

BROOKLYN IT PTY LTD

Combined Information Technology and Telecommunications Legal Liability Insurance Policy

Note: This Policy provides cover for Professional Indemnity and Public and Products Liability for the Australian Information Technology and Telecommunications Industry. Please read all terms and conditions carefully to ensure you understand the intent of the coverage provided. If you are unsure as to the intent of any section of this Policy contact your broker or Us in order to clarify the intent.

1. Introduction

Welcome to the Allianz Combined Information Technology and Telecommunications Legal Liability Insurance Policy for the Australian Information and Telecommunications Industry which sets out details of the cover We provide.

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

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

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

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

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

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

2. Your Duty of Disclosure

You have a duty to tell Us before the Policy is entered into, every matter known to You which:

- You know, or
- a reasonable person in the circumstances could be expected to know, is relevant to Our decision whether to insure You and whether any special conditions need to apply to Your Policy.

This duty applies when You renew, extend, vary or reinstate the Policy.

2.1 What don't You need to tell Us?

You do not need to tell Us about any matter:

- that diminishes Our risk;
- that is of common knowledge;
- that We know or should know as an insurer; or
- that We tell You We do not need to know.

2.2 Who must tell Us?

Everyone who is insured under the Policy must answer the questions in this way.

2.3 What happens if You or they do not comply with this duty?

If You or they do not answer the questions in this way, We may cancel the Policy or reduce the amount We pay if You make a claim. If fraud is involved, We may treat the Policy as if it never existed, and pay nothing.

3. Privacy Act 1988 – Information

We collect Your personal information directly from You where reasonably practicable or if not, from other sources. We collect it to provide our various services and products (e.g. to market, arrange and administer insurance and to handle and settle claims) and to conduct market or customer research. We also use it to develop and identify services of Our related companies and alliance partners that may interest You (but You can opt out of this by calling Allianz Direct Marketing Privacy Service Line - Freecall 1800 000 284 EST 8am-6pm, Monday to Friday or indicate Your decision in the appropriate area of the Privacy section of Our website at www.allianz.com.au). If You do not provide the information We require We may not be able to provide You with this service.

We disclose information to third parties who assist Us in the above. (e.g. insurers, insurance intermediaries, insurance reference bureaus, related companies, Our advisers, persons involved in claims, external claims data collectors and verifiers, Your agents and other persons where required by law. We prohibit them from using it for purposes other than those We supplied it for. Where You provide Us with information about another person for the above purposes, You must tell Us if You haven't got their consent to this. If You wish to gain access to Your personal information (including to correct or update it), have a complaint about a breach of Your privacy or You have any query on how Your personal information is collected or used, or any other query relating to Privacy, contact Us on 1300 360 529 EST 9am-5pm, Monday to Friday.

4. General Insurance Code of Practice

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

It:

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

4.1 Dispute resolution process –

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 Our nearest office and ask to speak to a dispute resolution specialist

4.2 Contact for assistance or confirmation of cover

If You need to confirm any Policy transaction or clarify any of the information contained in this Policy Document or if You have any other queries, please contact any of Our offices or refer to Our website at www.allianz.com.au.

4.3 If this insurance has been issued through an insurance intermediary

If Your Policy has been arranged through Our agent, or a broker who is acting under an agency arrangement such as a binder with Us, then they are acting as Our agent and not as Your agent. They will tell You when this is the case.

If Your Policy has been arranged by a broker, other than a broker acting under such an agency arrangement with Us, then the broker is acting as Your agent

Where this Policy has been arranged through an intermediary a commission maybe payable by Us to them for arranging the insurance.

5. Claims Made – Section 2

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

The Policy does not provide cover for:

- Wrongful Acts that occurred before the Policy's Retroactive Date specified in the Schedule;
- Claims made after the Period of Insurance expires even where the event giving rise to the Claim occurred during the Period of Insurance;

- Claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy;

- Claims made or threatened against You prior to the commencement of the Period of Insurance;

- Claims arising out of any facts or circumstances which were:

known to You prior to the inception of the Period of Insurance and which might give rise to a Claim, or Defence Costs and Expenses; or

notified under any insurance that was in force prior to the inception of the Period of Insurance;

- Claims arising out of circumstances noted on the Proposal form for the current Period of Insurance or on any previous proposal form.

