

# **QBE Australia**

# **Cyber Response**

**Cyber and Data Security  
Insurance Policy**



## Introduction

**We** understand how important it is to be comfortable with **your** cover so **we** are glad you chose QBE to take care of your insurance. As the largest Australian owned general insurer and reinsurer, **we** have been taking care of the insurance needs of Australians since 1886. Safe, strong and secure, **you** can be confident **you've** made a great choice.

Inside, **you** will find the information **you** need to know about the **policy**. We explain what the **policy** covers, information about excesses and importantly, how to make a **claim**.

Remember, whether **you** call us for a quote, or to report a **claim**, or to change **your** details, **you** can rely on **our** friendly team to help **you**.

Thank **you** for making QBE **your** first choice.

### About this booklet

This document contains important information to help **you** understand the insurance. It is up to **you** to choose the cover **you** need. Any advice in this booklet is general nature only and has not considered **your** objectives, financial situation or needs. **You** should carefully consider the information provided having regard to **your** personal circumstances to decide if it is right for **you**.

### For more information

Please take the time to read through this booklet and if **you** have any questions or need more information, please contact:

- **your** financial services provider.

### About QBE Australia

QBE Insurance (Australia) Limited is a member of the QBE Insurance Group (ASX: QBE). QBE Insurance Group is Australia's largest international general insurance and reinsurance group, and one of the top 25 insurers and reinsurers worldwide. The company has been operating in Australia since 1886 and continues to provide insurance solutions that are focused on the needs of policyholders.

QBE is a respect name in Australian insurance, backed by sizeable assets, and well known as a strong and financially secure organisation.

### Important Information

The information provided in this section includes high level information about this **policy** including **your** duty of disclosure, privacy, how to make a **claim**, our dispute resolution process and other relevant information. This section may also set out other information such as options in cover **you** can choose from, factors that affect the cost and any cooling off rights.

The **policy** wording section sets out the detailed terms, conditions and exclusions relating to the insurance.

If **we** issue **you** with a **policy**, **you** will be given a **schedule**. The **schedule** sets out the specific terms applicable to **your** cover and should be read together with this **policy** wording.

The **policy** wording and **schedule** form **your** legal contract with **us** so please keep them in a safe place for future reference. **You** should check the **schedule** or renewal **schedule** if **you** are issued one, when **you** receive it to ensure it accurately states what you have insured.

### Duty of disclosure

Under the *Insurance Contracts Act 1984* (Cth), **you** have a duty of disclosure. **You** are required before **you** enter into, renew, vary, extend or reinstate your **policy**, to tell **us** everything **you** know and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to **our** decision whether to insure **you**, and anyone else to be Insured under the policy, and if so, on what terms.

#### You do not have to tell us about any matter

- that diminishes the risk;
- that is of common knowledge;
- that **we** know or should know or, in the ordinary course of our business, **we** ought to know or which **we** indicate **we** do not want to know.

### If you do not tell us

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

### Privacy

When collecting and handling **your** personal information, QBE has a privacy policy which explains what sort of personal information **we** collect and hold about **you** and what **we** do with it. QBE collects personal information from or about **you** for the purpose of assessing **your** application for insurance and administering **your** policy, including any claims **you** make or claims made against **you**. QBE will only use and disclose personal information for a purpose **you** would reasonably expect. **We** will request **your** consent for any other purpose.

Without this personal information **we** may not be able to issue insurance cover, administer **your** insurance or process **your** claim. **Our** aim is to always have accurate and up-to-date information. When **you** receive a Certificate of Insurance or other document from **us**, **you** should contact **us** if the information is not correct.

QBE uses the services of a related company located in the Philippines to provide call centre sales and claims handling, accounting and administration services to QBE in Australia.

QBE may need to disclose personal information to its reinsurers (who may be located overseas), insurance intermediaries, insurance reference bureaux, credit reference agencies, QBE's advisers and those involved in the claims handling process (including assessors, investigators and other insurers), for the purposes of assisting it and the in providing relevant services and products, or for the purposes of recovery or litigation. QBE may disclose personal information to people listed as co-insured on **your** Policy and to family members or agents authorised by **you**. Computer systems and support services may be provided to QBE companies that may be located overseas. **We** may also disclose information to organisations which conduct customer service surveys on **our** behalf.

To obtain further information about **our** Privacy Policy or to request access to or correct personal information, please e-mail: [compliance.manager@qbe.com](mailto:compliance.manager@qbe.com). To make a complain e-mail: [complaints@qbe.com](mailto:complaints@qbe.com).

### **The General Insurance Code of Practice**

QBE Insurance (Australia) Limited is a signatory to the General Insurance Code of Practice.

The Code aims to:

- promote more informed relations between insurers and their customers;
- improve consumer confidence in the general insurance industry;
- provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- commit insurers and the professionals they rely upon to higher standards of customer service.

### **Dispute resolution**

**We** will do everything possible to provide a quality service to **you**. However, **we** recognise that occasionally there may be some aspect of **our** service or a decision **we** have made that **you** wish to query or draw to **our** attention.

**We** have a complaints and dispute resolution procedure which undertakes to provide an answer to **your** complaint within fifteen (15) working days.

If **you** would like to make a complaint or access **our** internal dispute resolution service please contact **your** nearest QBE office and ask to speak to a dispute resolution specialist.

## Policy Wording

The **policy** is underwritten by QBE Insurance (Australia) Limited ABN 78 003 191 035, AFS Licence No. 239545 of 82 Pitt Street, Sydney NSW 2000.

### Our agreement with you

This **policy** is a legal contract between **you** and **us**. **You** pay **us** the premium and **we** provide **you** with the cover **you** have chosen as set out in the **policy** and the **schedule**, occurring during the **period of insurance** shown on the **schedule** or any renewal period.

The limits of cover applying to the cover selected by you and the amount of any excess that applies to your **policy**, is shown on **your** schedule.

### Your Policy

**Your policy** consists of the **policy** wording in this booklet and the **schedule** **we** give **you**. Please keep them in a safe place for future reference.

Please check the **schedule** details to ensure it accurately states what **you** have insured. Be sure to check that the **limits of indemnity** and sums insured are adequate.

The 'general exclusions' and 'general conditions' apply to all sections of this **policy**.

### Paying your premium and Period of Insurance

The **policy** will provide insurance as described herein for the **period of insurance** provided the premium and other charges are paid to and accepted by the **insurer** on or before the payment date shown in the **schedule**. Taxes, levies and other relevant fiscal charges are payable in addition to the premium.

### Paying your annual premium

**You** must pay **your** annual premium by the due date to **your** financial services provider. If **your** premium is unpaid by this date or **your** payment is dishonoured this **policy** will not operate and there will be no cover.

### Claims made and notified

This **policy** operates on a 'claims made and notified' basis. This means that the **policy** covers **you** for **claims** made against **you** and notified to use during the **period of insurance**.

This **policy** does not provide cover in relation to:

- acts, errors or omissions actually or allegedly committed prior to the **retroactive date** of the **policy** (if such a date is specified);

- **claims** made after the expiry of the **period of insurance** even though the event giving rise to the **claim** may have occurred during the **period of insurance**;
- **claims** notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy;
- **claims** made, threatened or intimated against **you** prior to the commencement of the **period of insurance**;
- facts or circumstances of which **you** first became aware prior to the **period of insurance**, and which **you** ought reasonably to have known had the potential to give rise to a **claim** under this **policy**;
- **claims** arising out of circumstances noted on the proposal form for the current **period of insurance** or on any previous proposal form.

