



# Cyber, Security and Privacy Protection Insurance

Policy Wording



# Contents

## Welcome to Zurich

- About Zurich ..... 2
- Important information..... 2
- Duty of Disclosure..... 2
- Non-disclosure and Misrepresentation..... 2
- Our contract with you..... 2

## Policy Wording

- 1. Insurance Clauses..... 3
  - A. Incident Response..... 3
    - 1.1 Breach Costs ..... 3
    - 1.2 Emergency Costs..... 3
  - B. Third Party Covers..... 3
    - 1.3 Business Income Loss and Dependent Business Income Loss ..... 3
    - 1.4 Digital Asset Replacement Costs ..... 3
    - 1.5 Cyber Extortion Threat and Reward Payments ..... 3
  - C. Third Party Covers..... 4
    - 1.6 Security and Privacy Liability ..... 4
    - 1.7 Regulatory Proceeding..... 4
    - 1.8 PCI-DSS Payments ..... 4
    - 1.9 Internet Media Liability..... 4
- 2. Definitions..... 4
- 3. Exclusions..... 16
- 4. Special Provisions..... 22
- 5. General Conditions..... 23

# Welcome to Zurich

## About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ACN 000 296 640, an overseas registered company incorporated in Australia) (ZAIL), trading as Zurich New Zealand. In this policy wording, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurer that serves its customers in global and local markets. Zurich provides a wide range of general insurance and life insurance products and services in more than 210 countries and territories. Zurich's customers include individuals, small businesses, mid-sized and large companies, including multinational corporations.

## Important information

This is a 'Claims Made and Notified' insurance policy. It only provides cover if:

1. A *claim* is made against the *insured*, by some other person and notified to us, during the period when the policy is in force; and
2. The *claim* arises out of an occurrence which takes place after the *continuity date* stipulated in the policy *schedule*.

## Duty of Disclosure

Before you enter into a contract of general insurance with us, you have a duty to disclose to us every matter you know, or could reasonably be expected to know, that a prudent insurer would want to take into account in deciding whether to insure you and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate a contract of general insurance. Your duty however, does not require disclosure of a matter:

- that diminishes the risk to be insured;
- that is of common knowledge;
- that we know or in the ordinary course of our business we ought to know; or
- that we indicate to you that we do not want to know.

## Non-disclosure or Misrepresentation

If you make a material misrepresentation to us, or if you do not comply with your duty of disclosure, we may treat your policy as if it never existed.

## Our contract with you

This Policy is a contract of insurance between the *policyholder* and Zurich and contains all the details of the cover that we provide.

The Policy is made up of:

- the Policy Wording. It tells you what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the proposal which is the information provided to us when applying for insurance cover;
- the most current Policy Schedule issued by us. The *schedule* is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in the Policy Schedule are insured.

This document is used for any offer of renewal we may make, unless we tell you otherwise. Please keep your policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

# Cyber, Security and Privacy Protection Policy Wording

Subject to payment of the premium set out in the *schedule*, we agree to provide insurance on the terms set out in this Policy. The Policy consists of this Policy Wording, the proposal the *schedule* and endorsements.

## Section 1 – Insuring Clauses

### A. Incident Response

#### 1.1 Breach Costs

We will pay for *breach costs* incurred by the *insured* arising directly from a *privacy event*, *security event* or *electronic publishing event* that is first discovered by the *insured* during the *policy period*.

#### 1.2 Emergency Costs

If our consent cannot reasonably be obtained before *breach costs*, *digital asset replacement costs*, *increased costs of working* or *defence costs* are incurred by the *insured* with respect to any covered *event* or *claim* we will give retrospective approval for such costs.

The *insured* may also contact the *breach response service* to manage and coordinate the response to the *privacy event*, *security event*, or *electronic publishing event*.

### B. First Party Covers

#### 1.3 Business Income Loss and Dependent Business Income Loss

We will pay the *company* any:

1.3.1 *business income loss*;

1.3.2 *dependent business income loss*; and

1.3.3 *increase costs of working*,

incurred by the *insured* during the *period of restoration*, as a result of an *interruption of service*, that is first discovered during the *policy period*. The expiration of the *policy period* will not limit the length of the *period of restoration*.

#### 1.4 Digital Asset Replacement

We will reimburse the *digital asset replacement costs* incurred by the *insured* due to the corruption or destruction of *digital assets* as a result of a *privacy event* or *security event* that is first discovered during the *policy period*.

#### 1.5 Cyber Extortion Threat and Reward Payments

We will pay for:

1.5.1 *extortion expenses*;

1.5.2 *extortion payments*; and

1.5.3 *reward payments*,

incurred by the *insured*, arising directly from a *cyber extortion threat*, that is first received during the *policy period*,

provided always that:

(a) one of the *insured's* directors consents to the payment of such *extortion expenses* and/or *extortion payments*; and

(b) no *reward payment* shall be made to the *insured's* external auditor, or any *insured person* who is an internal auditor of the *insured* or who supervises or manages the *insured's* external auditor.

## C. Third Party Covers

### 1.6 Security and Privacy liability

We will pay on behalf of the *insured*:

1.6.1 all *loss* which the *insured* becomes legally liable to pay including claimants' costs and expenses; and

1.6.2 *defence costs* incurred by the *insured*,

arising from a *claim* first made against the *insured* and notified to us during the *policy period* or the *extended reporting period*, if applicable, that directly results from a *privacy wrongful act* or *security wrongful act* that takes place on or after the *retroactive date* and prior to the end of the *policy period*.

### 1.7 Regulatory Proceeding

We will pay to or on behalf of the *insured*:

1.7.1 *civil fines and penalties* which the *insured* becomes legally liable to pay; and

1.7.2 *defence costs* incurred by the *insured*,

arising from a *regulatory proceeding* first commenced against the *insured* and notified to us during the *policy period* or the *extended reporting period*, if applicable, that directly results from a *privacy event* or *security event* that takes place on or after the *retroactive date* and prior to the end of the *policy period*.

### 1.8 PCI-DSS Payments

We will pay to or on behalf of the *insured*:

1.8.1 the *PCI-DSS payments* which the *insured* becomes legally liable to pay; and

1.8.2 *defence costs* incurred by the *insured*,

arising from a *PCI-DSS claim* first made against the *insured* and notified to us during the *policy period* or the *extended reporting period*, if applicable, that directly results from a *privacy wrongful act* or *security wrongful act* that takes place on or after the *retroactive date* and prior to the end of the *policy period*.

### 1.9 Internet Media Liability

We will pay on behalf of the *insured*:

1.9.1 *loss* which the *insured* becomes legally liable to pay including claimants' costs and expenses; and

1.9.2 *defence costs* incurred by the *insured*,

arising from a *claim* first made against the *insured* and notified to us during the *policy period* or the *extended reporting period*, if applicable, that directly results from an *electronic publishing wrongful act* that takes place on or after the *retroactive date* and prior to the end of the *policy period*.

## Section 2 – Definitions

When used in this Policy, its *schedule* and its Endorsements, the following definitions shall apply:

### 2.1 Administrative Error

*administrative error* means an accidental, unintentional, or negligent act or an error or omission committed by the *insured* or the *service provider* in the course of:

2.1.1 data processing, programming, maintenance, service, conversion, modifying, handling, developing or maintaining *electronic data* or *software*; or

2.1.2 operating, maintaining or repair of *computer systems*,

including the collection, compilation, processing, warehousing, mining, storage, or management of data.

## 2.2 Aggregate Limit of Liability

*aggregate limit of liability* means the maximum aggregate amount set out in the *schedule* that we will pay in respect of all *claims* or *events*, for *loss*, *first party loss* and *defence costs* covered by this Policy.

## 2.3 Breach Costs

*breach costs* mean any reasonable and necessary charges, costs, expenses and fees incurred by the *insured* with our prior consent, within 24 months of the *insured* first having knowledge of a *privacy event*, *security event* or *electronic publishing event* in retaining an accountant, IT consultant, solicitor, lawyer, public relations consultant or other *third party* to:

- 2.3.1 conduct a computer forensic analysis to investigate the *insured's computer system* to determine the cause and extent of such *privacy event*, *security event* or *electronic publishing event*;
- 2.3.2 determine indemnification obligations under any written contract with respect to a *wrongful act* by a *service provider* in connection with any *privacy event*, *security event* or *electronic publishing event*;
- 2.3.3 determine the extent to which the *insured* is obliged to notify any regulatory authority or potentially affected individuals following any *privacy event*, *security event* or *electronic publishing event*;
- 2.3.4 effect compliance with any *privacy regulation* under the applicable *privacy regulation* most favourable to the *insured's* affected individuals (once compliance has been effected following a *privacy event*, *security event* or *electronic publishing event*, this Policy will not cover costs of maintaining ongoing compliance with any *private regulation*);
- 2.3.5 notify any individual or applicable regulatory agencies of the compromising of any *personal information* arising from any *privacy event*, *security event* or *electronic publishing event*, whether or not they are required to be notified pursuant to legislation (save that the *insured* will seek our consent before making any notification to an individual or regulatory agency where there is no legal or regulatory requirement to do so);
- 2.3.6 plan, implement, execute and manage a public relations campaign to counter or minimise any actual or anticipated adverse effects of negative publicity from a *privacy event*, *security event* or *electronic publishing event* to protect or restore the *insured's* business reputation in response to negative publicity following such *event*;
- 2.3.7 provide credit and identification monitoring services, identification restoration services, and identification theft insurance, provided that we shall have no obligation to apply for or furnish such insurance, for individuals affected by the destruction, loss, alteration, disclosure or access to *personal information*; or
- 2.3.8 provide call centre services if they are needed to handle enquiries from individuals affected by the destruction, loss, alteration, disclosure or access to *personal information*.

