to any liability for any **claim** or **loss** covered under this **policy** and/or costs including **defence costs and expenses, privacy forensic costs, privacy investigation costs** and **credit monitoring costs** on account of any **claim** or **loss** directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the risks in the above paragraph.

Section 7: Important Conditions

7.1 Alteration to risk

Notwithstanding the notification provisions of this **policy**, **you** must notify **us** within the **period of insurance** of any material alteration to the risk including but not limited to any material change in the nature of or cessation of the **business**.

7.2 Assignment

You must not assign this **policy** or any rights under this **policy** without **our** consent by way of **endorsement** to form part of this **policy**.

7.3 Authorisation

The insured named in the **policy schedule** shall act on behalf of all insureds with respect to the giving and receiving of notices under this **policy**, including the giving of notice of any **claim** or **loss**, the payment of the **premium**, the receipt and acceptance of any **endorsements** attaching to and forming part of this **policy**.

7.4 Confidentiality

You shall not disclose the terms of this **policy** or disclose the amount of the **premium** paid to any third party except:

- To the extent that **you** are required by law to do so or by any regulatory authority as may be necessary to demonstrate to such regulatory authority that any mandatory insurance requirements of such authority have been satisfied, or
- That the existence of the **policy**, policy number, lead insurer, **limit of indemnity** and **policy excess** available may be disclosed to an insurer, to a client or a prospective client, wholesale broker or placing agent necessary to maintain agency facilities, provided that no such disclosure shall be permitted where **you** are aware or ought reasonably to be aware that the person to whom disclosure is going to be made, has made, or is likely to make a **claim** against **you** or
- To the extent that **we** consent to such disclosure which **you** have sought, such consent not to be unreasonably withheld.

7.5 Document management

We may hold the **proposal** (including any attachments thereto) and any documents relating to this insurance and any **claim** or **loss** in electronic form and may destroy the originals. An electronic copy of any such document will be admissible in evidence to the same extent as, and carry the same weight as, the original.

7.6 Fraudulent claims

If **you** shall knowingly make any false or fraudulent request in respect of any **claim** or **loss**, as regards amount or otherwise, **you** will forfeit the right to cover only of the actual **claim** in relation to which there has been a false or fraudulent request.

7.7 Goods and Services Tax

The **premium** includes an amount for **GST**. **Our** liability to **you** in respect of a **claim** or **loss** under this **policy** is calculated less any input tax credit to which **you** are entitled for any acquisition which is relevant to the **claim** or **loss**, or to which **you** would have been entitled had it made a relevant acquisition. **You** must inform **us** of the extent to which it is entitled to an input tax credit, and any **GST** liability arising from **your** provision of incorrect advice is payable to **you**.

7.8 Indemnity to employees

At **your reasonable request**, **we** will cover any **employee** provided the **employee**, as though they were **you**, observes and complies and is subject to the terms of this **policy**.

7.9 Notification to law enforcement authorities

You must inform, or allow **us** to inform, the appropriate law enforcement authorities where any illegal threat was made, and keep **us** fully informed of all developments concerning any illegal threat or ransom demand.

7.10 Other insurance

The insurance provided by this **policy** shall apply only in excess of any other valid insurance, with the sole exception of any insurance written as specific excess insurance over the **limit of indemnity** provided by this **policy**.

7.11 Sanctions

We shall **not** be deemed to provide cover and shall not be liable to pay any **claim** or provide any benefit to the extent that the provision of cover, payment of claim or provision of benefit would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

11.4 Senior Counsel

In the event that;

- a. **We** recommend settlement of a **claim** and **you** do not agree to the settlement of the **claim** and **you** decide to contest the **claim**; or
- b. **You** wish to settle a **claim** and **we** do not agree to the settlement of the **claim**;

Senior Counsel (agreed upon by **you** and **us** or failing such agreement to be nominated by the Chairman for the time being of the Bar Council or where appropriate by a similar official of any similar body in any other applicable jurisdiction) shall advise whether the **claim** should be settled or contested taking into account all likely costs, prospects of success and the damages and costs likely to be recovered by the third party claimant, and **your** commercial interest. The costs of this exercise will be allocated by the agreed or appointed party on a fair and equitable basis, **and the parties** will abide by that allocation. This condition applies to clause 3.1 only when **you** and **we** have exhausted all appropriate forms of alternative dispute resolution. For purposes of this condition, only definition (a) or (b) of **you** applies.