Where **you** give notice in writing to **us** of any facts that might give rise to a **claim** against **you** as soon as reasonably practical after **you** become aware of those facts but before the expiry of the **period of insurance**, **you** may have rights under section 40(3) of the *Insurance Contracts Act 1984* (Cth) to be indemnified in respect of any **claim** subsequently made against **you** arising from those facts notwithstanding that the **claim** is made after the expiry of the **period of insurance**. Any such rights arise under legislation only. The terms of the **policy** and the effect of the **policy** is that **you** are not covered for **claims** made against **you** after the expiry of the **period of insurance**.

# 1. Our agreement in general

## 1.1 Parties to this agreement

This **policy** is between the **insured** and the **insurer** as declared in the **schedule**. This document, together with its **schedule** and any attached endorsements is the **policy** which sets out this insurance. It is a legal contract so please read all of it carefully.

## 1.2 Words in bold

Words in bold typeface used in this **policy** document, other than in the headings, have specific meanings attached to them as set out in the General definitions and interpretation section of this document.

## 1.3 Policy structure

1.3.1 The **insured sections** set out the scope of main coverage and the circumstances in which the **insurer's** liability to the **insured** is limited or may be excluded. Further, each **insured section** sets out other terms and conditions. The cover by each **insured section** is only operative if stated as 'insured' in the **schedule**. Where any **schedule** heading or sub-heading states 'n/a', 'not applicable' or 'not insured' then no cover applies for that item.

1.3.2 The exclusions set out limitations that apply to all **insured sections**.

1.3.3 The following general terms apply to all **insured sections**, clauses and endorsements:

- a) claims handling terms and conditions;
- b) general terms and conditions;
- c) general definitions;

## 2. Insured Section A - Cyber, data security and multimedia cover

### 2.1 Cyber, data security and multimedia cover

The **insurer** agrees to indemnify the **insured** for liability imposed by law to pay compensatory damages or awards, including any related injunction or restraining order and claimant costs recoverable from the **insured** arising from any **claim** first made against the **insured** and during the **period of insurance** and where the **claim** arises out of any actual or alleged:

- a) failure by the **insured** or **service provider** to properly handle, manage, store, destroy or

otherwise control **personal information**, including but not limited to any form of 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;

- b) failure by the **insured** or **service provider** to properly handle, manage, store, destroy or otherwise control third party corporate information in any format provided to the **insured** including that protected under a nondisclosure agreement or similar contract with the **insured**;

- c) unintentional violation by the **insured** of any government or public authority legislation or regulation regarding privacy or data-protection.

- d) failure of the **insured** to protect against unauthorised access to, unauthorised use of, a denial of service attack by a **hacker** against, or transmission of a **computer virus** to, **information and communication assets**;

- e) unintentional transmission by the **insured** to a third-party of a **computer virus**;

- f) reliance in good faith by a third party on a **hacker's** fraudulent use of **information and communication assets** and where there was a clear intention to cause either the third party or the **insured** a loss;

- g) damage, destruction, alteration, corruption, copying, stealing or misuses by a **hacker** to **information and communication assets**;

- h) defamation or other tort related to disparagement of character, reputation or feelings of any person or organisation, including libel, slander, product disparagement, trade libel, infliction of emotional distress, malicious falsehood, outrage or outrageous conduct, breach of comparative advertising regulations, failure to attribute authorship or provide credit under any agreement to which the **insured** is a party, arising from **multimedia activities**;

- i) infringement of intellectual property rights including but not limited to copyright, design, title, slogan, trade secret, trademark, trade name, trade dress, service mark, service name, domain name or metatag, breach of moral rights, passing off, plagiarism, piracy, breach of a hold harmless or indemnity agreement specified in a written contract for the supply of **matter**, arising from **multimedia activities**;

- j) improper deep-linking, framing, web scraping, web harvesting or web data extraction.

### 2.2 Cyber, data security and multimedia cover costs and expenses

#### 2.2.1 Court attendance compensation

The **insurer** will pay compensation to the **insured**, with the prior written consent (such consent not to be unreasonably withheld) of the **insurer**, in the event that the legal advisers acting on behalf of the

**insured** require any of the **insured**, any **employees** or any other relevant party (not including expert witnesses), to attend court or any arbitration or adjudication hearing as a witness of fact in connection with a **claim** made against the **insured** for which cover is afforded under this **policy** at the following rates for each day or part thereof on which attendance is required:

a) any principal partner or director of the **insured** AUD1000;

b) any **employee** AUD500;

c) other relevant party up to AUD400.

### 2.2.2 Defence costs

Following any event which is or may be the subject of indemnity under this **insured section** the **insurer** agrees to indemnify the **insured** for **defence costs**, incurred with the written consent of the **insurer** provided that if the **limit of indemnity** under clause 2.1 is exhausted by the payment or settlement of any **claim** or loss the **insurer's** liability to pay **defence costs** in respect of that **claim** or loss shall be limited to such proportion of those **defence costs** as the **limit of indemnity** available for payment or settlement of that **claim** or loss bears to the total payment (including where applicable claimants' costs) required to dispose of that **claim** or loss.

## 2.3 Cyber, data security and multimedia cover extensions

### 2.3.1 Dishonesty of employees

The **insurer** will indemnify the **insured** against all sums which the **insured** shall become legally liable to pay as a result of any **claim** against the **insured** during the **period of insurance** when alleged in conjunction with a **claim** covered under the **insured section** arising directly or indirectly from any dishonest, fraudulent, malicious or criminal act or omission of any of the **insured's employees** excluding partners, directors or principals, but the insurance by this **policy** excludes any indemnity to the **insured's employee** committing or colluding in the dishonest act, fraud, malicious or illegal act or omission.

### 2.3.2 Financial transfer indemnification

The **insurer** agrees that if during the **period of insurance** the **insured** has a **claim** or loss under this **insured section** and has also had money, property, products, goods, services or any other financial benefit transferred, to a third party and for which the **insured** has not received any benefit and cannot recoup, the **insurer** will indemnify the **insured** to the value of the loss. Provided that the **insurer's** maximum liability will not exceed the sub-limit of indemnity stated in the **schedule** which amount is inclusive of **defence costs**, fees and expenses, and is the maximum payable for any one claim and in the aggregate during the **period of insurance**.

### 2.3.3 Public relations, crisis management, forensic and security specialist services

Following a **claim, circumstance** or loss under this **insured section**, the **insurer** will pay all reasonable costs the **insured** incurs with the **insurers** written consent for:

a) a public relations and crisis management consultant to avert or mitigate any material damage to any of the **insured's** brands and business operations;

b) a forensic consultant to establish the identity of the **hacker**;

c) a security specialist to assess the **insured's** electronic security and the costs of reasonable security improvement;

d) the temporary storage of the **insured's** electronic data at a third-party host location, if it is viewed that the **insured's** **information and communication assets** remain vulnerable to damage, destruction, alteration, corruption, copying, stealing or misuse by a **hacker**

provided that:

e) **insurer's** maximum liability will not exceed the sub-limit of indemnity stated in the **schedule** which amount is inclusive of **defence costs**, fees and expenses, and the maximum payable for any one claim and in the aggregate during the **period of insurance**;

f) the public relations and crisis management consultants shall be chosen by the **insurer** who shall take into account the nature of the **claim** or loss and the cost and quality of the services that they can deliver, unless the **insured** has reasonable cause to request a different consultant and the **insurer** and **insured** mutually agree upon such company.