Provided always that *breach costs* do not include:

- (i) regular or overtime wages, salaries or fees of any *business partner*, director, *member* or *employee*;
- (ii) the cost to comply with any injunctive or other non-monetary relief;
- (iii) principal, interest or other monies paid or due as the result of any loan, lease or extension of credit; or
- (iv) taxes, fines, sanctions or penalties.

## 2.4 Betterment

*betterment* means:

- 2.4.1 unavoidable, standard technological advancements included within any newer *insured's computer system*, such as increased memory capacity or processing speed; or
- 2.4.2 reasonably necessary to install a more secure and efficient version of the affected *insured's computer system*.

## 2.5 Breach Response Service

*breach response service* means the providers specified as such in the *schedule*.

## 2.6 Business income loss

*business income loss* means the:

- 2.6.1 net profit before income taxes that the *insured* is prevented from earning during the *period of restoration* solely in consequence of an *interruption of service*; and
- 2.6.2 normal operating expenses incurred by the *insured*, but solely to the extent that such operating expenses must continue during the *period of restoration* and would have been incurred had there been no *interruption of service*,

provided always that *business income loss*, *dependent business income loss* will be calculated net of any savings the *insured* makes or service credits the *insured* receives as a result of the *interruption of service* and do not include:

- (i) contractual penalties;
- (ii) costs or expenses incurred to correct any deficiencies or problems with any *computer system* or to update, restore, replace or improve a *computer system* to a level beyond that which existed immediately before the *interruption of service*, other than *betterment*;
- (iii) costs and expense incurred to identify or remediate *software* program errors or vulnerabilities;
- (iv) legal costs or expenses;
- (v) loss arising out of liability to any *third party*;
- (vi) other consequential loss or damage; or
- (vii) *increased cost of working*.

## 2.7 Business Partner

*business partner* means any person in business with the *insured* under the terms of a partnership agreement whether express or implied under legislation.

## 2.8 Card Association

*card association* means an issuer of credit cards, debit cards, stored value cards or prefunded cards.

## 2.9 Circumstance

*circumstance* means an incident, occurrence, fact, matter, act or omission that may give rise to a *claim*, *security event*, *privacy event*, *electronic publishing event*, *administrative error*, *system failure*, *cyber extortion threat*, *regulatory proceeding*, *GDPR proceeding* or *PCI-DSS claim*.

## 2.10 Civil Fines and Penalties

*civil fines and penalties* mean civil, administrative or regulatory money penalties directly assessed against the *insured* for a violation of any law, regulation or statute not including punitive, exemplary or multiple damages but only where:

- 2.10.1 such violations are not knowing, wilful or criminal; and
- 2.10.2 such penalties are insurable under the internal laws of the jurisdiction in which such penalties were assessed or levied.

## 2.11 Claim

*claim* means:

- 2.11.1 a written demand against the *insured* for monetary damages or non-monetary or injunctive relief, including a written demand that the *insured* toll or waive a statutory limitation period;
- 2.11.2 a civil proceeding against the *insured* for monetary damages or non-monetary or injunctive relief, commenced by the service upon the *insured* of a complaint or similar pleading, including any appeal thereof;

- 2.11.3 an arbitration or other alternative dispute resolution proceeding against the *insured* for monetary damages or non-monetary or injunctive relief, commenced by the *insured's* receipt of a request or demand for such proceeding, including any appeal thereof; or
- 2.11.4 solely with respect to the Insuring Clause 7. Regulatory Proceeding and Insuring Clause 8. PCI-DSS Payments, a *regulatory proceeding* or a *PCI-DSS claim*.

## 2.12 Computer System

*computer system* means computer hardware and *software* and the *electronic data* stored thereon including associated input and output devices, data storage devices, networking equipment, components, firmware and electronic back up facilities including systems available through the internet, intranets, extranets or virtual private networks.

Solely with respect to the *insured's computer system*, this includes computer hardware and *software*, and the *electronic data* stored thereon, which:

- 2.12.1 the *insured* leases, owns or operates;
- 2.12.2 the *insured* leases or owns, but is operated by a third party pursuant to a written contract; or
- 2.12.3 is owned by the *insured's employees* and operated by them on behalf of the *insured* for the purpose of obtaining remote access to the *insured's computer system* or otherwise operated pursuant to the *insured's* Bring Your Own Device policy,

to provide services to the *insured*. *Computer system* also means any of the foregoing that are part of an Industrial Control System.

## 2.13 Consumer Redress Fund

*consumer redress fund* means any sum of money the *insured* is legally required to deposit in a fund for the payment of consumer claims due to a settlement of, or an adverse judgment in, a *regulatory proceeding*.

## 2.14 Control Group

*control group* means the *policyholder's* Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Information Security Officer, Chief Information Officer, Data Protection Officer, Chief Technology Officer, Risk Manager, Insurance Manager, Head of Legal, or any other officer with a Technology, Legal or Data based remit.

## 2.15 Customer

*customer* means an entity or individual to whom the *insured* sells goods or provides services under a written contract.

## 2.16 Cyber Extortion Threat

*cyber extortion threat* means:

- 2.16.1 a reasonably credible threat or connected series of threats made without the cooperation of an Executive Officer to:
- (i) introduce *malware* into a *computer system*;
  - (ii) commence a *denial of service attack*;
  - (iii) disseminate, divulge, or improperly utilise any *personal information* taken as a result of the *unauthorised access* to the *insured's computer system*; or
  - (iv) encrypt or otherwise make unavailable *electronic data*,

unless an *extortion payment* is received from the *insured* or on the *insured's* behalf in return for the elimination, mitigation, or removal of such threat; and

- 2.16.2 a threat or connected series of threats related to any of the acts in 2.16.1 above that have already commenced.



## 2.17 Cyberterrorism

*cyberterrorism* means the use of information technology to execute attacks or threats by any person or group, whether acting alone, or on behalf of, or in connection with, any individual, organisation, or government, with the intention to:

- 2.17.1 cause harm;
- 2.17.2 intimidate any person or entity; or
- 2.17.3 cause destruction or harm to critical infrastructure or data,

in pursuit of financial, social, ideological, religious, or political objectives, which results in a threat or harm to the *insured's network security*.

## 2.18 Deductible

*deductible* mean the amount specified as such in this Policy, the *schedule* or any endorsement in respect of each and every *claim* or *event*, for *loss*, *first party loss* and/or *defence costs* for which the *insured* will be responsible.

## 2.19 Defence Expenses

*defence expenses* mean the reasonable and necessary fees (including but not limited to attorneys' fees and experts' fees), costs, charges and expenses (other than regular or overtime wages, salaries, remuneration or fees of the directors of the *insured* or an *employee*), incurred by the *insured*, with our prior consent, in the investigation, defence, discharge, dismissal, adjustment, settlement of a *claim*.

*Defence costs* will be in addition to the applicable *limit of liability* and is subject to any *deductible*.

## 2.20 Denial of Service Attack

*denial of service attack* means any actions or instructions constructed or generated with the ability to damage, interfere with or otherwise affect the availability of networks, network services, network connectivity or information systems including but not limited to the generation of excess network traffic into network addresses, the exploitation of system or network weaknesses and the generation of excess or non-genuine traffic between and amongst networks.

## 2.21 Dependent Business Income Loss

*dependent business income loss* means the *business income loss* (not including any liability to the *service provider* itself) incurred by the *insured* as a direct result of an *interruption of service* affecting a *service provider's computer system* provided always that such *interruption of service* would have been covered under this Policy if the *service provider* had been the *insured*.

## 2.22 Digital Assets

*digital assets* mean *electronic data*, *software*, audio files, and image files stored on the *insured's computer system*, provided always that *digital assets* do not include accounts, bills, evidence of debt, money, cryptographic key material allowing access to digital currencies, valuable papers, records, abstracts, deeds manuscripts or other documents unless they have been converted to *electronic data* and then only in that form.