Where you give notice in writing to us of any facts that might give rise to a Claim against You as soon as reasonably practicable after you became aware of those facts but before the expiry of the Period of Insurance, you may have rights under Section 40 (3) of the

Insurance Contracts Act 1984 to be indemnified in respect of any Claim subsequently made against You arising from those facts notwithstanding that the Claim is made after the expiry of the Period of Insurance. Any such rights arise under the legislation only. The terms of the Policy and the effect of the Policy is that you are not covered for Claims made against You after the expiry of the Period of Insurance.

6. About Allianz

Allianz Australia Insurance Limited AFS Licence No. 234708 ABN 15 000 122 850 is the insurer of the Policy and is one of Australia's largest general insurers. We utilise years of local expertise, combined with global experience to offer a wide range of products and services to Our customers. As a member of the worldwide Allianz Group, We are committed to continuous improvement of Our products and services and strive to achieve this through knowledge transfer within the Group, dedicated technical research units, sharing globally new product developments and a wide range of risk management services.

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Section 1 – Preamble

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

Section 2 – Professional Indemnity

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

2.1 Wrongful Act

We agree, subject to the provisions of this Policy, to indemnify You against all Claims, subject to the Limit of Indemnity, first made against You and notified to Us during the Period of Insurance caused by a Wrongful Act.

Automatic Extensions

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

(a) Contractual Liability

An unintentional breach of a written contract with a Third Party arising from the provision of Your Information Technology and Telecommunication Products and/or Information Technology and Telecommunication Services caused by an actual or alleged breach of professional duty.

(b) Trade Practices Act and Similarly Intentioned Legislation

Subject to Exclusion 8.9. of this Policy, an unintentional breach of the Trade Practices Act 1974 (Commonwealth), Fair Trading Act 1987 (NSW), Fair Trading Act 1985 (Victoria) or similar legislation enacted in any State or Territory of the Commonwealth of Australia or New Zealand caused by an actual or alleged breach of professional duty but only in so far as the unintentional breach arises from the provision of Your Information Technology and Telecommunication Products and/or Information Technology and Telecommunication Services.

(c) Intellectual Property Rights

An unintentional infringement of an Intellectual Property Right of a Third Party caused by an actual or alleged breach of professional duty including any Claim made by a Third Party Licensee to whom You have licensed Your Information Technology and Telecommunication Products or Information

Technology and Telecommunication Services and provided a warranty or indemnity in respect of Your ownership and/ or permission to license Intellectual Property Rights.

(d) Documents and Data

Unintentional damage or destruction of Documents and/or Data caused by an actual or alleged breach of professional duty.

(e) Defamation

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

(f) Dishonesty

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

(g) Continuous Cover

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

- i) We were Your Information Technology and Telecommunication Products and Information Technology and Telecommunication Services Legal Liability insurer at the time the facts or circumstances first became known to You (the "Previous Period of Insurance") and have continued to be Your Information Technology and Telecommunication Products and Information Technology and Telecommunication Services Legal Liability insurer from then until the date of actual notification; and
- ii) but for Your failure to notify Us of the facts or circumstances during the Previous Period of Insurance, You would have been entitled to indemnity under the policy in effect during the Previous Period of Insurance; and
- iii) but for Exclusion 8.24 You would be entitled to indemnity under this Policy; and

iv) You have not committed or attempted to commit fraudulent non-disclosure or fraudulent misrepresentation.

We are only liable to indemnify You to the extent that We would have been liable to indemnify You under the provisions of the policy in effect during the Previous Period of Insurance. Further, We may reduce Our liability to You by the amount that fairly represents the extent to which We have been prejudiced as a result of the late notification.

(h) Disciplinary or Coronial Enquiries

We will indemnify You against legal costs and expenses incurred with Our prior written consent (which legal costs and expenses We deem to be reasonable and consent shall not be unreasonably withheld) for Your representation at any Disciplinary Enquiry or coronial enquiry of which You first became aware and notify to Us during the Period of Insurance. Our maximum liability under this section shall not exceed \$100,000 any one enquiry and in the aggregate during the Period of Insurance. This cover excludes Your regular or overtime wages, salaries or fees, or those of Your Employees or Contractors.