### 2.3.4 Regulatory defence and penalties

Notwithstanding clause 7.1.9, the **insurer** shall pay on behalf of the **insured** those amounts which the **insured** is legally obliged to pay, including any legal and investigation costs, as a result of a civil regulatory action, **regulatory compensatory award**, civil penalty, or fines to the extent insurable by law, imposed by a government or public authority regulator against the **insured** as a result of a **claim** under this **insured section**, provided that the **insurer's** maximum liability will not exceed the sub-limit of indemnity stated in the **schedule** which amount is inclusive of **defence costs**, fees and expenses, and the maximum payable for any one claim and in the aggregate during the **period of insurance**.

### 2.3.5 Withdrawal of content

The **insurer** will indemnify the **insured** against all expenses incurred above the **excess** which the



**insured** shall become legally liable to pay as result of the withdrawal or alteration of any **matter** by order of a court as a result of or in mitigation of a claim covered under this **insured section** including as a result of a complaint made to the Advertising Standards Bureau, Telecommunications Industry Ombudsman or Australian Competition and Consumer Commission or any other official regulatory or self-regulatory body within the Australia or equivalent overseas body, but only to the extent that such expenses cannot be avoided or curtailed and providing that the **insured** in the first instance:

- a) obtains the approval of the **insurer** before incurring any cost or expense
- b) satisfies the **insurer** that such content would, if not rectified, result in damages equal to or in excess of the indemnified costs and expenses;
- c) satisfies the **insurer** that the costs and expenses incurred are necessary to successfully avoid a **claim**.

The **insurer's** maximum liability under this clause will not exceed the sub-**limit of indemnity** stated in the **schedule** which amount is inclusive of **defence costs**, fees and expenses, and the maximum payable for any one claim and in the aggregate during the **period of insurance**.

### 3. Insured section B - Data breach costs cover

#### 3.1 Data breach costs

The **insurer** agrees that if during the **period of insurance** the **insured** has a **claim, circumstance** or loss under **insured section A** the **insurer** will provide **data and privacy breach costs**. The **insurer's** maximum liability will not exceed the **limit of indemnity** stated in the **schedule** which amount is inclusive of **defence costs**, fees and expenses, and the maximum payable for any one claim and in the aggregate during the **period of insurance**.

### 4. Insured section C - Information and communication asset rectification costs cover

#### 4.1 Information and communication asset rectification costs

The **insurer** agrees that if during the **period of insurance** the **insured** has a **claim, circumstance** or loss under **insured section A** the **insurer** will pay the costs to repair, restore or replace the

affected parts of the **information and communication assets** to the same equivalent standard, condition, functionality, level of service and/or with the same content or as near as reasonably possible as immediately before the **information and communication assets** were damaged, destroyed, altered, corrupted, copied, stolen or misused by a **hacker**. The **insurer's** maximum liability will not exceed the **limit of indemnity** stated in the **schedule** which amount is inclusive of fees and expenses, and the maximum payable for any one claim and in the aggregate during the **period of insurance**.

### 5. Insured section D - Cyber business interruption cover

#### 5.1 Cyber business interruption cover

Notwithstanding clause 7.1.33 the **insurer** agrees that if during the **period of insurance** the **insured** has a **claim, circumstance** or loss under **insured section A** the **insurer** will indemnify the **insured** for loss of **business income** incurred by the **insured** during the **period of reinstatement** directly as a result of the total or partial interruption, degradation in service, or failure of **information and communication assets** provided that:

- a) the insurance by this clause excludes the **time retention** period; and
- b) the **insurer's** liability will not exceed the maximum amount specified in the **schedule** per consecutive hour that the **insured's business income** is totally or partial interrupted after the **time retention**.

### 6. Insured section E - Cyber extortion cover

#### 6.1 Cyber extortion

The **insurer** agrees to indemnify the **insured** for **cyber extortion expenses** arising from a **cyber extortion threat** during the **period of insurance** and provided that:

- a) the **insured** can demonstrate to **insurers** that the **insured** has taken all reasonable efforts to determine that the threat is genuine and not a hoax and to ensure that at least one director of the **insured** has agreed to the payment of the **ransom**;
- b) the **insurer** has provided consent to the payment of the **ransom**;
- c) the **insurer's** maximum liability will not exceed the **limit of indemnity** stated in the **schedule** which amount is inclusive of fees and expenses, and the maximum payable for any one

claim and in the aggregate during the **period of insurance**.

## 7. General exclusions

This **policy** excludes and does not cover:

### 7.1.1 Aircraft motor vehicles and watercraft

any **claim** made against the **insured** directly or indirectly based upon, attributable to, or in consequence of the ownership, lease, operation or use of any aircraft, motor vehicle or watercraft by the **insured**.

### 7.1.2 Asbestos

any **claim** made against the **insured** directly or indirectly based upon, attributable to, or in consequence of the manufacturing, mining, processing, treating, handling, installing, using, removing, transporting, selling, distributing, and/or storage of asbestos, asbestos products or any product containing asbestos.

### 7.1.3 Associated company

any **claim** loss, liability, expenses, costs or **defence costs** brought or maintained by or on behalf of:

a) any **insured** any **parent** of the **insured** or any **subsidiary**; or

b) any firm, partnership or entity in which the **insured** or any director or partner of the **insured** has a financial or executive interest;

provided that this exclusion shall not apply to such **claims** originating from an independent third party.

### 7.1.4 Betterment

solely in respect of **insured section C**, any costs in repairing, replacing or restoring **information and communication assets** to a level beyond that which existed prior to any **claim** or loss.

### 7.1.5 Bodily injury or property damage

any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising out of, or in any way involving **bodily injury** or **property damage** unless arising directly from any **claim** seeking compensatory damages for mental anguish or distress where such damages arise from **claims** covered under clause 2.1.1 h).

### 7.1.6 Deliberate or reckless acts of defamation

any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising out of any defamatory statement that was made deliberately or recklessly by the **insured**, not including amendments made to **matter** by a **hacker**.

### 7.1.7 Dishonesty

any loss, liability, expenses, costs or **defence costs** arising out of the dishonesty or fraudulent acts of any principal, partner or past or present director, officer, trustee of the **insured**.

### 7.1.8 Excess

the amount of the **excess** stated in the **schedule**.

### 7.1.9 Existing claims

a) any **claim**, loss, liability, expenses, costs or **defence costs** made, threatened or intimated against the **insured** prior to the **period of insurance**;

b) any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising out of, or in any way involving any fact or **circumstance**:

i) of which written notice has been given under any previous policy (whether insured by the **insurer** or not); or

ii) of which the **insured** first became aware prior to the **period of insurance** and which the **insured** knew or ought reasonably to have known had the potential to give rise to a **claim** or loss.

### 7.1.10 Financial services

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of any Regulated Activities as defined in the *Financial Services Reform Act 2001* as amended from time to time.