## 2.23 Digital Asset Replacement Costs

*digital asset replacement costs* mean reasonable and necessary costs and expenses incurred by the *insured* with our prior consent to:

- 2.23.1 restore or reconstitute *digital assets* from written records; or
- 2.23.2 partially or fully match *electronic data*,

due to their corruption or destruction including but not limited to any disaster recovery or forensic investigation efforts,

provided always that *digital asset replacement costs* do not include:

- (i) any costs and expenses incurred to update, replace, or otherwise improve *digital assets* to a level beyond that which existed prior to the *security event* or *privacy event*, other than *betterment*;
- (ii) any costs and expenses incurred to identify or remediate *software* errors or vulnerabilities;
- (iii) any costs and expenses incurred to research and develop *digital assets*, including trade secrets;
- (iv) the economic or market value of *digital assets*, including trade secrets;
- (v) any consequential loss or damage;
- (vi) *extortion expenses*; or
- (vii) *extortion payments*.

## 2.24 Electronic Data

*electronic data* means information that exists in electronic form, including but not limited to floppy disks, CD ROMs, magnetic tapes, magnetic discs, or any other media in which electronic data is recorded or stored, including *personal information*. *Electronic data* does not include *software*.

## 2.25 Electronic Publishing

*electronic publishing* means the reproduction, publication, dissemination, transmission or release of information, including *electronic data*, image files, audio files, or text (including user generated content published) on the *insured's* internet website, provided that such information has been developed by or for the *insured* or acquired by the *insured* for its use.

## 2.26 Electronic Publishing Event

*electronic publishing event* means any actual or alleged:

- 2.26.1 libel, slander, trade libel or disparagement arising from the *electronic publishing* of material that defames a person or organisation or disparages a person's or organisations goods, products or services;
- 2.26.2 plagiarism, false light or false advertising arising from the *insured's electronic publishing* activities;
- 2.26.3 violation of the right of privacy or seclusion or right of publicity of any person other than an *insured person* arising from the *electronic publishing* of material that publicly discloses private facts relating to such person or commercially appropriates such person's name or likeness;
- 2.26.4 infringement of a copyright, title, slogan, trademark, trade name, trade dress, mark, service mark or service name including but not limited to infringement of domain name, deep-linking or framing arising from the *insured's electronic publishing* activities; or
- 2.26.5 unauthorised use of titles, formats, performances, style, characters, plots or other protected material arising from the *insured's electronic publishing* activities,

provided always that cover is not provided for any liability arising directly or indirectly from:

- (i) the theft of computer or video game points, earnings awards or other intangible property;
- (ii) the uploading or downloading of digitised music, movies, software or video games by persons who allegedly or actually failed to obtain valid licenses with respect to such music, movies, software or video games; or
- (iii) any licensing fees, damages, account of profits or royalties ordered, directed or agreed to be paid by the *insured* pursuant to a judgment, arbitration award, settlement agreement or similar order or agreement for the continued use of a person or entity's copyright, slogan, trademark, trade name, trade dress, service mark, service name or other protected intellectual property.

## 2.27 Electronic Publishing Wrongful Act

*electronic publishing wrongful act* any actual or alleged act, error, omission, neglect or breach of duty by an *insured*, that results in an *electronic publishing event*.

## 2.28 Employee

*employee* means any natural person who is:

2.28.1 under a contract of service or apprenticeship with the *insured*;

2.28.2 a labour master or labour only subcontractor or persons supplied by any of them;

2.28.3 self-employed;

2.28.4 under a work experience or similar scheme; or

2.28.5 hired or borrowed by the *insured* from another employer;

and working for the *insured* in connection with its business while under the direct control or supervision of the *insured*.

## 2.29 Events

*events* mean *security event*, *privacy event*, *electronic publishing event*, *cyber extortion threat*, *administrative error* and *system failures*.

## 2.30 Extended Reporting Period

*extended reporting period* means the period immediately following the *policy period* during which the *insured* may notify us of any *claim* or *regulatory proceeding* first made during such period and arising from a *wrongful act* committed on or after the *retroactive date* and prior to the expiration date of the *policy period*.

The *extended reporting period* is stated in the *schedule*.

## 2.31 Extortion Expenses

*extortion expenses* mean reasonable and necessary expenses incurred by the *insured* with our prior consent, arising directly from a *cyber extortion threat*.

## 2.32 Extortion Payments

*extortion payments* mean any monies and cryptocurrencies paid by the *insured*, with our prior consent, to a *third party* who the *insured* reasonably believes to be responsible for a *cyber extortion threat* for the purpose of terminating such *cyber extortion threat*. For the avoidance of doubt, any indemnity paid by us to the *insured* will be in the currency of the *limit of liability*.

## 2.33 First Party Loss

*first party loss* means *breach costs*, *business income loss*, *dependent business income loss*, *increased costs of working*, *digital asset replacement costs*, *extortion expenses*, *extortion payments* and *reward payments*.

## 2.34 GDPR

*GDPR* means the General Data Protection Regulation (Regulation (EU) 2016/679) and any amendment thereto. *GDPR* will also include any state, provincial, territorial, local, or federal regulations enacted in furtherance of or pursuant to implementation of the General Data Protection Regulation (Regulation (EU) 2016/679) and any amendment thereto.

## 2.35 GDPR proceeding

*GDPR proceeding* means a formal investigation of or an administrative adjudicative proceeding against an *insured* by concerning the *GDPR* by an administrative or regulatory agency, including an appeal thereof, commenced by the *insured's* receipt of a subpoena, investigative demand, complaint or similar document.

## 2.36 Increased Costs of Working

*increased costs of working* mean reasonable and necessary expenses incurred by the *insured*, with our consent, during the *period of restoration* to minimise, avoid or reduce any *interruption of service* or *business income loss* or *dependent business income loss* and that:

2.36.1 are over and above the *insured's* normal operating and payroll expenses; and

2.36.2 do not exceed the amount of loss that would otherwise be payable as *business income loss* or *dependent business income loss*,

provided always that *increased costs of working* do not include:

- (i) any costs or expenses to correct any deficiencies or problems with any *computer system* or to identify or remediate *software* errors or vulnerabilities;
- (ii) any costs or expenses to update, restore, replace or improve any *computer system* or *software* to a level beyond that which existed just before the *interruption of service*, other than *betterment*;
- (iii) any contractual penalties arising out of any liability to a *third party*;
- (iv) any consequential loss or damage; or
- (v) any other costs, loss or payments which are specifically defined in this Policy and covered under any Insuring Clause or endorsement.

## 2.37 Insured

*insured* means:

2.37.1 the *policyholder* as stated in the *schedule*;

2.37.2 a *subsidiary company*; or

2.37.3 an *insured person*.

## 2.38 Insured Person

*insured person* means:

2.38.1 any current or former *business partner*, director, *member* or principal or any person who becomes a *business partner*, director, *member* or principal during the *policy period*;

2.38.2 any current or former *employee* or any person who becomes an *employee* during the *policy period*;

2.38.3 the personal representative of any *business partner*, director, *member*, principal or *employee* in the event of their death, incapacity, insolvency or bankruptcy; or

2.38.4 any retired *business partner*, retired director or retired *member* while acting as a consultant to the *insured*.

## 2.39 Interrelated Events

*interrelated events* all *events* that arise out of, are based upon, are in connection with or are otherwise attributable to the same originating cause or source.

## 2.40 Interrelated wrongful acts

*interrelated wrongful acts* mean all *wrongful acts* that arise out of, are based upon, are in connection with or are otherwise attributable to the same originating cause or source.

## 2.41 Interruption of service

*interruption of service* means an actual and measurable interruption, suspension, failure, degradation or delay in the performance of the *insured's computer system* directly arising from an *administrative error*, *system failure*, *security event* or *privacy event*. *Interruption of service* also means:

2.41.1 a voluntary shutdown of the *insured's computer system* when such action is taken to minimise, avoid or mitigate a *security event*; or

2.41.2 a regulatory shutdown of the *insured's computer system* when such action is ordered by a regulatory or governmental body as part of a *regulatory proceeding*.

## 2.42 Limit of Liability

*limit of liability* means the maximum amount after payment of any *deductible* which we can be liable to pay under each Insuring Clause in this Policy as specified in the *schedule*.

## 2.43 Loss

*loss* means:

2.43.1 any amount, including judgments and settlements, pre and post judgment interest, the *insured is* legally obligated to pay as the result of a *claim* against the *insured*. *Loss* includes punitive, exemplary or multiple damages, to the extent such damages or penalties are insurable under the internal laws of any applicable jurisdiction most favourable to the *insured*, including without limitation the jurisdiction in which the *insured*, this Policy or such *claim* is located; and

2.43.2 a *consumer redress fund*, solely with respect to coverage afforded under Insuring Clause 7, Regulatory Proceedings.

*Loss* does not include:

- (i) *defence costs*;
- (ii) the loss, offset or return of fees, commissions, royalties, bonuses or profits by the *insured* or the cost to re-perform any services;
- (iii) the cost to comply with any injunctive or other non-monetary relief;
- (iv) the return, restitution, or offset of fees, expenses or costs paid to the *insured*;
- (v) liquidated damages to the extent that such liquidated damages exceed the amount for which the *insured* would have been liable in the absence of such liquidated damages;
- (vi) the cost to design, upgrade, maintain, or improve a *computer system*, including correcting any deficiencies or problems;
- (vii) principal, interest or other moneys paid or due as the result of any loan, lease or extension of credit;
- (viii) taxes, fines, sanctions or penalties, other than as provided under Insuring Clause 7. Regulatory Proceeding, and Insuring Clause 8. PCI-DSS Payments; or
- (ix) *first party loss*.