(i) Mitigation of Loss

We agree to indemnify You against costs and expenses necessarily incurred in respect of any action to mitigate or rectify a Wrongful Act that

otherwise would be the subject of a claim under this Section of the Policy. However, We are only liable to indemnify You under this clause if:

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

(ii) You establish to Our reasonable satisfaction that there is a probability that a Claim would be made and that You would be liable in the absence of You carrying out the mitigation or rectification; and

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

(iv) Indemnity under this Section is limited to \$10,000 for the Period of Insurance.

2.2 Joint Venture/Partnership Cover

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

Section 3 – Public and Products Liability

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

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

3.1 Joint Venture Cover

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

extend to any third party joint venture party or partner of Yours.

3.2 Tenants Liability

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

Section 4 – Product Recall Expense

4.1 Product Recall Expense

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

Product Recall Expense which is not incurred in the circumstances and due solely to the considerations set out above is not covered. Nor is there any cover for Product Recall

Expense where Your Information and Telecommunication Technology Products known or reasonably anticipated propensity to cause Personal Injury or Property Damage comes about due to:

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

Indemnity under this section is limited to \$100,000.00 for the Period of Insurance.

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

Section 5 - Defence Costs and Expenses Applicable to all Sections of the Policy.

5.1 General

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

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

5.2 Advancement of Defence Costs and Expenses

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

- (a) where We give You written confirmation that We will indemnify You against the Claim; or

- (b) where We take over and conduct proceedings in respect of the Claim under Claims Condition 9.2.

In any other case, We may pay Defence Costs and Expenses before final disposition of a Claim at our discretion.

5.3 Reimbursement of Defence Costs and Expenses Advanced

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

Section 6 – Limits of Indemnity Applicable to all Sections of the Policy.

6.1 Limits of Indemnity

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

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

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

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

6.3 One Claim

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

6.4 Claims – Different Sections

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

Section 7 – Deductible Applicable to all Sections of the Policy.

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

Section 8 – Exclusions Applicable to all Sections of the Policy.

General Exclusions

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

8.1 Refunds

awards, court orders, or damages, to the extent that they relate to the refund of the purchase price for Information Technology and Telecommunication Products or Information Technology and Telecommunication Services supplied by You;

8.2 Fines and Penalties

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

8.3 Fees and Trading Debts

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

8.4 Insolvency

Your insolvency or bankruptcy;

8.5 Avionics

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

8.6 Pollution and Nuclear Risk

(a) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants into or upon real or personal property, the atmosphere any water course or body of water or any enforcement, action or proceeding in connection with the containment, clean up, removal, treatment or monitoring of such pollutants of seepage, pollution or contamination howsoever occurring; or

(b) ionising radiation or the contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel; or

(c) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or

(d) nuclear weapons material;

8.7 USA and Canada

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

arising out of the enforcement of judgments, orders or awards obtained within or determined pursuant to the law of the United States of America or the Dominion of Canada or their territories or protectorates.

8.8 Dishonesty

(a) dishonest, fraudulent, malicious, or reckless act, error, omission, representation or other conduct; or

(b) any wilful violation or wilful breach of any statute or regulation,

by You or Your consultants or sub-contractors where such act, error, omission, representation, other conduct, violation or breach is established by judgment or other final adjudication except as provided by Section 2.1 (f) of this Policy;

8.9 Restrictive Trade Practices, Unconscionable Conduct and Resale Price Maintenance

any allegation of an infringement or breach of Parts IV (Restrictive Trade Practices), IVA

(Unconscionable Conduct) or VIII (Resale Price Maintenance) of the Trade Practices Act 1974 (Cth) or similar legislation;

8.10 War

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

8.11 Workers Compensation and Employment Practices

(a) Personal Injury to any Employee or Contractor;

(b) imposed by any Workers' Compensation Law; or

(c) any law relating to Employment Practices;

8.12 Terrorism

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

8.13 Asbestos

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

8.14 Motor Vehicle

the ownership, maintenance, operation, possession, use, loading or unloading by You or on Your behalf of any motor vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Personal Injury. This exclusion does not apply to liability caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer provided no indemnity is or would be available to You under any policy of compulsory liability insurance had You complied with Your obligations pursuant to such law;

8.15 Own Property Damage

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

(a) vehicles not owned by You or used in the course of Your Business, whilst within a free car park provided by You for the use of customers, visitors or Employees;

(b) Your Employees' property; and

(c) Other property (not owned by You) temporarily in Your possession but indemnity in respect of this clause (c) is limited to \$100,000 for the Period of Insurance.