### 7.1.11 Fines and contractual penalties

any fines, penalties, liquidated damages or contractual penalties other than those that are covered under clause 2.3.4.

### 7.1.12 Game promotion, contest or lottery

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of the use or provision of any gaming, gambling or lotteries unless these form part of **business services**.

### 7.1.13 Government intervention

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of confiscation, commandeering, requisition, destruction of or damage to **information and communication assets** by order of the government or public authority.

### 7.1.14 Inaccurate pricing

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of



inaccurate, inadequate or incomplete description of the price of goods, products or services but this clause does not exclude amendments made to **matter** by a **hacker**.

#### 7.1.15 Insider act

solely in respect of **insured section E**, any **claim**, loss, liability, expenses, costs or **defence costs** arising from a fraudulent or criminal act committed by or in collusion with any principal, shareholder (beneficial or otherwise), partner, director or other officer or any **employee** of the **insured**, or any person to whom the ransom is entrusted.

#### 7.1.16 Insolvency of the insured

any **claim**, loss, liability, expenses, costs or **defence costs** arising out of or relating directly or indirectly to the insolvency or bankruptcy of the **insured**, but this exclusion shall not apply to:

- a) any **claim** in respect of monies held on behalf of third parties; or
- b) any **claim** that otherwise would be indemnified by this **policy**, but for the insolvency or bankruptcy of the **insured**.

#### 7.1.17 Legal advice

any **claim**, loss, liability, expenses, costs or **defence costs** arising out of or relating directly or indirectly from any failure of the **insured** to adhere to legal advice with regard to clearances or dissemination of **matter**.

#### 7.1.18 Legislation and regulation

any **claim**, loss, liability, expenses, costs or **defence costs** arising out of the **insured's** breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation including but not limited to:

- a) the *Superannuation Industry (Supervision) Act 1993* and any amendment thereto, or any rules or regulations promulgated thereunder;
- b) any actual or alleged violations of the *Australian Crime Commission Act 2002* and any amendments thereto, or any rules or regulations promulgated thereunder;
- c) any actual or alleged violation of any of the provisions of the *Corporations Act 2001* or any similar Federal or State law or any common law relating thereto.

#### 7.1.19 Liability arising out of employment

any **claim**, loss, liability, expenses, costs or **defence costs** arising from any liability to any **employee**, former employee or prospective employee in respect of employment-related, libel, slander, humiliation or defamation, unfair or wrongful dismissal, repudiation or breach of any

employment contract or arrangement, termination of a training contract or contract of apprenticeship, harassment, discrimination or like conduct.

#### 7.1.20 License payments

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly from any non-payment or under payment of royalties or any other payments due under a license.

#### 7.1.21 Limit of indemnity

liability in excess of the **limit of indemnity** or any applicable sub-**limit of indemnity**, whichever is the lower, as stated in the **schedule**.

#### 7.1.22 Loss of goodwill

any **claim** or loss for loss of goodwill and reputational harm, other than those claims covered under clause 2.3.3.

#### 7.1.23 Management liability

any **claim**, liability, loss or **defence costs** caused by or arising from any personal liability incurred by a director or officer of the **insured** when:

- a) acting in that capacity or managing the **insured's** business; or
- b) in breach of their fiduciary duty, other than when performing a business activity for a client; or
- c) making or issuing any statement, representation or information concerning the **insured** and the **business services** contained in any accounts, reports or financial statements

#### 7.1.24 Natural perils

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly from physical cause or natural peril, including but not limited to fire, wind, water, flood, subsidence, or earthquake, that results in the physical damage to property including to **information and communication assets**.

#### 7.1.25 Nuclear risks

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly from:

- a) loss or destruction of or damage to any property whatsoever, or any loss or expense whatsoever resulting or arising therefrom, or any consequential loss;
- b) any legal liability of whatsoever nature;
- c) for any sum which the **insured** becomes legally liable to pay or any loss or expense;

directly or indirectly caused by, or contributed to, or arising from, or in the case of (c) above, attributable to:

i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;

ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

#### 7.1.26 Other insurance

where the **insured** is entitled to indemnity under any other policy except in respect of any excess beyond the amount which would have been payable under such policy had this **policy** not been effected.

#### 7.1.27 Patent

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of the infringement of any patent.

#### 7.1.28 Products liability

any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising out of, or in any way involving goods or products (being tangible property or merchandise) sold, supplied, repaired, altered, treated, manufactured, installed or maintained by the **insured** or on behalf of the **insured**, other than those **claims** covered under an **insured section** and arising from the maintenance of **information and communication assets**.

#### 7.1.29 Pollution

any **claims**, loss, liability, expenses, costs or **defence costs**:

a) for **bodily injury** sickness disease or death or loss, damage or loss of use of property directly or indirectly caused by seepage, **pollution** or contamination; and/or

b) the cost of removing nullifying or cleaning-up seeping, polluting or contaminating substances;

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

d) directly or indirectly arising out of noise, electromagnetic fields or radio waves.

#### 7.1.30 Punitive, multiple or exemplary damages

any punitive, multiple or exemplary damages where such have been identified separately within any award of any court or tribunal.

#### 7.1.31 Reports and accounts

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of breach of any obligation owed by the **insured**

regarding any statement or representation (express or implied) contained in the **insured's** report and accounts, reports or financial statements, or concerning the insured's financial viability.

#### 7.1.32 Retroactive date

any **claim**, loss, liability, expenses, costs or **defence costs** arising from any act committed, or alleged to have been committed, prior to the **retroactive date**.

#### 7.1.33 Self-replicating computer virus

any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising from any **computer virus** which indiscriminately replicates itself and automatically disseminates on a global or national scale and/or was not specifically targeted at **information and communication assets**.

#### 7.1.34 Territorial limits

any **claim**, liability, loss or **defence costs** arising from or alleged to have been caused by or sustained from an act committed outside the **territorial limits** and/or from any **claim** brought in a court outside the **jurisdiction**.

#### 7.1.35 Trading loss and liabilities

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly from:

a) the **insured's** lost profit, mark-up or liability for GST or its equivalent;

b) the **insured's** trading loss or trading liability including those arising from the loss of any client, account or business,

other than those claims covered under **insured section D**.

#### 7.1.36 Uninsured sections

any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising under an uninsured **insured section** of this **policy**.

#### 7.1.37 Unlicensed software

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of the **insured's** knowing use of illegal or unlicensed programs that are in violation of software protection laws.

#### 7.1.38 Utility service provider

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of the failure of the service provided by any internet service provider, telecommunications provider or other utility provider but this exclusion shall not apply where these services form part of the **business services**.

#### 7.1.39 USA/Canadian jurisdiction

any **claim**, loss, liability, expenses, costs or **defence costs**, in respect of any judgment, award, payment, **defence costs** or settlement delivered, made or incurred within countries which operate under the laws of the United States of America, its territories and possessions and/or Canada (or to any order made anywhere in the world to enforce such judgment, award, payment, **defence costs** or settlement either in whole or in part).

#### 7.1.40 Wear and tear

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of wear and tear of **information and communication assets**.

#### 7.1.41 War and terrorism

any **claim**, loss, liability, expenses, costs or **defence costs** of whatsoever nature directly or indirectly caused by, resulting from or in connection with **war** or **terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the **claim**.

This exclusion also excludes any **claim**, liability costs, **defence costs** or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any of the above.