## 2.44 Malware

*malware* means unauthorised, corrupting, or harmful *software* code or program specifically designed to:

2.44.1 erase or corrupt *electronic data*;

2.44.2 damage or disrupt any network or *computer system*; or

2.44.3 circumvent any security product or service,

including, but not limited to, computer viruses, Trojan horses, keystroke loggers, cookies, spyware, adware, worms, ransomware and logic bombs.

## 2.45 Member

*member* means a member of the *insured's* limited liability partnership as defined in the Limited Liability Partnerships Act 2000 or any other similar federal, state, national or local act or law.

## 2.46 Money

*money* means currency, coins or bank notes in current use and having a face value; or travellers cheques, registered checks and money orders held for sale to the public. *Money* does not include cryptocurrencies.

#### 2.47 Network security

*network security* means the use of hardware, *software*, firmware and written security policies and procedures by the *insured*, or on their behalf to protect against *unauthorised access* including the use of a *computer system* in a *denial of service attack*.

#### 2.48 PCI-DSS Claim

*PCI-DSS claim* means a written demand from either the Payment Card Industry Security Standards Council, *card association*, issuing bank, or acquiring bank alleging noncompliance with or violations of:

2.48.1 the Payment Card Industry Data Security Standard; or

2.48.2 a merchant services agreement in connection with the Payment Card Industry Data Security Standard, following a *privacy event* or *security event*.

#### 2.49 PCI-DSS Payments

*PCI-DSS payments* mean payments which the *insured* has a contractual liability to make following a *privacy event* or *security event* to a *card association* or bank as a result of non-compliance by the *insured* with data security standards published by the payment card industry and which apply to the *insured* by virtue of the contract.

#### 2.50 Policy Period

*policy period* means the period of time shown in the *schedule*.

#### 2.51 Period of Restoration

*period of restoration* the period from the date and time that the *insured* is first impacted after a *computer system* suffers an *interruption of service* to the date and time the *insured* is returned to substantially the level of operation that had existed prior to such *interruption of service*,

provided always that:

- (i) if the *schedule* provides for a *waiting period*, the *period of restoration* will commence only once it has expired; and
- (ii) in no event will the *period of restoration* exceed the period specified in the *schedule*.

#### 2.52 Personal information

*personal information* means any information from which an individual may be reasonably identified or contacted, including an individual's name, telephone number, email address, tax file number, medical or healthcare data or other protected health information, driver's license number or bank account number, credit card number, debit card number, access code or password that would permit access to that individual's financial accounts or any other non-public personal information as defined in *privacy regulations*. *Personal information* does not include information lawfully available to the general public for any reason, including information from foreign or local government records.

#### 2.53 Policyholder

*policyholder* means the legal entity stated in the *schedule* including its predecessors.

#### 2.54 Privacy Event

*privacy event* means:

2.54.1 an actual, alleged or reasonably suspected unauthorised disclosure or loss of:

- (i) *personal information* in the *insured's* care, custody or control or in the care, custody or control of the *insured's service provider*; or
- (ii) corporate information in the *insured's* care, custody or control or the care, custody or control of a *service provider* that is specifically identified as confidential and protected under a non-disclosure agreement or similar contract;

- 2.54.2 an actual, alleged or reasonably suspected violation of any *privacy regulation* by the *insured*; or
- 2.54.3 failure by the *insured* to comply with that part of its public declaration of its policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to *personal information* that specifically:
- (i) prohibits or restricts the *insured's* disclosure, sharing or selling of *personal information*;
  - (ii) requires the *insured* to provide an individual access to *personal information* or to correct incomplete or inaccurate *personal information* after a request is made; or
  - (iii) mandates procedures and requirements to prevent the loss of *personal information*,
- provided the *insured* has in force, at the time of such failure, such a policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to *personal information*.

## 2.55 Privacy Regulation

*privacy regulation* means any legislation, regulation or by-law, including but not limited to, *GDPR*, enacted to control the use of *personal information* within the *territorial limits*.

## 2.56 Privacy Wrongful Act

*privacy wrongful act* means any actual or alleged act, error, omission, neglect or breach of duty by an *insured*, someone for whom the *insured* is legally responsible, or the *insured's service provider*, that results in a *privacy event*.

## 2.57 Property

*property* means tangible property of an *insured* other than *money* or *securities*.

## 2.58 Regulatory Proceeding

*regulatory proceeding* means:

- 2.58.1 a formal investigation of the *insured* by an administrative or regulatory body or similar governmental body arising from a *privacy event*; or
- 2.58.2 an administrative adjudicative proceeding against the *insured* by an administrative or regulatory agency or similar governmental body for a *wrongful act*, including any appeal thereof, commenced by the *insured's* receipt of any complaint, investigative demand, notice of prosecution, writ, summons or similar document.

*Regulatory proceeding* includes a *GDPR proceeding* but does not include a *PCI-DSS claim*.

## 2.59 Related Entity

*related entity* means any individual or entity or its *subcontractors* or assignees:

- 2.59.1 which wholly or partially own, operate or manage the *insured*;
- 2.59.2 in which the *insured* has an ownership interest in excess of 20%; or
- 2.59.3 which is controlled, operated or managed by the *insured*.

## 2.60 Regulatory Proceeding

*regulatory proceeding* means a formal investigation of or an administrative adjudicative proceeding against an *insured* by an administrative or regulatory agency or similar governmental body for a *privacy wrongful act* or *security wrongful act*, including an appeal thereof, commenced by the *insured's* receipt of a subpoena, investigative demand, complaint or similar document.

## 2.61 Retroactive Date

*retroactive date* means the Retroactive Date specified in the *schedule*.

## 2.62 Reward Payment

*reward payment* any amount, offered by the *insured*, with our prior consent, for information that leads to the arrest and conviction of any individual committing or trying to commit any illegal act related to a *cyber extortion threat*.

## 2.63 Schedule

*schedule* means the Schedule attaching to and forming part of this Policy, including any Schedule substituted for the original Schedule, duly signed, stamped and dated by our authorised officer.

## 2.64 Securities

*securities* mean any bond, debenture, note, share, stock or other equity or security for debt, and will include any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or to purchase, voting trust certificate relating to, or other interest in any of the foregoing items representing *money* or *property*. *Securities* shall not include *money* or *property*.

## 2.65 Security Event

*security event* means:

2.65.1 the *unauthorised access* to;

2.65.2 physical theft by a person other than the *insured* of;

2.65.3 introduction of *malware* into; or

2.65.4 *denial of service attack* upon,

the *insured's computer system* causing a breach of *network security* that results in:

- (i) an *interruption of service*;
- (ii) the theft, alteration, destruction, loss, or unauthorised release of *electronic data* on the *insured's computer system*;
- (iii) the denial of an authorised user's access to the *insured's computer system*, unless such denial of access is caused by a mechanical or electrical failure outside the control of the *insured*;
- (iv) the participation by the *insured's computer system* in a *denial of service attack* or digital currency mining directed against a *third party's computer system*;
- (v) the transmission of *malware* from the *insured's computer system* to a *third party's computer system*;
- (vi) the alteration, corruption or destruction of *digital assets* or *personal information*; or
- (vii) the loss of use of all or part of the *insured's computer system* caused by the unauthorised reprogramming of *software* that renders such *computer system*, or any component thereof, non-functional or useless for its intended purpose.

## 2.66 Security Wrongful Act

*security wrongful act* means any actual or alleged act, error, omission, neglect or breach of duty by the *insured*, someone for whom the *insured* is legally responsible or the *insured's service provider*, that results in a *security event*.

## 2.67 Service Provider

*service provider* means a business that the *insured* does not own, operate or control that the *insured* retains under a written contract to provide services to the *insured* for:

2.67.1 maintaining, managing or controlling *computer systems*; or

2.67.2 hosting or facilitating any publicly accessible internet website used by the *insured* for the purposes of the *insured's* business the content of which is under the *insured's* control.



## 2.68 Subcontractor

*subcontractor* means any independent consultant or subcontractor other than an *employee* who provides the *insured* with services under a written contract.

## 2.69 Software

*software* means operations and applications, codes and programs by which *electronic data* is electronically collected, transmitted, processed, stored or received. *Software* does not include *electronic data*.

## 2.70 Subsidiary

*subsidiary* means any company or other legal entity over which the *policyholder* exercises effective governance or control or in respect of which the *policyholder* directly or indirectly:

2.70.1 controls the composition of the board of directors; and/or

2.70.2 controls more than half of the voting power; and/or

2.70.3 holds more than half of the issued share capital or other ownership of the entity,

and any company or legal entity whose financial accounts are required to be consolidated with those of the named *policyholder* pursuant to Financial Reporting Act 2013 or the applicable New Zealand accounting standard.

## 2.71 System Failure

*system failure* the measurable, material, unintentional and unplanned outage, suspension or failure of the *computer system*, however caused. *System failure* does not include *security events*.