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

8.16 Reckless and Wilful Act

(a) for any act, error, omission, representation or conduct committed or alleged to have been committed by You with a reckless disregard for its consequences; or

(b) for any wilful breach of any contract, statute or duty of care owed by You;

8.17 Assumed Contractual Liability

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

8.18 Non Information Technology and Telecommunication Products and/or Information Technology and Telecommunication Services

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

8.19 Aircraft and Watercraft

arising out of the ownership, possession or use of Aircraft or Watercraft;

8.20 Related Entities

an Entity insured by this Policy;

8.21 Known Defects

the provision or supply of Information Technology and Telecommunication Products or Information Technology and Telecommunication Services You knew or

ought to have known were defective or incapable of fulfilling the essential purpose they were intended to perform as specified, guaranteed or warranted by You;

8.22 Product Recall – Known Defects

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

Additional Exclusions Applicable to Section 2

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

8.23 Prior Claims and circumstances

- (a) any Claim first made or threatened against You prior to the commencement of the Period of Insurance;
- (b) any Wrongful Acts that occurred before the Policy's Retroactive Date specified in the Schedule;
- (c) any Claims arising out of facts or circumstances which were:

- (i) known to You prior to the inception of the Period of Insurance and which might give rise to a Claim, or Defence Costs and Expenses; or

- (ii) notified under any insurance that was in force prior to the inception of the Period of Insurance; or

- (d) Claims arising out of circumstances noted on the Proposal form for the current Period of Insurance or on any previous proposal form.

8.24 Retroactive Date

any Wrongful Act occurring in whole or in part prior to the Retroactive Date;

8.25 Subsidiaries

any claim against:

- (a) a current Subsidiary; or
- (b) a former Subsidiary; or
- (c) a Subsidiary that You acquire or create during the Period of Insurance,

in respect of any Wrongful Act committed or alleged to have been committed by the Subsidiary either:

- (i) before You acquire or create the Subsidiary; or
- (ii) after the Subsidiary ceases to be your Subsidiary.

Section 9 – Claims Conditions

9.1 Notification

You must notify Us of any Claim made against You during the Period of Insurance as soon as practicable after the Claim is made and no later than the end of the Period of Insurance. You must give notice of any Claim, loss or other matter in writing, and send it to The Claims Manager, Professional Risks Division, Allianz Australia Insurance Limited, 2 Market Street, Sydney, NSW, 2000.

9.2 Conduct of Proceedings

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

- (a) have advanced Defence Costs and Expenses to You; or

- (b) are liable to indemnify You under this Policy.

9.3 Settlement of Claims

You must not incur any Defence Costs and Expenses, settle any Claim, make any admission, offer or payment or otherwise assume any contractual obligations with respect to any Claim without Our prior written consent. We are not liable to indemnify You in respect of any Defence Costs and Expenses, settlement, admission, offer or payment or assumed obligation unless We give Our written consent. However, We must not withhold consent unreasonably.

9.4 Co-Operation

You must:

- (a) give Us and Our investigators and legal representatives all information and assistance that We or they reasonably require; and

(b) co-operate fully with Us and Our investigators and legal representatives in any proceedings in relation to which We are liable to indemnify You under this Policy.

9.5 Mitigation

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

9.6 Senior Counsel

(a) General

Neither We nor You may require the other to contest any Claim unless Senior Counsel advises that the Claim should be contested. In formulating his or her advice, Senior Counsel must take into consideration the damages and costs which are likely to be recovered by the plaintiff, the likely Defence Costs and Expenses and Your prospects of successfully defending the Claim.

(b) Appointment of Senior Counsel

For the purpose of (a), We may nominate a Senior Counsel. If We nominate a Senior

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

(c) Costs of Senior Counsel's Opinion

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

(d) Meaning of 'Senior Counsel'

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

9.7 Election to Contest

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

Section 10 - General Conditions

10.1 Alteration to Risk

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

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

10.2 Subrogation

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

10.3 Assignability

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

10.4 Cancellation

(a) Your Right to Cancel the Policy

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

(b) Our Right to Cancel the Policy

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

(c) Effect of Cancellation

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

10.5 Imputation

Where more than Entity is insured under this Policy:

- (a) failure by one of them to comply with the duty of disclosure under the Insurance Contracts Act 1984 (C'wealth); or

(b) misrepresentation by one of them to Us before this Policy commences; or

(c) failure by one of them to comply with any provision of this Policy,

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

(a) the other Entity is innocent of, and has no knowledge of, such conduct; and

(b) as soon as practicable after becoming aware of the conduct, the other Entity notifies Us of all facts relating to such conduct.