Except an unlawful act of a **hacker** that damages **information and communication assets** for the sole purpose of exacting malice against or commercial gain from the **insured** shall not be regarded as an act of **terrorism**.

## 8. Duties in the event of a claim or potential claim

Except for clause 8.1.1 b), the due observance and fulfilment of the provisions of 'claim notification, **insured's** duties and claim procedure' are a condition precedent to the **insurer's** liability for any claim under this **policy**. The Observance clause sets out the consequences of a failure to comply with conditions precedent or **policy** provisions such as the said clauses.

### 8.1 Claims notification

8.1.1 In respect of **insured section A** the **insured** will give notice to the **insurer**:

a) as soon as reasonably practical of any **claim**, but in any event not later than fourteen (14) days from receipt of any **claim**, any notice of an intention to make a **claim**, and for the avoidance of doubt within the **period of insurance**;

b) as soon as reasonably practical of any **circumstance**, but in any event before expiry of the **period of insurance**;

with full particulars thereof. Provided always that such written notice is given to the **insurer** during the same period of insurance or (if the insured does not renew this insurance with the **insurer**) within thirty (30) days after its expiry.

8.1.2 In respect of **insured section B** the **insured** will give notice to the **insurer** and **cyber and data security representative** promptly after the **insured** first learns of the failure by the **insured** or **service provider** to properly handle, manage, store, destroy or otherwise control **personal information** or third-party corporate information, and within the **period of insurance**.

8.1.3 In respect of **insured section C** the **insured** will give notice to the **insurer** and **cyber and data security representative** promptly after the **insured** first learns of any damage, destruction, alteration, corruption, copying, stealing or misuses by a **hacker to information and communication assets**, and within the **period of insurance**.

8.1.4 In respect of **insured section D** the **insured** will give notice to the **insurer** and **cyber and data security representative** promptly after the **insured** first learns of:

a) any damage, destruction, alteration, corruption, copying, stealing or misuses by a **hacker to information and communication assets**, and within the **period of insurance**; and / or

b) the total or partial interruption, degradation in service, or failure of **information and communication assets**, during the **period of insurance**.

The calculation of the **insured's** losses under **insured section D** shall be based on an analysis of the revenues and costs generated during each month of the twelve months prior to the loss occurring (as recorded in the **insured's** accounts) and will also take into account the reasonable projection of future profitability or otherwise had no loss occurred and will include all material changes in market conditions which would affect the future profits generated.

Requests made by the **insured** for indemnity by the **insurer** shall be accompanied by a computation of the loss. This shall set out in detail how the loss has been calculated and what assumptions have been made. The **insured** shall produce any documentary evidence, including any applicable reports, books of accounts, bills, invoices and other vouchers and copies of the such which the **insurer** may require, and the **insured** shall afford them every assistance in their investigations.

Any **claims** payment under **insured section D** will, where applicable, be reduced by the extent to which the **insured**:

a) could have and/or does use damaged or undamaged **information and communication assets**; or

b) makes use of available stock, merchandise or other data; or

c) uses substitute facilities, equipment or personnel.

8.1.5 In respect of insured section E the insured will give notice to the insurer and cyber and data security representative promptly after a cyber extortion threat. In addition the insured must inform or allow the insurer or cyber and data security representative to inform the appropriate law enforcement authorities of the cyber extortion threat.

## 8.2 Insured's duties

For each and every claim the **insured** and any person acting on behalf of the **insured** must:

a) not admit responsibility, make an offer or promise, nor offer payment or indemnity without the written consent of the **insurer**; and

b) not incur any expense without the consent of the **insurer** except at the **insured's** own cost; and

c) always act honestly, there being no right to any form of payment or indemnity under the **policy** in the event that any claim is made fraudulently; and

d) give all such information or assistance possible and forward all documents, to enable the **insurer** and/or the **cyber and data security representative** to investigate, settle or resist any claim as the **insurer** may require; and

e) provide such proofs and information with respect to the claim as may reasonably be required, together with (if demanded) a statutory declaration of the truth of the claim and any matters connected therewith; and

f) not destroy evidence, supporting information or documentation without the **insurer's** prior consent; nor destroy any plant or other property relating to an occurrence, loss or suit that may give rise to a claim under this **policy**.

## 8.3 Claim Procedure

For each and every claim the **insured** and any person acting on behalf of the **insured** must:

a) immediately send the **insurer** and/or **cyber and data security representative** copies of any request, demand, order, notice, summons, legal paper and all documents relating thereto, in connection with an insured event as soon as received by the **insured**. In addition, the **insured** must co-operate with the **insurer**, **cyber and data security representative** and/or any other

appointed agents of the **insurer** to allow them to comply with such relevant practice directions and pre-action protocols as may be issued and approved from time to time by the head of civil justice; and

b) authorise the **insurer** to obtain medical records or other pertinent information upon request, in the event of an insured event involving **bodily injury**;

c) prove, if it is alleged that an event is not covered or that the indemnity is otherwise limited being **war** or an act of terrorism that the said exclusion or **limit of indemnity** does not apply, it being understood and agreed that any portion of an exclusion or **limit of indemnity** being found invalid, inapplicable or unenforceable will not in any way render the remainder of the exclusion or limit invalid, inapplicable or unenforceable.

## Reporting and notice

You will give to us written notice as soon as practicable of any claim made against you provided such written notice is given to us during the period of insurance in which the claim is made.

Notice of any claim must be given to us in writing and delivered to:

The Service Manager

Professional Liability Claims Department

QBE Insurance (Australia) Ltd

60 Station Street, Parramatta NSW 2150

## 8.4 Insurer's rights

8.4.1 Claims will be handled and administered by the **insurer** or such parties as the **insurer** in its absolute discretion may determine.

8.4.2 The **insurer** will be under no obligation to investigate any potential claims or to undertake the conduct of any proceedings in connection with such claims and will be at liberty in all cases to leave the conduct of such proceedings wholly to the **insured** upon such conditions as regards the payment of opponents' costs and with such liberty to bind the **insurer** by compromise as the **insurer** may in its absolute discretion determine.

8.4.3 The **insurer** may at any time pay the **limit of indemnity** (after deduction of any sums already paid) or such lesser sum for which the claim can be settled and will relinquish the conduct and control of the claim and be under no further liability except (where payable under the relevant **insured section**) for payment of **costs and expenses** incurred prior to the date of payment.

8.4.4 The **insurer** may at any time apply to the **insured** for reimbursement for payments made



under **insured sections A - E** but which do not exceed the **excess**.

### 8.5 Disputed defence or appeal

If any dispute arises between the **insured** and **insurer** as to whether a prosecution should be defended or an appeal made, such dispute will be referred to a Queen's Counsel to be mutually agreed between the parties (or in default of agreement to be nominated by the President of the Law Society) whose decision will be final. In the event of conflict between any person falling within the definition of **insured** separate representation will be arranged for each party.

### 8.6 Subrogation

8.6.1 For each and every claim the **insured** and any person acting on behalf of the **insured** must not waive any rights of recourse or recovery against any other person, including any **service provider**, relating to an occurrence, loss or suit that may give rise to a claim under this insurance and must assist the **insurer** in all respects in exercising such rights if requested to do so by the **insurer**.