## 2.72 Territorial Limits

*territorial limits* mean worldwide, unless otherwise specified in the *schedule*.

## 2.73 Third Party

*third party* means any natural person, firm, individual, partnership, organisation or corporation other than the *insured* but not any *related entity* or any other person or entity having a financial or executive interest in the *insured*.

## 2.74 Unauthorised Access

*unauthorised access* means an access to or a use of a *computer system* by an unauthorised person or persons, or by an authorised person or persons in an unauthorised manner.

## 2.75 Waiting Period

*waiting period* means the waiting period, if any, from the date and time the *insured's computer system* first suffers an *interruption of service* which is specified in the *schedule*.

## 2.76 Wrongful act

*wrongful act* means a *security wrongful act* or a *privacy wrongful act* or an *electronic publishing wrongful act*.

## Section 3 – Exclusions

This Policy does not cover any loss, damage, consequential loss, legal liability, fees, costs, disbursements, awards or other expenses of whatsoever nature, whether specifically defined in this Policy or generally:

### 3.1 Bodily injury and Property damage

based upon, arising out of, or attributable to, directly or indirectly:

3.1.1 death, bodily injury, mental injury, sickness, disease, mental anguish or shock sustained by any person other than emotional distress arising from a *privacy event*; or

3.1.2 physical damage to *property*.

### 3.2 Claims by Related Entities

based upon, arising out of, or attributable to any *claim* brought or loss claimed by any *insured* or any *related entity*.

Provided always that this exclusion does not apply to any *claim* brought by the *insured* in their capacity as:

- (i) a *customer* or client of the *insured*; or
- (ii) an *employee* for a *privacy event* relating to the unauthorised disclosure of such *employee's personal information*.

### 3.3 Contractual Liability

based upon, arising out of, or attributable to, directly or indirectly, any express warranty, express guarantee or under any contractual obligation (other than for *PCI –DSS payments* if that Insuring Clause applies) to the extent that the obligation gives rise to a *claim* for which the *insured* would not have been liable in the absence of the express warranty, express guarantee or contractual obligation.

### 3.4 Criminal or Malicious Acts

based upon, arising out of, or attributable to, directly or indirectly:

- 3.4.1 any criminal, dishonest, fraudulent or malicious act committed or condoned by any *insured*;
- 3.4.2 any intentional or knowing violation of law committed or condoned by any *insured*; or
- 3.4.3 any gaining of profit, remuneration, financial or non-financial advantage by the *insured* to which the *Insured* was not legally entitled,

provided always that:

- (i) we will pay *defence costs* and defend such *claim* until there is a judgment, binding arbitration decision or finding of fact against such *insured* or an adverse admission under oath or plea of no contest by such *insured* which establishes such criminal, dishonest, fraudulent or malicious *wrongful act*, intentional or knowing violation of law or profit, remuneration or advantage. In such event, the *insured* will reimburse us for any *defence costs* paid by us on behalf of such *insured* arising from such *claim*; and
- (ii) no *wrongful act* of or knowledge possessed by such *insured person* will be imputed to any other *insured* except the *wrongful act* of or knowledge possessed by the *insured's* Chief Executive Officer, Chief Financial Officer, Director of Human Resources, General Counsel or risk manager or any other *insured person* in a functionally equivalent position.

### 3.5 Crypto-assets

based upon, arising out of, or attributable to, directly or indirectly, any loss of, theft of, loss of access to, or fall in value of, any crypto-assets including, without limitation, any cryptocurrencies and non-currency crypto-assets such as tokens.

### 3.6 Electromagnetic Field, Electromagnetic Radiation or Electromagnetism

based upon, arising out of, or attributable to, directly or indirectly, any *electromagnetic field*, *electromagnetic radiation* or *electromagnetism*.

*Electromagnetic field* means any field of force that is made up of associated electric and magnetic components.

*Electromagnetic radiation* means any succession of electromagnetic waves.

*Electromagnetism* means magnetism that is developed by a current of electricity.

### 3.7 Electronic Communications

based upon, arising out of, or attributable to any actual or alleged violation of:

- 3.7.1 the Spam Act 2003 (Cth), taking into account amendments within the Competition and Consumer Act 2010 (Cth);
- 3.7.2 the Telephone Consumer Protection Act (U.S.) (TCPA);

- 3.7.3 the CAN-SPAM Act of 2003 (U.S.);
- 3.7.4 Canada's federal anti-spam legislative Act; an Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act; and including, all the rules and regulations promulgated under it, any amendment of or addition to it and any aspects of other federal, provincial, territorial or municipal act, law or statute it amends;
- 3.7.5 the Canadian Radio-Television and Telecommunications Commission (CRTC) guidelines;
- 3.7.6 the Canadian Marketing Association's do-not-call list;
- 3.7.7 the Fair Credit Reporting Act (U.S.) (FCRA) and the Fair and Accurate Credit Transactions Act (U.S.) (FACTA);
- 3.7.8 any federal, state, provincial, territorial, or local statute, ordinance, regulation, or directive other than the items listed above in 3.7.1 to 3.7.7 above, or any other legal liability, at common law or otherwise, that addresses, prohibits, or limits the printing, dissemination, disposal, monitoring, collecting, recording, use of, sending, transmitting, communicating or distribution of material or information; or
- 3.7.9 any amendment, addition, or replacement of any statute, ordinance, regulation, rule, or directive shown in 3.7.1 to 3.7.8 above,

provided, however, this exclusion does not apply if such unsolicited electronic dissemination of faxes, electronic mail or other communications to multiple actual or prospective *customers* by the *insured* or any other *third party* caused by a *security event*.

### 3.8 Employment

based upon, arising out of, or attributable to, directly or indirectly:

- 3.8.1 death, bodily injury, mental injury, sickness, disease, mental anguish or shock of any *business partner*, director, *member*, principal or *employee* while in the course of their employment with the *insured*;
- 3.8.2 any obligation owed by the *insured* as an employer or potential employer to any director or *employee* or applicant for employment; or
- 3.8.3 any express or implied terms of a partnership agreement or membership agreement,

provided always that this exclusion will not apply to any *claim* by an *employee* for a *privacy event* relating to the unauthorised disclosure of such *employee's personal information*.

### 3.9 Government Action

based upon, arising out of, or attributable to, directly or indirectly, any seizure, confiscation, expropriation, nationalisation or destruction of a *computer system* by order of any governmental authority, provided however that this exclusion shall not apply to a *regulatory proceeding* following a *privacy event*.

### 3.10 Infrastructure and Power failure

based upon, arising out of, or attributable to any mechanical or electrical failure, interruption or outage including any electrical power interruption or surge, brownout, blackout, short circuit, over voltage or power fluctuation or outage to gas, water, telephone, cable, satellite, telecommunications, the internet or any component thereof including hardware or software or any other infrastructure, provided always that this exclusion will not apply to any failure, interruption or outage of telephone, cable or telecommunications under the *insured's* direct control which constitute a *system failure* or arise out of a *wrongful act* or a *denial of service attack* against the *insured's computer systems*.

### 3.11 Insolvency

based upon, arising out of, or attributable to, directly or indirectly, the *insured's* or any of the *service provider's* or *subcontractor's* insolvency or bankruptcy.

### 3.12 Nuclear Risks

based upon, arising out of, or attributable to, directly or indirectly:

- 3.12.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- 3.12.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any *nuclear installation*, *nuclear reactor* or other nuclear assembly or nuclear component thereof; or
- 3.12.3 any weapon employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

*Nuclear installation* means any installation of such class or description as may be prescribed by regulations made by the relevant governmental authority from time to time by statutory instrument being an installation designed or adapted for:

- (a) the production or use of atomic energy;
- (b) the carrying out of any process which is preparatory or ancillary to the production or use of atomic energy and which involves or is capable of causing the emission of ionising radiation; or
- (c) the storage, processing or disposal of nuclear fuel or of bulk quantities of other radioactive matter which has been produced or irradiated in the production or use of nuclear fuel.

*Nuclear reactor* means any plant including any machinery, equipment or appliance whether affixed to land or not designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons.

### 3.13 Patents

based upon, arising out of, or attributable to any actual or alleged misappropriation, infringement or violation of any patent or trade secret, provided always that this exclusion will not apply to the extent any *claim* alleges an inadvertent disclosure of a trade secret that constitutes a *privacy event*.

### 3.14 Physical Events and Natural Perils

based upon, arising out of, or attributable to, directly or indirectly, any fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, storm, subsidence, tidal wave, landslide, riot, hail, subterranean fire or any other physical event however caused.

### 3.15 Pollution or Contamination

based upon, arising out of or attributable to:

- 3.15.1 the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of *pollutants* into or on real or personal property, water or the atmosphere; or
- 3.15.2 any direction or request that any *insured* test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *pollutants*, or any voluntary decision to do so.

*Pollutants* means any substance exhibiting any hazardous characteristics as defined by or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or a federal, state, provincial, territorial, county, municipality or locality counterpart thereof or equivalent list in any territories outside of the United States of America.