10.6 Governing Law and Jurisdiction

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

10.7 GST

GST Notice

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

Limit of Indemnity

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

Claims settlements – Where We agree to pay

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

- Where You are liable to pay an amount for GST in respect of an acquisition relevant to

Your Claim (such as services to repair a damaged item insured under the Policy), and We agree to pay the claim, We will pay for the GST amount.

- If Your Limit of Indemnity is not sufficient to cover Your loss, We will only pay the GST amount that relates to Our settlement of Your Claim. We will reduce the GST amount we pay for by any input tax credits to which You are or would be entitled on a relevant acquisition.
- We will reduce the GST amount We pay for by the amount of any input tax credits to which You are or would be entitled.
- Where We make a payment under this Policy as compensation instead of payment for a relevant acquisition, We will reduce the amount of the payment by the amount of any input tax credit that You would have been entitled to had the payment been applied to a relevant acquisition.

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

Disclosure - input tax credit entitlement

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

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

Section 11 – Definitions

11.1 Accidental means unexpected or unintentional.

11.2 Aircraft means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

11.3 Avionics Industry means any business involved in the design, inspection, supervision, manufacture, supply, assembly and/or

construction of any aircraft, space craft, missile or the guidance and control systems of any such items.

11.4 Claim means:

- (a) a written or verbal demand by a Third Party for compensation or damages; or

(b) a civil proceeding brought by a Third Party for recovery of compensation or damages,

under Section 2 in respect of an actual or alleged Wrongful Act or under Section 3 in respect of an Occurrence.

11.5 Contractor means an individual or Entity that is providing Information Technology Products or Information Technology Services on Your behalf pursuant to a written contract between You and the Contractor.

11.6 Data means any information stored electronically, magnetically or electro-magnetically on a hard drive or portable media.

11.7 Deductible means the sum specified as such in the Schedule.

11.8 Defence Costs and Expenses means reasonable costs, charges, fees (including legal counsels' fees and experts' fees) and expenses incurred in defending, investigating or monitoring a Claim and costs of appeal.

11.9 Disciplinary Enquiry means any legal or quasi legal process enquiring whether You have breached any relevant professional code of conduct administered by any overseeing professional association

11.10 Documents means all documents that relate to Your Business including but not limited to written, printed or computer records and electronic data material but not including any currency, and whether Your property or not but which are in Your personal control, or the control of any other person with whom You have lodged, deposited or entrusted such Documents.

11.11 Employee means any person that You employ under a contract of service or apprenticeship during or prior to commencement of the Policy.

11.12 Employment Practices means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination (sexual or otherwise) in respect of employment by You.

11.13 Entity means any corporation, trust, partnership, joint venture or natural person.

11.14 Limit of Indemnity means the amount stated, under the respective heading, in the Limits of Indemnity section of the Schedule.

11.15 Information Technology and Telecommunication Products means computer equipment designed, specified, manufactured, installed, supplied, repaired or

marketed by You including computer hardware, computer firmware, computer software, computer chip including embedded control logic or microprocessor chip, telecommunications system or other electronic computer device, provided either singularly or in connection with Information Technology and Telecommunication Services as listed in the Schedule

11.16 Information Technology & Telecommunication Services means services, advice or work provided including consultancy services, design, specification, training, testing, data processing, data hosting, data communications service, project management, systems integration, or project implementation, analysis or maintenance, provided either singularly or in connection with Information Technology & Telecommunication Products as listed in the Schedule

11.17 Intellectual Property Right means a statutory right, conferred within the Territory, in or to any patent, copyright or design (including in respect of semiconductor topographies) or a right in confidential information or trade secrets, claimed by any party other than You.

11.18 Occurrence means an event, or series of events consequent on or attributable to one source or originating cause, including continuous or repeated exposure to substantially the same general conditions which results in Personal Injury or Property Damage and which is neither expected nor intended by You.

11.19 Period of Insurance means the period specified in the Schedule.

11.20 Personal Injury means:

(a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;

(b) false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution and humiliation;

(c) libel, slander, defamation of character or invasion of right of privacy;

(d) assault and battery not committed by You or at Your direction unless committed for the purpose of preventing or eliminating danger to persons or property.