8.6.2 The **insured** will at the request and expense of the **insurer** do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the **insurer** for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other parties including any **service provider** to which the **insurer** will be or would become entitled or subrogated upon its paying for or the making good of any damage under this section, whether such acts and things will be or become necessary or required before or after their indemnification by the **insurer**.

8.6.3 In the event of any payment under this insurance, the **insurer** will act in concert with all other interested persons (including the **insured**) concerned in the exercise of any rights of recovery.

8.6.4 The apportioning of any amounts which may be so recovered will follow the principle that any interested persons (including the **insured**) that will have paid an amount over and above any payment hereunder, will first be reimbursed up to the amount paid by them; the **insurer** is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interested persons (including the **insured**) to whom this coverage is in excess shall be entitled to claim the residue, if any.

8.6.5 Expenses necessary to the recovery of any such amounts will be apportioned between the interested parties concerned, in the ratio of their respective recoveries as finally settled.

### 8.7 Waiver of subrogation against employees

The **insurer** agrees that it shall not exercise any subrogation rights against an **employee** of the **insured** unless the claim has been brought about or

contributed to by the dishonest fraudulent criminal or malicious act or omission of the **employee**.

## 9. General terms and conditions

### 9.1 Applicable law

This policy will be governed by and interpreted in accordance with the laws of Australia and the jurisdiction of the court in the state where this policy was issued.

### 9.2 Assignment

Assignment of interest under this **policy** will not bind the **insurer** unless and until the **insurer's** written consent is endorsed hereon.

### 9.3 Cancellation

How the **insured** may cancel this **policy**

- the **insured** may cancel this **policy** at any time by telling the insurer in writing that they want to cancel it
- Where the **insured** involves more than one person, the insurer will only cancel the **policy** when a written agreement to cancel the **policy** is received from all persons named as the **insured**.

How the **insurer** may cancel the **policy**

- The **insurer** may cancel this **policy** in any circumstances permitted by law (e.g. failure to pay the premium by the due date) by informing the **insured** in writing
- The **insurer** will give notice by sending it to the **insured's** address (including an electronic address) last known to them.

Where the **insured** has paid the premium in advance of the date they wish to cancel from, the **insurer** will refund the proportion of the premium for the remaining period of insurance. Unless directed otherwise by all **insured**, the refund will be made payable to all **insured**,

### 9.4 Confidentiality

The **insured** will not disclose the terms, conditions, exclusions, **limit of indemnity** of this **policy** or the amount of the premium paid to any third party except to the extent that they are required by law to do so or the **insurer** consents, in writing, to such disclosure.

### 9.5 Document management

The **insurer** may hold documents relating to this insurance and any claims under it 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.

## 9.6 Fraud

9.6.1 If the claim or any part of a claim is in any respect fraudulent or if any fraudulent means or devices are used by the **insured** or anyone acting on their behalf to obtain any benefit under this **policy**; or

9.6.2 If any liability, loss, destruction or **damage** is occasioned by wilful act or with the connivance of the **insured**;

then there will be no rights to any form of payment or indemnity under this **policy**. Further, any claim paid to the **insured** where there has been any fraudulent means or device must be repaid to the **insurer**.

## 9.7 Inspection and audit

The **insurer, cyber and data security representative** or any other representative as the **insurer** may designate, will be permitted but not obligated to inspect the **insured's** property and operations, including **information and communication assets**, at any time given reasonable notice. Neither the **insurer's** right to make inspections nor the making thereof nor any report thereon will constitute an undertaking on behalf of or for the benefit of the **insured** or others, to determine or warrant that such property or operations, including **information and communication assets**, are safe or fit for purpose.

## 9.8 Material alteration and disclosure

9.8.1 All information supplied by the **insured** in connection with the application for insurance whether supplied by or on behalf of the **insured** will be incorporated into and forms the basis of the **policy**. It shall be a condition of the **policy** that all such information is true so far as is within the **insured's** knowledge or could, with reasonable diligence, have been ascertained.

9.8.2 This **policy** shall be voidable in the event of misrepresentation and/or non-disclosure of any material particular.

9.8.3 The **insured** shall give notice to the **insurer** of any material change or change in circumstances affecting the nature of the **business services** offered by the **insured** and until the **insurer** shall have agreed in writing to accept the altered risk the **insurer** shall not provide an indemnity in respect of liability arising from such altered circumstances.

9.8.4 The **insured** shall give to the **insurer** written notice as soon as practicable of any material alteration to the risk during the **period of insurance** including but not limited to:

a) the **insured** going into voluntary bankruptcy, receivership or liquidation or the **insured** failing to pay debts or breaching any other obligation giving

rise to the appointment of a receiver or bankruptcy or winding-up proceedings;

b) any **take-over or merger**.

Where such notice is given or where there is material alteration to the risk we will be entitled to cancel this Policy in accordance with the *Insurance Contracts Act 1984*.

## 9.9 Minimisation of risk

The **insured** will take all reasonable steps at its own expense to prevent an insured event arising or continuing and to minimise any **claims** which arise or may arise from an insured event, including but not limited to:

a) having anti-virus software and anti-spyware operating on **information and communication assets** which is running, correctly configured and regularly or automatically updated;

b) having a fire wall or similar configured device to control access to **information and communication assets**;

c) encrypting and controlling the access of all **information and communication assets** including but not limited to external devices and plug-in devices networked to **information and communication assets**;

d) controlling unauthorised access to **information and communication assets** by correctly configuring its wireless network;

e) changing all passwords on **information and communication assets** at least every 60 days and cancel any username, password or other security protection after it knew or had reasonable grounds to suspect that it had been available to any unauthorised person;

f) taking regular back-up copies of any data, file or programme;

g) having an operational system for logging and monitoring user activity on **information and communication assets**;

h) updating **information and communication assets** with new protection patches issued by the original system or software manufacturer or supplier;

i) keeping up to date with and implementing all the latest requirements of data protection legislation or regulation.

## 9.10 Observance

9.10.1 The due observance and fulfilment of the provisions of this **policy** insofar as they may relate to anything to be done or complied with by the **insured**, and are not described in the **policy** as conditions precedent, will be a condition of this **policy**. Any waiver by the **insurer** of any provision



will not prevent the **insurer** from relying on such term or condition or condition precedent in the future.

9.10.2 In the event of a breach of any condition in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce **claims** connected with the breach providing the **insurer** can demonstrate some prejudice.

9.10.3 In the event of a breach of any condition precedent in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce **claims** connected with the breach, and continue the **policy** on such terms as the **insurer** may determine and if any payment on account of any such **claim** has already been made the **insured** will repay forthwith all payments on account to the **insurer**.

### 9.11 Premium adjustment

Where the premium in whole or part is provisionally based on estimates provided by the **insured**, the **insured** will keep accurate records and declare such information as the **insurer** requires within three (3) months of the expiry of the **period of insurance**. The premium will then be adjusted and any difference paid by or allowed to the **insured** as the case may be but subject to any minimum premium that may apply. The **insurer** reserves the right to request that the **insured** supplies an auditor's certificate with such calculations as are subject to adjustment attesting the accuracy thereof.

### 9.12 Representation

Any person falling within the definition of the **insured** agrees that the business is their agent for the purpose of giving and receiving of any notices from the **insurer** or their representatives including any notice of cancellation. The payment to the **insured** of any return premium that may be payable under this **policy** will satisfy the **insurer's** obligations to return premium to the business.