7.12 Several liability of insurers

Where there is more than one insurer named in the **policy schedule** subscribing to this **policy**, insurers' obligations are several and not joint and are limited solely to the extent of their individual subscriptions. **We are** not responsible for the subscription of any co-subscribing insurer who for any reason does not **satisfy** all or part of their obligations.

7.13 Subrogation

- a. Where **we** have paid a **claim** or **loss** covered under this **policy**, **we** will be entitled to any rights **you** have against any party in relation to the **claim** or **loss** to the extent of **our** payment.
- b. **You** must assist **us** and provide information as **we** may reasonably require to exercise **our** rights of subrogation, including bringing any action or suit in **your** name. This may include providing and signing statements and other documents and the giving of evidence.
- c. Any recovery received shall be applied first against any **claim**, **loss** or costs insofar as it exceeds the **limit of indemnity**, then against any payment made by **us**, and finally against the **policy excess**.
- d. **We** will not subrogate against any current or former principal, partner, member, director or **employee** under this **policy** unless that person is found to have committed a criminal, fraudulent, malicious or dishonest act or omission.

7.14 Take over and mergers

In the event of a take-over or merger where there is a sale or a merger with or acquisition by another entity such that **you** are not the surviving entity and no longer: (a) control the composition of the board of directors or (b) control more than half the voting power or (c) hold more than half of the issued share capital then this **policy** shall apply only to any **claim** or **loss** arising from **your business** carried out prior to the date of such take-over or merger, unless **we** otherwise agree.

7.15 Third party rights

A person who is not a party to this **policy** has no rights under the *Contracts (Rights of Third Parties) Act 1999* or any amendment or re-enactment thereof to enforce any term of this **policy**.

7.16 Waiver or amendment

The terms of this **policy** shall not be waived or amended except by **endorsement** to form part of this **policy**.

Section 8: Claims conditions

8.1 Claims notification

You shall notify the **nominee** named in the **policy schedule** as soon as practicable within the **period of insurance**, or at the latest within 21 days of receipt of any **claim**, or **loss**, **breach**, **privacy investigation**, or **illegal threat made against you**, or an **employee or persons responsible to you** during the **period of insurance**.

8.2 Co-operation

As soon as practicable following receipt by **you**, **you** must deliver to the **nominee** named in the **policy schedule** any preliminary letter of **claim**, pre-action protocol letter, **claim** form, other legal procedural documents, summons, arbitration notice or other similar correspondence and documents to those described. **You** shall provide **us** with all information and assistance that **we** and **our** representatives and others appointed by **us** may reasonably require. Compliance with this condition will be at **your** own cost.

8.3 Legal defence and settlement

- a. **We** are entitled but not obliged to assume the legal defence of any **claim** covered under this **policy** in **your** name and **we** shall have full discretion in managing any negotiation or proceedings as to the resolution of such **claim**
- b. **We** shall be entitled to select and appoint the lawyers and other representatives that will defend and represent **you** or **employee** in respect of any **claim**;
- c. Subject to the conditions of this **policy**, **we** shall be entitled to settle a **claim** if **we** so choose;
- d. **You** agree in relation to any **claim** or potential **claim** or **loss** not to admit liability for or settle any such **claim**, make any admission, offer payment or assume any obligation in connection with any **claim** or potential **claim** or **loss**, or incur any costs in connection with any **claim** or **loss**, without **our** consent, such consent not to be unreasonably withheld;
- e. **You** must not disclose the nature or terms of this insurance to any person unless required to do so by law or in compliance with the rules of their regulatory body, or in negotiating a contract with any client unless **we** have agreed to the disclosure in writing;
- f. **We** shall not be liable for any settlement, costs, admission, offer, payment or assumed obligation without **our** consent, such consent not to be unreasonably withheld;
- g. **We** may at any time pay to **you** the **limit of indemnity** (having deducted any sums already paid) or any lesser amount for which such **claim** or **loss** may be settled and having paid that sum **we** shall relinquish the control of the **claim** and be under no further liability in connection with the **claim** or **loss**;
- h. Prior to settling any **claim** or **loss** within the **policy excess** **you** shall obtain from the claimant a signed form of discharge in full and final settlement of the **claim** or **loss** and **you** shall advise **us** of the final amount for which the **claim** or **loss** was settled or resolved.
- i. **You** must ensure that our rights of recovery against a third-party are not unduly restricted or financially limited by any term in any of your contracts. If **you** do not, **we** may reduce any payment we make under this section by an amount equal to the detriment **we** have suffered as a result.