11.21 Policy means:

(a) all provisions of this document;

(b) all information contained in the Proposal, Schedule and other documents attached to them from time to time; and

(c) all endorsements issued from time to time for incorporation in this document, all of which shall be read together and constitute the contract of insurance between Us and You.

11.22. Pollutants means:

(a) any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapour, soot, fumes, acids, alkalis and chemicals; and

(b) any waste materials, including materials to be recycled, reconditioned or reclaimed; and

(c) any other air emission, odour, waste, water, oil, oil products, infectious or medical waste, asbestos, asbestos products or any noise emission.

11.23 Premium means the amount specified as such in the Schedule.

11.24 Products means Information Technology and Telecommunication Products and Information Technology & Telecommunication Services (after they have ceased to be in Your physical possession or under Your control) manufactured or deemed to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, repaired, serviced, treated, sold, supplied (including services) or distributed by You (including any container other than a Vehicle);

11.25 Product Recall Expense means reasonable and necessary costs personally and directly incurred by You, in respect of:

(a) communications including radio and television announcements and printed advertisements;

(b) the cost of shipping Information Technology and Telecommunication Products from any purchaser, distributor or user to the place or places designated by You;

(c) the cost of hire of necessary, additional persons other than Your regular employees;

(d) remuneration paid to Your regular, hourly Employees at basic rates for necessary straight time or overtime, if required;

(e) expenses incurred for transportation and accommodation of Employees where necessary;

(f) the extra expense for rent or hire of additional warehouse or storage space;

(g) the disposal or destruction of Your Information Technology and Telecommunication Products recalled,

but only when such costs are incurred exclusively for the purpose of recalling Your Information Technology and Telecommunication Products or property of which they form a part, because of an Occurrence.

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

11.26 Property Damage means:

(a) physical damage to, loss of or destruction of property including the loss of use thereof or resulting there from; or

(b) loss of use of property which has not been physically damaged or destroyed provided such loss of use is caused by physical damage to or destruction of other tangible property during the Period of Insurance.

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

11.28 Related Entity means any Entity which:

(i) employs or employed staff engaged in Your Business; or

(ii) provides or provided administration, nominee or like services to Your Business,

but only in respect of such Entity acting or having acted in the course of Your Business.

11.29 Retroactive Date means the date specified in the Schedule.

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

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

11.32 Subsidiary means:

(a) any Entity in which You own or control, directly or indirectly, in any combination, more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors; or

(b) any Entity deemed to be Your subsidiary under any applicable legislation, law or Australian Accounting Standard.

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

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

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

11.34 Territory means the territory specified in the Schedule.

11.35 Third Party means any Entity:

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

11.36 Third Party Licensee means:

a Third Party to whom You have licensed Your Information Technology Products pursuant to a legally enforceable, written contract (including a Shrink Wrap Licence).

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

11.38 We / Our / Us means Allianz Australia Insurance Limited ABN 15 000 122 850.

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

11.40 Wrongful Act means act, error, omission, representation or conduct by You which might give rise to a Claim caused by or in respect a defect in or failure to perform of Your Information Technology Products and/or Information Technology Services caused by an actual or alleged breach of professional duty.

11.41 You or Your(s) means:

- (a) the person, partnership, company or other entity specified in the Schedule;
- (b) any Subsidiary Companies listed in the Schedule
- (c) where You are a partnership or limited liability partnership, any person who is a partner at any time during the Period of Insurance;
- (d) any person who is a director of You during the Period of Insurance;
- (e) any person who is an Employee of You during the Period of Insurance;
- (f) Prior Corporate entities through which You previously traded, in the course of the conduct of the Your Information Technology Services;

(g) any officer, committee or member of the canteen, social, sports, first aid/medical, fire fighting and employee welfare organisations of Yours; and

(h) any Contractor who is engaged by You pursuant to a written Contract that is signed and dated by You and the Contractor and specifies the Information Technology and Telecommunication Products or Information Technology and Telecommunication Services to be provided or supplied by the Contractor. No coverage is granted for Claims arising from Contractors where the scope of work agreed has not been reduced to a written contract.

11.42 Your Business means:

- (a) Your business specified in the Schedule which is
- (b) conducted in the Territory specified in the Schedule, but which is
- (c) limited to Your supply of Information Technology and Telecommunication Products and Information Technology and Telecommunication Services.