### 9.13 Sanction limitation and exclusion

The **insurer** shall not provide cover nor be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the **insurer** or any member of the **insurer's** group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

### 9.14 Subscribing insurer

The **insurers'** obligations under this **policy** are several and not joint and are limited solely to the extent of their individual subscriptions. The **insurers** are not responsible for the subscription of

any co-subscribing **insurer** who for any reason does not satisfy all or part of its obligations.

## 10. General definitions and interpretation

The following words will have the same meaning attached each time they appear in this **policy** in **bold** type face, whether with a capital first letter or not.

Where the context so admits or requires, words importing the singular will include the plural and vice versa and words importing the masculine will import the feminine and the neuter. References to 'a person' will be construed so as to include any individual, company, partnership, or any other legal entity. References to a statute or regulation will be construed to include all its amendments or replacements. All headings within the **policy** are included for convenience only and will not form part of this **policy**.

### 10.1 Business income

Business income means the amount of net income (net profit or loss before income taxes) which would have been earned or incurred after the **time retention** had no loss occurred. Business income will be determined in accordance with clause 8.1.4.

### 10.2 Business Services

Business services mean the performance by the **insured** on those services specified in the **schedule** including but not limited to the provision of **multimedia activities**.

### 10.3 Circumstance

Circumstance means an incident, occurrence, dispute, fact, matter, act or omission that could give rise to a **claim**.

### 10.4 Claim

Claim means:

10.4.1 the receipt by the **insured** of any written notice of demand for compensation made by a third party against the **insured**;

10.4.2 any writ, statement of claim, claim form, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the **insured**;

10.4.3 any notice of intention in writing to commence legal proceedings against the **insured**.

## 10.5 Computer Virus

Computer virus means any computer program, including but not limited to, any file virus, boot sector virus, macro virus, hostile applet, Trojan horse program, java virus, ActiveX virus or other executable program which contains instructions to initiate an event on the infected computer, causing modification of or damage to data, memory or data media or otherwise adversely affecting the operation of any information and communications technology system.

## 10.6 Cyber and data security representative

Cyber and data security representative means the party specified as cyber and data security representative in the **schedule**.

## 10.7 Cyber extortion expenses

Cyber extortion expenses mean reasonable and necessary expenses incurred by the **insured** including the value of any **ransom** paid by the **insured** for the purpose of terminating a **cyber extortion threat**.

## 10.8 Cyber extortion threat

Cyber extortion threat means threat from a **hacker**:

10.8.1 to damage, destroy, alter, corrupt, copy, steal or misuse **information and communication assets** including by introducing a computer virus, worm, logic bomb or Trojan horse;

10.8.2 to cause a failure of the security protecting **information and communication assets**;

10.8.3 to attack **information and communication assets** in order to restrict or prevent access to **information and communication assets** by authorised persons or entities;

10.8.4 to divulge **information and communication assets** into the public domain which will cause commercial and financial harm;

10.8.5 to fraudulently use **information and communication assets** to cause a loss to either a third-party or the **insured**.

## 10.9 Data and privacy breach costs

Data and privacy breach costs means those reasonable and necessary expenses incurred by the **insured** or which the **insured** becomes legally obliged to pay:

10.9.1 to comply with **data breach law**, including but not limited to consumer notification provisions;

10.9.2 for credit monitoring services following a failure to comply with **data breach law**, but only where a wrongful disclosure of **personal information** has occurred and could result in the opening of an unauthorised line of credit or other

financial or insurance account by a unauthorised source, or where compulsory under **data breach law**.

10.9.3 In respect of a) and b) above **data and privacy breach costs** include but are not limited to:

- i) the legal fees incurred to identify notification obligation and draft notification communications;
- ii) the costs to draft, send and administer notification communications;
- iii) the costs of call centre services to respond to enquiries and queries following a notification communication;
- iv) the cost of a third-party credit specialist to offer credit monitoring services to those individuals whose **personal information** was disclosed.

## 10.10 Data breach law

Data breach law means the following, as well as similar statutes and regulations within the **jurisdiction**, as they currently exist and as amended and replaced from time to time, associated with the confidentiality, access, control and use of **personal information** including, but not limited to; The *Privacy Act 1988* (Cth), Australia Privacy Principles or other Legislation; all published guidance by the Office of the Australian Information Commissioner and similar privacy laws in states and territories of Australia and worldwide.

## 10.11 Defence cost(s)

Defence cost(s) mean all legal costs and expenses incurred with the prior written and continuing consent of the **insurer** (such consent not to be unreasonably withheld or unreasonably delayed or unreasonably withdrawn) in the investigation, defence or settlement of any **claim** and/or **circumstance(s)**. It does not include the **insured's** own costs and expenses.

## 10.12 Employee

Employee means any person including trainees and freelance consultants acting under a contract of service with the **insured** in respect of **business services**.

## 10.13 Excess

The **limit of indemnity** is additional to the excess and excess means the first amount specified in the **schedule** payable by the **insured** in respect of each and every **claim**, **series of claims** or **circumstance** as ascertained after the application of all other terms and conditions of this insurance. The **excess** will be applied to **defence costs**, fees and expenses (unless expressly stated otherwise in the **schedule**).

## 10.14 Hacker

Hacker means anyone who specifically and maliciously targets the **insured** and gains unauthorised access to **information and communication assets** by circumventing electronically the security system in place to protect against such unauthorised access. Hacker will also include anyone who threatens to specifically and maliciously target the **insured** and gain unauthorised access to **information and communication assets**. Hacker does not include any principal, shareholder, partner, director or other officer of the **insured**.

## 10.15 Information and communication assets

Information and communication assets means the **insured's** computer and telecommunication system, including but not limited to the **insured's** email system, encrypted electronic signature, encrypted electronic certificate, website, intranet, network, software, hardware, firmware, program or any data held electronically.

## 10.16 Insured/You/Your

Insured means:

10.16.1 the insured named in the **schedule**.

10.16.2 the partners, directors, members and **employees** of the business during the **period of insurance**;

10.16.3 former partners and/or former directors and/or former members of the business;

10.16.4 in respect of the **business services** undertaken on behalf of the business only those persons named as consultants or former consultants in the **proposal**;

10.16.5 any retired partner, director or member of the business remaining as a consultant to the business;

10.16.6 the estate, heirs and executors and/or legal/personal representatives of those parties mentioned in above in the event of their death, incapacity, insolvency or bankruptcy for legal liabilities incurred due to any act, error or omission of such deceased, incompetent or bankrupt person.

## 10.17 Insured section

Insured section means all or any individually lettered sections of this **policy** that forms part of the insurance contract but only if stated as 'insured' in the **schedule**.

## 10.18 Insurer/We/Us

Insurer means QBE Insurance (Australia) Limited ABN 78 003 191 035, AFS Licence No. 239545.

## 10.19 Jurisdiction

Jurisdiction means the jurisdiction of Australia, its states and territories.

## 10.20 Limit of indemnity

10.20.1 Limit of indemnity means the amount specified in the **schedule** which shall be maximum amount payable by the **insurer** in the aggregate during any one **period of insurance** inclusive of **defence costs**, fees and expenses for claims under the **policy** (unless expressly provided otherwise in the **schedule**).