Section 9: Definitions

Word

Special meaning

Breach

Means the unauthorised acquisition, access, use or disclosure of, or the loss or theft of **personal data**, which compromises the security or privacy of that information such that it poses a significant risk of financial harm to the **data subject**; or any unauthorised acquisition, access, use or disclosure of **personal data** which triggers **your** obligations under any statute, law or regulation to make any notification of such unauthorised acquisition, access, use or disclosure.

Breach forensic costs

Means following a possible **breach**, the costs **you** incur for computer forensic analysis conducted by outside forensic experts to confirm the **breach** and identify the affected **data subjects**, as well as outside legal fees necessary

for the preservation of the lawyer-client privilege of forensic reports and findings.

Business	means the business as specified in the policy schedule and/or declared in the proposal to us .
Circumstance	means something that may result in a claim against you .
Claim	means any written or oral demand for monetary damages or other relief including non-pecuniary relief or any civil, arbitration or adjudication proceedings including any counterclaim or appeal.
Cloud provider	Any entity providing hardware or software services to you over the internet including the provision of software as a service, infrastructure as a service or platform as a service.
Computer systems	Any computer network, hardware, software, information technology and communications system, including any email, intranet, extranet or website.
Credit monitoring costs	Following a breach , the costs you incur to provide one year of credit monitoring services or other credit protection services to each affected data subject . Such services must be redeemed by the data subject within 12 months of the data subject first being offered such services.
Data subject	Any natural person who is the subject of personal data
Defence costs and expenses	means any fees, expenses, costs and disbursements incurred in investigating, adjusting, settling or defending a claim that may be covered by this policy . Your internal or overhead expenses or the cost of your time is not included.
Employee	means any person employed by you under a contract of service or apprenticeship during or prior to the commencement of the period of insurance .
Endorsement	means a change to the terms of the policy
Excess	means the amount specified in the policy schedule .
GST (and input tax)	Means those words in A New Tax System (Goods and Services Tax) Act 1999 (as amended).
Hacking attack	means any malicious specific or unauthorised electronic act including but not limited to denial of service phishing spear phishing Trojans botnets worms brute-force port scanning spoofing ransomware cracking or phreaking that has been instigated by any third party or any employee or persons responsible to you .
Illegal threat	Any threat from a third-party to: <ol style="list-style-type: none">damage, destroy or corrupt your computer system, programmes or data you hold electronically, or any programmes or data for which you are responsible, including by specifically introducing a virus; ordisseminate, divulge or use any electronically held commercial information which:

- i. **you** are responsible for;
- ii. is not in the public domain; and
- iii. will cause commercial harm if made public;

following any unauthorised external electronic access by that third-party.

Investigation

means a civil, criminal, administrative or regulatory examination, investigation or other proceeding conducted by any official body or institution empowered under statute to investigate **your** affairs. **Investigation** does not mean routine regulatory supervision, inspection or compliance reviews. Proceedings includes an appeal against the outcome of any initial proceedings

Investigation costs

means reasonable fees, costs and expenses (except remuneration of any **employee** or **persons responsible to you**) incurred with **our** consent (which shall not be unreasonably withheld) in connection with preparing for and attending an investigation.

Limit of indemnity

means our maximum total liability as specified in the **policy schedule** or as may be specifically endorsed to this **policy** to cover you within the terms and conditions of this **policy**.

Loss(es)

means any financial harm caused to **your business**

Media liability

means;

1. defamation, libel, slander, product disparagement, trade libel, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organisation, including any breach of the misleading or deceptive conduct provisions of the Competition and Consumer Act 2010 (Cth.) or any Fair Trading or similar legislation of any country, state or territory;
2. misappropriation of any name or likeness for commercial advantage, or trade secret;
3. plagiarism, piracy or misappropriation of ideas under implied contract;
4. infringement of copyright;
5. infringement of trade dress, domain name, title or slogan, or the dilution or infringement of trademark or service mark;
6. negligence concerning the content of any **media communication**, including harm caused through any reliance of failure to rely on such content. **Media communication** means the display, broadcast, dissemination, distribution or release of media material to the public by **you**

PCI Charges

means charges, fines, penalties, levies, costs, expenses, assessments, contractual damages or imposition of liabilities of any nature arising as a result of **your** failure to comply with PCI Data Security Standards due to a **breach**, including any sums in relation to card reissuance or fraudulent transactions.