*Pollutants* shall also mean any other air emission, odour, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, noise, fungus (including mould, mildew and any mycotoxin, spore, scent or by-product produced or released by any fungus, but not any fungus intended by the *insured* for consumption) and electric or magnetic or electromagnetic field. Such matters shall include, without limitation, solids, liquids, gaseous, thermal, biological, nuclear or radiological irritants, contaminants or smoke, soot, fumes, acids, alkalis, chemicals, or waste materials.

### 3.16 Prior and Pending Claims

based upon, arising out of or attributable to:

- 3.16.1 any act, error or omission or *wrongful act* or *circumstance*:
  - (a) that occurred prior to the inception date or *retroactive date* as specified in the *schedule* and that the *control group* knew or ought to have reasonably known about prior to inception of this Policy which may give rise to a *claim* against the *insured*;
  - (b) that was notified by the *insured* under any other insurance policy prior to inception of this Policy; or
  - (c) that was disclosed or ought reasonably to have been disclosed on the *insured's* latest proposal to us; or
- 3.16.2 any act, error or omission or *wrongful act, circumstance* or any *claim* made against any *insured* prior to inception of this Policy arising from the same or *interrelated wrongful acts* or the same or *interrelated events*; or
- 3.16.3 based upon, arising out of, or attributable to, directly or indirectly any failure in the *insured's network security* or issue likely to cause an *event* which any person in the *control group* knew about or should have been aware of before any *privacy event* or *security event* or *system failure*.

### 3.17 Products and Professional Services

based upon, arising out of or attributable to any actual or alleged:

- 3.17.1 failure of the *insured's* products, including *software*, to perform the function, or serve the purpose, intended by any *third party* or any *insured*; or
- 3.17.2 negligent rendering of or negligent failure to render *professional services*.

However, this exclusion shall not apply to any *privacy wrongful act*.

*Professional services* mean those acts or services requiring specialised knowledge, skill, or professional judgment that the *insured* renders to others pursuant to a written agreement and for a fee or other consideration, including but not limited to financial analysis, securities valuation and forecasting.

### 3.18 Ransomware Payments

based upon, arising out of, or attributable to any actual or alleged violation or contravention of any Ransomware Payments, for which does not allow us to make such payments.

### 3.19 RICO

based upon, arising out of or attributable to any actual or alleged violations of any responsibilities, obligations or duties imposed by the Racketeer Influenced and Corrupt Organization Act of 1961 or amendments thereto or any similar provisions or statute or common law enacted in the United States of America or in any other territory or jurisdiction outside the United States of America.

### 3.20 Statutory and Related Matters

based upon, arising out of, or attributable to any actual or alleged:

- 3.20.1 violation by the *insured* of the Employee Retirement Income Security Act of 1974 (U.S.) (ERISA), the Canadian Pension Benefits Standards Act, the Ontario Pension Benefits Act, 1990, or any other similar federal, state, provincial, territorial or municipal act;
- 3.20.2 violation by the *insured* of the Securities Act of 1933 (U.S.), the Securities Exchange Act of 1934 (U.S.), the Investment Company Act of 1940 (U.S.), the Investment Advisors Act (U.S.), the Canadian Securities Act (Ontario), or any other foreign, federal, state, provincial, territorial, or local securities law;
- 3.20.3 violation by the *insured* of any rule or regulation promulgated under the statutes listed in paragraphs 3.20.1 and 3.20.2 above, or any other foreign, federal, state, provincial, territorial, or common law similar thereto;
- 3.20.4 deceptive or unfair trade practice, consumer fraud, false or deceptive advertising, or misrepresentation;

- 3.20.5 unfair competition, price fixing, restraint of trade, monopolisation, consumer fraud, or other violation of the Federal Trade Commission Act (U.S.), the Sherman Anti-Trust Act (U.S.), the Clayton Act (U.S.), the Competition Act (Canada), or any other federal, state, provincial, territorial, local, or common law or rules or regulations involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade, or otherwise protecting competition;
- 3.20.6 any amendment, addition, or replacement of any statute, ordinance, regulation, rule, or directive shown in 3.20.1 to 3.20.5 above; or
- 3.20.7 any equivalent statute or common law in any other territory or jurisdiction outside the United States of America or Canada,

provided, however, this exclusion shall not apply to:

- (i) a *regulatory proceeding* that may constitute a violation of Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) (U.S.), as amended, including a *consumer redress fund* established in resolving such a *regulatory proceeding*; or
- (ii) an otherwise covered *claim* or *breach costs*.

### 3.21 Trading Losses

based upon, arising out of, or attributable to the monetary value of any transaction or change in value of any account, including but not limited to, electronic funds transfers, trading losses, trading liabilities, awards, points, coupons, earnings or other intangible property.

### 3.22 Unlicensed Software

based upon, arising out of, or attributable to, directly or indirectly, any *insured's* known use of illegal or unlicensed programs that infringe copyright or otherwise are in violation of software protection laws.

### 3.23 War, Civil Unrest and Terrorism

based upon, arising out of, or attributable to, directly or indirectly or in the context of:

- 3.23.1 war, including undeclared or civil war, or action by a military force, including action in hindering or defending against an actual or expected attack, by any government or sovereign, or other authority using military personnel or other agents; or
- 3.23.2 insurrection, rebellion, revolution, riot, usurped power, or action taken by governmental authority using military personnel in hindering or defending against any of these; or
- 3.23.3 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 any 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 whether acting alone or on behalf of or in connection with any organisation or government de jure or de facto and which:
- (i) involves violence against one or more persons;
- (ii) involves damage to property;
- (iii) endangers life other than that of the person committing the action;
- (iv) creates a risk to health or safety of the public or a section of the public; or
- 3.23.4 any action in controlling, preventing, suppressing, retaliating against or responding to any act or preparation in respect of action or threat of action described in 3.23.3 above.

However, this exclusion does not apply to *cyberterrorism*.

## Section 4 – Special Provisions

### 4.1 Contracts (Rights of Third Parties) Act 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Policy is not enforceable by any *third party*.

### 4.2 Discharge of Liability

We may at any time pay in connection with any *claim* or *loss* the maximum amount payable under this Policy after deduction of any sum already paid during the *policy period* or any lower amount for which the *claim* or *loss* can be settled and then relinquish the conduct and control and be under no further liability in respect of the *claim* or *loss*.

### 4.3 Joint Liabilities

If the *insured* comprises more than one party we will indemnify each party as though a separate policy had been issued to each of them provided always that the total amount of indemnity to all such parties will not exceed the amount payable if the *insured* comprised only one party and in any event will not exceed the *aggregate limit of liability* specified in the *schedule*.

### 4.4 Limit of Liability

- 4.4.1 All *claims* and *circumstances* arising out of the same *wrongful act* and all *interrelated wrongful acts* shall be considered a single *claim* and such single *claim* shall be considered to have been first made on the date upon which the earliest *claim* is first made or *circumstance* notified.
- 4.4.2 All *first party loss* arising out of the same *event* and all *interrelated events* shall be considered a single *first party loss* and such single *first party loss* shall be considered to have been first discovered on the date upon which the earliest *event* is first discovered.
- 4.4.3 The *insured* will pay the *deductible* in respect of each and every covered single *claim* and/or single *first party loss* under this Policy.
- 4.4.4 Subject to the *aggregate limit of liability*, the *limits of liability* specified in the *schedule* are the maximum aggregate amounts that we are liable to pay in respect of each Insuring Clause, except where any sub-limit is applicable as specified in the *schedule*. Where any such sub-limit applies then this forms part of, and is not in addition to, the maximum aggregate amount that we are liable to pay in respect of such *claim* or *first party loss*.
- 4.4.5 The *aggregate limit of liability* specified the *schedule* is our maximum aggregate liability in respect of all items of *loss*, *first party loss* and *defence* costs covered under all Insuring Clauses and, unless stated otherwise, any extension/endorsement.
- 4.4.6 In the event any *claim* or single *first party loss* is covered under more than one Insuring Clause then:
- (i) only one *deductible* shall be applicable to such single *claim* or single *first party loss*, being the highest *deductible* applicable to any of the relevant Insuring Clauses; and
  - (ii) subject to 4.4.4 and 4.4.5 only one *limit of liability* shall be applicable to such single *claim* or single *first party loss*, being the highest *limit of liability* applicable to any of the relevant Insuring Clauses.

### 4.5 Sanctions regulation

Notwithstanding any other terms or conditions under this Policy, Zurich shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to any *insured* or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of the *insured* would violate any applicable trade or economic sanctions, law or regulation.

### 4.6 Valuation of Digital Asset Replacement Expenses

If the *insured* cannot restore *digital assets* but can only reconstitute such *digital assets*, then *digital assets replacement costs* will be limited to the actual cost the *insured* incurs to reconstitute such *digital assets*. If the *insured* cannot restore or reconstitute *digital assets*, then *digital assets replacement costs* will be limited to the actual cost the *insured* reasonably incurs to determine this to be the case.