10.20.2 For the avoidance of doubt the limit of indemnity is the maximum payable by the **insurer** in respect of any one **claim** regardless of the number of insured parties, persons or organisations bringing **claims** against the **insured** or **series of claims** against the **insured**, or claims made by the **insured** under the **policy**.

10.20.3 Where a limit of indemnity is stated as in the aggregate, that aggregate is the maximum the **insurer** will pay for all insured events during the **period of insurance**.

10.20.4 Where a **claim** or **series of claims** can be brought under more than one (1) **insured section** of this **policy**, the **insured** is free to choose the **insured section** that will apply and the applicable limit of indemnity as stated in the **schedule** shall be the maximum amount payable by the **insurer** under this **policy**.

10.20.5 Any sub-limit of indemnity stated in the **schedule** applies as if it was the limit of indemnity for the claims specified in the **schedule** for that sub-limit of indemnity and is deemed to be part of and not in addition to the limit of indemnity specified in the **schedule**.

## 10.21 Matter

Matter means any data, text, sounds, images or similar content disseminated, including but not limited to the content of the **insured's** email, intranet, extranet, website, bulletin board, chat room or other on-line discussion or information forum. Matter will include any alteration or addition made by a **hacker**.

## 10.22 Multimedia activities

Multimedia activities mean the publishing, dissemination, releasing, gathering, transmission, production, webcasting or other distribution of **matter** by the **insured**.

## 10.23 Parent

Parent means a company which by itself, or in concert with other companies with the same majority ownership or control as itself:

10.23.1 controls the composition of the board of directors, of the **insured**; or

10.23.2 controls more than half the voting power of the **insured**; or

10.23.3 holds more than half of the issued share capital of the **insured**.

#### 10.24 Period of insurance

Period of insurance means the period shown as such on the **schedule**, with times taken as local Standard Time.

#### 10.25 Period of reinstatement

Period of reinstatement means the number of hours that elapse immediately after the total or partial interruption, degradation in service, or failure of **information and communication assets** began, and ends on the earlier of either:

10.25.1 the time when the **insurer** is satisfied **information and communication assets** are repaired, restored and/or replaced to the same equivalent standard, condition, functionality, level of service and/or with the same content, or as near as reasonably possible as immediately before the total or partial interruption, degradation in service, or failure of **information and communication assets** began, or;

10.25.2 one hundred and sixty eight (168) hours after the **time retention**.

#### 10.26 Personal information

Personal information means any information from which an individual may be uniquely and reliably identified or contacted, including an individual's name, telephone number, tax file number, medical data, drivers licence number, bank or building society account number, credit card number, debit card number, access code or password that would permit access to that individuals financial account.

#### 10.27 Policy

Policy means this document, the **schedule** (including any **schedules** issued in substitution) and any endorsements attaching to this document or the **schedule** that will be considered part of the legal contract and any word or expression in bold type face on any of these documents will bear the specific meaning stated in these definitions.

#### 10.28 Policy limit of liability

Policy limit of liability means the amount stated in the **schedule** which is the maximum amount of the **insurer's** liability under any one and all **insured sections** for any one **period of insurance**.

#### 10.29 Pollutant

Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste is deemed to include materials to be recycled, reconditioned or reclaimed.

#### 10.30 Pollution

Pollution means:

10.30.1 the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time;

10.30.2 any cost, expense, claim or suit arising out of any request, demand or order as a result of actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time that the **insured** or any other insured party test for, monitor, clean up, remove, contain, treat, detoxify, or neutralise or in any way respond to, or assess the effects of **pollutants**.

#### 10.31 Property damage

Property damage means physical loss, destruction or damage of tangible property including the loss of use thereof.

#### 10.32 Proposal

Proposal means any information supplied by or on behalf of the **insured** in written or electronic format, deemed to be a completed proposal form, application form, medical questionnaire including in each case attachments thereto and other relevant information that the **insurer** may require.

#### 10.33 Ransom

Ransom means any money, products, goods, services or property of the **insured**.

#### 10.34 Regulatory compensatory award

Regulatory compensatory award means a sum of money which the **insured** is legally obliged to pay as an award or fund for the affected individuals following a regulators monetary award to a third party. This does not include any criminal penalty or fine.

#### 10.35 Retroactive date

Retroactive date means the date (if any) stated in the **schedule**.

10.35.1 Unlimited retroactive cover – where no retroactive date is specified in the **schedule**, coverage under this **policy** shall be in respect of acts, errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed or alleged to have been committed;

10.35.2 Limited retroactive cover – where a retroactive date is specified in the **schedule**, then coverage under this **policy** shall only be in respect of acts, errors or omissions first committed or alleged to have been first committed after the retroactive date;

### 10.36 Schedule

Schedule means the document titled schedule that includes the name and address of the **insured**, the premium and other variables to this **policy** (including endorsement clauses) and is incorporated in this **policy** and accepted by the **insured**. Schedules may be re-issued from time to time where each successor overrides the earlier document.

### 10.37 Series of claims

Series of claims means all **claims**, loss, liability, expenses, and costs resulting from:

10.37.1 one and the same act error or omission; or

10.37.2 a series of acts, errors or omissions arising out of or attributable to the same originating cause, source or event; or

10.37.3 the acts, errors or omissions of one person or persons acting together or in which such person or persons is/are concerned or implicated; shall jointly constitute one claim under this **policy**, and only one **excess** shall be applicable in respect of such claim.

### 10.38 Service provider

Service provider means a business the **insured** does not own, operate, or control, but that the **insured** hires for a fee under a written contract written contract with the **insured** to perform **business services** on behalf of the **insured**.

### 10.39 Subsidiary

Subsidiary means any company in respect of which the **insured** or the **parent** (either directly or indirectly through one or more of its subsidiary companies):

10.39.1 controls the composition of the board of directors; or

10.39.2 controls more than half the voting power; or

10.39.3 holds more than half of the issued share capital.

### 10.40 Take-over or merger

Take-over or merger means any sale of the **insured** named in the **schedule** or its merger with or acquisition by another entity such that the **insured** is not the surviving entity and no longer:

10.40.1 controls the composition of the board of directors; or

10.40.2 controls more than half the voting power; or

10.40.3 holds more than half of the issued share capital, and includes, in the case of an **insured** which is a partnership, a merger with another partnership or the appointment of new partners (other than from existing **employees** of the partnership **insured**) such that the number of partners in the partnership immediately after such merger or appointment(s) is more than two hundred percent (200%) of the number of partners in the partnership Insured immediately before such merger or appointment(s).

### 10.41 Territorial limit

Territorial limit means worldwide excluding USA/Canada.

### 10.42 Terrorism

Terrorism means an activity that involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure, or a threat thereof; and appears to be intended to:

10.42.1 intimidate or coerce a civilian population, or

10.42.2 disrupt any segment of the economy of a government de jure or de facto, state, or country, or

10.42.3 overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion, or

10.42.4 affect the conduct or policy of any government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.

### 10.43 Time retention

10.43.1 Time retention means the number of hours specified in the schedule that must elapse before the recovery of **business income** can be considered;

10.43.2 The time retention will only start to run from the time the **insured** notifies the **insurer** or **cyber and data security representative** of an insured or possible insured event.

### 10.44 War

War means war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power or confiscation by order of any public authority or government de jure or de facto or martial law but not including **terrorism**.