Period of insurance

means the time for which this **policy** is in force as stated in the **policy schedule**.

Personal data	Any non-public individually identifiable information about a data subject , including but not limited to such information protected by the Privacy Act 1988 (Cth) or any similar or successor legislation.
Persons responsible to you	means locum, consultant, sub-consultant or agent or self-employed person appointed by you to perform services on your behalf so as to enable you to perform your business .
Policy	means this policy wording, the policy schedule and any endorsements .
Policy schedule	means the document attaching to or incorporated into this policy wording and headed policy schedule and bearing the policy number applicable to this insurance.
Pollution	means any substance, solid, liquid, gaseous or thermal irritant or contaminant including but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste materials. Waste materials include, but are not limited to, recycled, reconditioned or reclaimed materials.
Premium	means the amount stated against the premium in the policy schedule
Privacy forensic costs	Following a claim under Privacy investigation claim, clause 3.1, the reasonable and necessary costs incurred by you with our prior written consent for forensic services conducted by outside forensic experts to defend a claim .
Privacy investigation	Any official examination, official enquiry or official investigation brought against you based on the same allegations as a claim under Privacy investigation claim, clause 3.1 a. i, ii and iv, conducted by any regulator, government department or other body legally empowered.
Privacy investigation costs	All reasonable and necessary lawyers' and experts' fees and legal costs, including privacy forensic costs , incurred with our prior written agreement in investigating, settling, defending, appealing or defending an appeal against a privacy investigation , but not including any overhead costs, general business expenses, salaries or wages incurred by you or any other person or entity entitled to coverage under this section.
Programmes	A collection of instructions that performs a specific task when executed by your computer systems .
Proposal	means the written proposal made by you to us together with any other related particulars and statements that have been supplied to us and which have been taken into consideration by us when deciding whether to provide this Insurance and upon what terms.
Regulatory award	Following a privacy investigation , any civil or regulatory sanctions, fines, penalties, disgorgement of profits, treble damages or multiple damages, including but not limited to those imposed by any national, federal, state or local governmental body or any licensing organisation, if insurable in the jurisdiction where such award was first ordered, but not including PCI charges .
Retroactive date	means the date specified against the retroactive date in the policy schedule .

Subsidiary	An entity that has been identified in your proposal for this policy and of which you own more than 50% of the book value of the assets or of the outstanding voting rights as of the first day of the period of insurance .
Territorial limits	The territorial limits specified in the schedule
Terrorism	means an act of terrorism including but limited to the use of force or violence and/or the threat 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 and/or to put the public, or any section of the public in fear.
Virus	means a piece of unauthorised executable code which propagates itself through a computer system .
We, us, our	ASR Underwriting Agencies Pty Ltd
You, your means	<ol style="list-style-type: none"> The named insured on the policy schedule; any person who was, is or during the period of insurance becomes your partner, director, trustee, in-house counsel or senior manager in actual control of your operations; any subsidiary

Section 10: Governing Law and Disputes Clause

Any dispute between **you** and **us** arising out of or in connection with this **policy** shall be referred to arbitration before a sole arbitrator (to be mutually agreed upon by **you** and **us** or failing agreement to be appointed by the Chairman for the time being of the Bar Council in the applicable State or Territory where the **policy** was issued) whose decision shall be final and binding on all parties.

Furthermore, in the event of any dispute between any insurer concerning this **policy** such dispute shall be referred to arbitration before a sole arbitrator (to be mutually agreed upon or failing agreement to be appointed by the Chairman for the time being of the Bar Council in the applicable State or Territory where the **policy** was issued) whose decision shall be binding on all parties.

As an alternative to the above paragraphs, disputes arising from or in connection with this **policy** may be referred to a recognised mediation service if **you** and **we** agree in writing.

Disputes arising from or in connection with this **policy** shall be subject to the jurisdiction of the laws of Australia and the State or Territory where the **policy** was issued.

Section 11: Interpretation

In this **policy**:

- reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this **policy**;
- if any term, condition, exclusion or **endorsement** or part thereof is found to be invalid or unenforceable the remainder shall be in full force and effect;
- headings herein are for reference only and shall not be considered when determining the meaning of this **policy**.



ASR Underwriting
Agencies

ASR Underwriting Agencies Pty Ltd
ABN 84 113 542 233 | AFSL 291522

25 Main Street | PO Box 491
Beenleigh Q 4207 Australia

P 07 3442 3333
F 07 3807 6839
E info@asruw.com.au

www.asruw.com.au