#### 4.7 Valuation of Business Income Loss

It is agreed that *business income loss* and *dependent business Income loss* will be calculated on an hourly basis based on the actual such loss the *insured* incurs during the *period of restoration* as the case may be.

In order to determine the amount of loss payable we will consider the *insured's* net profit and expenses before the *interruption of service* occurred and the *insured's* probable net profit and expenses if no *interruption of service* had occurred. Any such calculation will not include any estimate or projection that assumes that the *insured* would have earned additional income as a result of favourable business conditions experienced by competitors or other comparable businesses. The *insured* will provide us with access to all relevant sources of information, including, but not limited to:

- (a) the *insured's* financial records, tax returns, accounting procedures;
- (b) Bills, invoices and other vouchers; and
- (c) Deeds, liens and contracts.

### Section 5 – General Conditions

#### 5.1 Consent

Where our consent is required under this Policy (including for the incurring of any reasonable and necessary fees, costs and expenses) such consent will not be unreasonably withheld or delayed.

#### 5.2 Policy Interpretation and Jurisdiction

The validity and interpretation of this Policy shall be exclusively governed by and construed in accordance with the laws and regulations of the country specified in the Applicable Law section of the *schedule* of this Policy.

This Policy, its *schedule* and any endorsements are one contract in which, unless the context otherwise requires:

- 5.2.1 headings are descriptive only, not an aid to interpretation;
- 5.2.2 singular includes the plural, and vice versa;
- 5.2.3 the male includes the female and neuter;
- 5.2.4 all references to specific legislation include amendments to and re-enactments of such legislation; and
- 5.2.5 references to positions, offices or titles shall include their equivalents in any jurisdiction in which a *claim* is made.

Any dispute under this Policy is subject to the exclusive jurisdiction of the country, region or city specified in the Applicable Law and Jurisdiction section of the *schedule*.

In the event that any part of this Policy becomes unenforceable or invalid under any applicable law or becomes so by subsequent court decision, such unenforceability or invalidity shall not render the Policy unenforceable or invalid as a whole.

#### 5.3 Arbitration

We and the *policyholder* shall submit any dispute or controversy arising out of or relating to this Policy to arbitration, whether arising during or after the period of this Policy. Unless otherwise agreed by the parties, such arbitration shall be administered by an arbitration tribunal (the Tribunal) consisting of three arbitrators, one to be appointed by the *policyholder*, one to be appointed by us and the third to be appointed by the two appointed arbitrators (the 'Third Arbitrator'). The Third Arbitrator shall be appointed as soon as practicable (and no later than thirty (30) days) after the appointment of the two party-appointed arbitrators. The Tribunal shall be constituted upon the appointment of the Third Arbitrator. The arbitrators shall be persons (including those who have retired) with not less than ten years' experience of insurance or reinsurance within the industry or as lawyers or other professional advisers serving the industry.

The three arbitrators shall decide by majority. If a majority cannot be achieved the decision of the Third Arbitrator shall prevail.



If an arbitrator subsequent to his or her appointment is unwilling or unable to act a new arbitrator shall be appointed to replace him or her by the procedure set out above.

Unless otherwise extended or ordered by the tribunal within 15 days of the appointment of the Third Arbitrator each party shall submit its case to the tribunal within 45 days of the appointment of the Third Arbitrator.

The Tribunal shall not be bound by the formal rules of evidence. The Tribunal shall have power to fix all procedural rules relating to the conduct of the arbitration.

The Tribunal shall within 60 days of reaching its decision in the arbitration issue to the *policyholder* and us its written and reasoned award. The award shall be final and binding on the parties. We and the *policyholder* are obliged to carry out the same. If either we or the *policyholder* should fail to carry out the award the other may apply for its enforcement to a court of competent jurisdiction in any territory in which the party in default is domiciled or has assets or carries on business.

All costs of the arbitration shall be at the discretion of the Tribunal who may direct to and by whom and in what manner they shall be paid.

The parties to the arbitration shall share equally the fees and expenses of the Third Arbitrator as well as other common expenses of the arbitration process.

The dispute or controversy submitted to the Tribunal shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force when notice of arbitration is submitted.

#### 5.4 Automatic acquisition

If during the *policy period* the Insured acquires or forms a *subsidiary* this Policy will automatically apply to such *subsidiary* and its *insured persons* from the date of such acquisition or formation,

provided always that:

- 5.4.1 such *subsidiary* is domiciled within New Zealand;
- 5.4.2 it does not have turnover which exceeds 15% of the total consolidated turnover of the *policyholder* as stated in the last published accounts;
- 5.4.3 The *subsidiary* has not, in the preceding 3 years, suffered *claims* or loss of a type covered by this Policy (whether insured or not) which was greater than the amount of the *deductible*; and
- 5.4.4 the *insured* notifies us in writing within 90 days of the acquisition or formation of such *subsidiary*.

With regard to newly acquired *subsidiary*, which do not meet the conditions described in 5.4.1 to 5.4.3 above, we may, at our sole discretion, extend coverage to such *subsidiary* and any *insured person* thereof, if the *policyholder*:

- (i) notifies us in writing of the acquisition of such entity;
- (ii) provides us with full underwriting information as we may require; and
- (iii) agrees to any additional premium and/or amendment of the provisions of this Policy required by us relating to such *subsidiary*.

Any cover provided for any *subsidiary* formed or acquired during the *policy period* and its *insured persons* will only apply to *wrongful acts, events* or *claims* occurring after the *Insured's* acquisition or formation of such *subsidiary* and will be conditional upon the *policyholder* paying, when due and if applicable, any additional premium required by us for such *subsidiary*.

#### 5.5 Policy termination and Non-renewal

This Policy, including all purchased Insuring Clauses, shall terminate at the earliest of the following times, subject to any applicable laws:

- 5.5.1 Upon expiration of the *policy period* as set out in the *schedule*;
- 5.5.2 At such other time as may be agreed upon by Zurich and the *policyholder*.

### 5.5.3 Cancellation:

- (a) The *policyholder* may cancel this Policy by giving notice to us at any time.
- (b) We may cancel this Policy at any time by giving notice to the *policyholder*, such cancellation to take effect 60 days from the time of receipt of notification by the *policyholder*.
- (c) After cancellation by the *policyholder* a refund of premium will be allowed pro rata for the unexpired *policy period*.
- (d) After cancellation by us a refund of premium will be allowed pro rata for the unexpired *policy period*.

However, in the event of the notification of a *claim* or *circumstance* which is covered under this Policy, the premium shall be regarded as fully earned and may be retained by us.

5.5.4 Non-renewal. If Zurich elects not to renew this Policy, we shall mail to the *policyholder* written notice thereof at least 60 days prior to the expiration of the *policy period*.

5.5.5 Cessation of Subsidiaries. If during the *policy period* a *subsidiary* cease to be a *subsidiary* no cover will be provided in respect of such *subsidiary* and its *insured persons* for any *wrongful act*, any *event* or *claims* involving such company or persons or any other loss or *claim* after the date such company ceased to be a *subsidiary*.

## 5.6 Change of Control

If there is a *change of control* during the *policy period* then the cover provided under this Policy only applies in respect of any *wrongful act* or any *event* occurring prior to the effective date of that *change of control*.

The *insured* must give written notice to us of the *change of control* as soon as reasonably practicable.

*Change of control* means an event wherein any person, entity or group:

- 5.6.1 acquires more than 50% of the *policyholder's* share capital;
- 5.6.2 acquires the majority of the voting rights in the *policyholder*;
- 5.6.3 assumes the right to appoint or remove the majority of the *policyholder's* board of directors or equivalent positions;
- 5.6.4 assumes control pursuant to written agreement with other shareholders over the majority of the voting rights in the *policyholder*;
- 5.6.5 merges with the *policyholder* such that the *policyholder* is not the surviving entity; or
- 5.6.6 is appointed as a trustee in bankruptcy, receiver, liquidator, conservator, rehabilitator or administrator (or equivalent official or person in the applicable jurisdiction) for the *policyholder*, or the *policyholder* becomes a debtor-in-possession (or the equivalent status in the applicable jurisdiction).

## 5.7 Claims procedures

5.7.1 Responsibilities of the *insured*.

It is agreed that:

- (i) on receiving verbal or written notice of any *claim* that could reasonably exceed 50% of the *deductible* the *insured* will:
  - 1. as soon as reasonably possible, but in no event later than 60 days after the end of the *policy period*, give notice to us;
  - 2. as soon as reasonably possible forward to us any *claim*, writ or summons issued against any *insured*;
  - 3. at the *insured's* own expense and as soon as reasonably possible supply full details of the *claim* in writing to us together with any evidence and information that may be reasonably required by us for the purpose of investigating or verifying the *claim* and keep us up to date with any future evidence and information received by the *insured* or reasonably required by us; and

- (ii) on the discovery of a *privacy event* as a condition precedent to any liability on our part to make any payment to the *insured* under the Policy the *insured* will:
  1. as soon as reasonably possible notify us using the Breach Response Service emergency number and in any event no later than 72 hours after the *insured* first becomes aware of the *privacy event* give us written notice during the *policy period*;
  2. take all reasonable steps to protect *computer systems, personal information, digital assets* or confidential corporate information from further loss or damage; and take all reasonable steps and measures to limit or mitigate *business income loss*;
  3. co-operate with us in our investigation and with any loss adjusters or other advisers or professionals we engage or on the *insured's* behalf; and
  4. at the *insured's* own expense and as soon as reasonably possible supply full details of any evidence and information that may reasonably be required by us for the purpose of investigating or verifying the *privacy event*.
- (iii) on the discovery of a *security event, administrative error* or *system failure* the *insured* will:
  1. as soon as reasonably possible, but in no event later than 60 days after the end of the *policy period*, notify us using the Breach Response Service emergency number and in any event no later than 30 days after the *insured* first becomes aware of the *security event, administrative error* or *system failure* give us notice;
  2. take all reasonable steps and measures to limit or mitigate *business income loss* and *dependent business income loss*; and
  3. provide us with proof of loss within 6 months of the discovery of any such *security event, administrative error* or *system failure* under this Policy or with our prior consent within such additional time as the *insured* may request,

provided always that no legal proceedings for the recovery of any amount may be brought before the end of the 60 days after the *insured's* original proof of loss is submitted to us or more than 12 months after the discovery of *the security event, administrative error* or *system failure*.
- (iv) on the occurrence of a *cyber extortion threat* the *insured* will notify us using the Breach Response Service emergency number and provide us with notice as soon as reasonably possible, but in no event later than 60 days after the end of the *policy period*; and
- (v) no settlement, admission of liability, payment or promise of payment will be made to a *third party* without our consent.

## 5.72 Our Rights.

We will:

- (i) be entitled to conduct the defence or settlement of any *claim* made against any *insured* and the *insured* will give all assistance as may be reasonably required by us;
- (ii) be entitled to appoint legal counsel;
- (iii) be entitled to take the benefit of any rights of any *insured* against any other party before or after any *insured* has received indemnification under this Policy and the *insured* will give all assistance as may be reasonably required by us; and
- (iv) have the right but not the duty to defend any *regulatory proceeding*. The *insured* will not incur any *defence costs* in any *regulatory proceeding* without our prior consent.

## 5.8 Extended Reporting Period

- 5.8.1 In the event this Policy is not renewed or replaced, the *policyholder* will be entitled to an *extended reporting period*:
- (i) automatically for sixty (60) days at no additional premium; or
  - (ii) for the period of time specified in the *schedule*, subject to the *policyholder* making a request for such *extended reporting period* no later than thirty (30) days after the expiry of the *policy period* and paying the applicable required additional premium.
- 5.8.2 In the event an *extended reporting period* is applicable such *extended reporting period* applies only in respect of any *wrongful act* committed on or after the *retroactive date* specified in the *schedule* and prior to the expiration date of the *policy period*,  
provided always that:
- (i) any *claim* first made during the *extended reporting period*, if applicable, shall be considered made during the *policy period*;
  - (ii) the *extended reporting period* does not reinstate or increase the *limit of liability*, nor extend the *policy period*;
  - (iii) in the event of *change of control* (as defined in General Condition 5.6, Change of Control) the *extended reporting period* will not be available; and
  - (iv) the additional premium for any *extended reporting period* shall be deemed fully earned at the inception of the *extended reporting period*.
- 5.8.3 The *extended reporting period* shall terminate immediately upon the effective date of:
- (i) the renewal of this Policy by us; or
  - (ii) the placement of any cyber insurance contract issued by any other insurer which effectively replaces or renews the coverage afforded by this Policy, either in whole or in part (obtaining cover on terms which are more restrictive than this Policy does not constitute non-renewal or non-replacement).

## 5.9 Fair Presentation of the risk

- 5.9.1 At inception and renewal of this Policy and also whenever changes are made to it at the *insured's* request the *insured* must:
- (i) disclose to us all material facts in a clear and accessible manner; and
  - (ii) not misrepresent any material facts.
- 5.9.2 If the *insured* does not comply with clause 5.9.1 of this condition we may:
- (i) avoid this Policy which means that we will treat it as if it had never existed and refuse all *claims* where any non-disclosure or misrepresentation by the *insured* is proven by us to be deliberate or reckless in which case we will not return the premium paid by the *insured*; and
  - (ii) recover from the *insured* any amount we have already paid for any *claims* including costs or expenses we have incurred.
- 5.9.3 If the *insured* does not comply with clause 5.9.1 of this condition and the non-disclosure or misrepresentation is not deliberate or reckless this Policy may be affected in one or more of the following ways depending on what we would have done if we had known about the facts which the *insured* failed to disclose or misrepresented:
- (i) if we would not have provided the *insured* with any cover we will have the option to:
    - (a) avoid the Policy which means that we will treat it as if it had never existed and repay the premium paid; and
    - (b) recover from the *insured* any amount we have already paid for any *claims* including costs or expenses we have incurred;

- (ii) if we would have applied different terms to the cover we will have the option to treat this Policy as if those different terms apply. We may recover any payments made by us on *claims* which have already been paid to the extent that such *claims* would not have been payable had such additional terms been applied; or
- (iii) if we would have charged the *insured* a higher premium for providing the cover we will charge the *insured* the additional premium which the *insured* must pay in full.

## 5.10 Fraudulent Claims

If the *insured* or anyone acting on the *insured's* behalf:

- 5.10.1 makes a fraudulent or exaggerated *claim* under this Policy;
- 5.10.2 uses fraudulent means or devices including the submission of false or forged documents in support of a *claim* whether or not the *claim* is itself genuine;
- 5.10.3 makes a false statement in support of a *claim* whether or not the *claim* is itself genuine;
- 5.10.4 submits a *claim* under this Policy for loss or damage which the *insured* or anyone acting on the *insured's* behalf or in connivance with the *insured* deliberately caused;
- 5.10.5 realises after submitting what the *insured* reasonably believed was a genuine *claim* under this Policy and then fails to tell us that the *insured* has not suffered any loss or damage; or
- 5.10.6 suppresses information which the *insured* knows would otherwise enable us to refuse to pay a *claim* under this Policy,

we will be entitled to refuse to pay the whole of the *claim* and recover any sums that we have already paid in respect of the *claim*.

We may also notify the *insured* that we will be treating this Policy as having terminated with effect from the date of any of the acts or omissions set out in clauses 5.10.1 to 5.10.6 of this condition.

If we terminate this Policy under this condition the *insured* will have no cover under this Policy from the date of termination and not be entitled to any refund of premium.

If any fraud is perpetrated by or on behalf of the *insured person* and not on behalf of the *insured* this condition should be read as if it applies only to that *insured person's claim* and references to this Policy should be read as if they were references to the cover effected for that person alone and not to the Policy as a whole.

## 5.11 Other Insurance

If any loss covered under this Policy is also covered, wholly or partially, by any other valid and collectable insurance policy, this Policy shall only apply and pay loss in excess of the amount paid by such other insurance policy, irrespective of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise. As excess insurance this Policy shall not apply or contribute to the payment of any loss until the insured limits and retentions amounts of that other insurance policy have been exhausted.

## 5.12 Sole Agent

It is agreed that:

- 5.12.1 if the *insured* comprises more than one party the person, company or entity set out as the *policyholder* in the *schedule* will act for itself and be deemed to act as the sole agent for the *insured*;
- 5.12.2 all parties comprising the *insured* are deemed to have consented and agreed that rights of action under this Policy are not assignable except with our prior consent;
- 5.12.3 the *policyholder* has the sole right to file notice or proof of loss or make a *claim* under this Policy; and
- 5.12.4 the *policyholder* has the sole right to bring legal proceedings arising under or in connection with this Policy.

### 5.13 Confidentiality

The existence and terms of the Policy shall be confidential as between the *insured* and us and shall not be published, disclosed or otherwise communicated except where:

5.13.1 the law requires disclosure in the financial statements or annual reports of the payment of premium by the *policyholder*, or

5.13.2 Zurich consents in writing to the disclosure of the existence and/or terms of this Policy.

### 5.14 Goods and Services Tax

All *limits of liability* in this Policy (except for the *deductible*) exclude GST where that GST is recoverable by us under the Goods and Services Tax Act 1985. We add GST, where applicable, to *claim* payments. However, this does not apply to the *deductible* which is GST inclusive.

### 5.15 Waiver of Privilege

If we instruct any lawyer to investigate or defend any *claim* against any *insured*, you authorise the lawyer to provide us any documents, information or advice in respect of the *loss*, including in relation to indemnity, and you waive any privilege to the extent necessary to give full effect to our entitlement in this respect. We agree to keep any documents, information or advice in respect of the *loss* confidential, and not to take steps to waive privilege over them.

**Zurich Australian Insurance Limited**

(incorporated in Australia)

Trading as Zurich New Zealand

ABN 13 000 296 640, AFS Licence No: 232507

Level 9, 29 Customs Street West, Auckland Central 1010

Client Enquiries

Telephone: 0508 987 424

[www.zurich.co.nz](http://www.zurich.co.nz)



**ZURICH**<sup>®</sup>