

# Technology and Communications Sectors Professional Indemnity Insurance

Policy Wording



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# 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 insurance provider with a global network of subsidiaries and offices. With about 55,000 employees, the Zurich Insurance Group delivers a wide range of general insurance and life insurance products and services for individuals, small businesses, and mid-sized and large companies, including multinational corporations, in more than 170 countries.

## Important information

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

1. A *claim* is made against *you*, 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 *retroactive date* stipulated in the *schedule*.

## Duty of Disclosure

Before *you* enter into a contract of general insurance with us, *you* have a duty at common law to disclose to us every matter they 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;
- is of common knowledge;
- we know or in the ordinary course of our business we ought to know;
- we indicate to *you* that we do not want to know.

## Non-disclosure or Misrepresentation

If the *you* make a misrepresentation to us, or if *you* do not comply with this duty of disclosure we may, subject to policy terms and conditions, treat the policy as if it never existed.

## Our contract with you

*Your* policy is a contract of insurance between *you* and Zurich and contains all the details of the cover that we provide. When we say '*you*' are entering into a contract, we are referring to the person(s) or parties shown as the Insured in the *schedule*. We otherwise refer *you* to the definition of '*you*' or '*your*' in the policy.

*Your* policy is made up of:

- the policy wording. This is common to all customers who buy our Technology and Communications Sectors Professional Indemnity Insurance product. 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 *you* provide to us when applying for insurance cover;
- *your* most current policy *schedule* issued by us. The policy *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 *your 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.

# Technology and Communications Sectors Professional Indemnity Insurance

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* form, the *schedule* and any Extensions of Cover and endorsements.

## 1. Insuring Clause

We agree to indemnify *you* for *compensation* and *claims expenses* resulting from any *claim* for *civil liability* first made against *you* and notified to us during the *period of insurance*, based solely on the provision of the *services*.

## 2. Limit of Liability

Subject to Extension of Cover 3.33 'Reinstatement', the *limit of liability* is the total limit of our liability in respect of all *compensation* directly or indirectly arising out of or in connection with:

- any single *claim*;
- all *claims* referable to the *period of insurance*;
- all *compensation* otherwise covered under the policy,

shall not exceed the respective *limit of liability* or other applicable sub-limit prescribed in the policy and/or *schedule* and shall apply only to the amount by which such loss exceeds the prescribed amount of the applicable *deductible*. For the purposes of application of the *limit of liability* and the *deductible*, all *claims* arising directly or indirectly out of or in connection with the same source or originating cause shall be deemed to be a single *claim*.

### 2.1 Claim expenses – exclusive of Limit of Liability

Where the *limit of liability* in the *schedule* is specified to be exclusive of *claim expenses*, we agree, in addition to the *limit of liability*, to pay the *claim expenses* of any *claim* which is the subject of indemnity under the Insuring Clause, except:

- 2.1.1 where *your* liability exceeds the available *limit of liability*, we shall only pay such proportion of the *claim expenses* as the available *limit of liability* bears to *your* liability;
- 2.1.2 where the amount we have paid or incurred as *claim expenses* exceeds the share that we are obliged to pay, *you* shall upon demand, pay to us the excess amount or alternatively, we may deduct the excess amount from any entitlements *you* may have at any time under this policy.

### 2.2 Claim expenses – inclusive of Limit of Liability

Where the *limit of liability* in the *schedule* is specified as inclusive of *claim expenses*, we agree to pay the *claim expenses* of any *claim* which is the subject of indemnity under the Insuring Clause, however the total of our liability together with the *claim expenses* shall not exceed the *limit of liability*.

## 3. Extensions of Cover

Extensions of Cover are provided, on the same terms and in the same manner as in the Insuring Clause (except as expressly stated), for the Extensions of Covers described below. Each Extension of Cover is subject to all the other applicable provisions of this policy, including any additional terms stipulated in connection with it, and no Extension of Cover shall increase our *limit of liability* unless expressly stated otherwise.

### 3.1 Claims preparation costs

We will pay all reasonable and necessary out of pocket costs incurred by an *insured person* at our request in the preparation of a defence to a *claim* covered by this policy up to an aggregate amount of \$50,000 in respect of all *claims* covered by this policy.

Notwithstanding the *deductible* specified in the *schedule* this extension will be subject to an excess of \$1,000. Payments provided under this extension, shall not include any *claim expenses*.

### 3.2 Compensatory penalties

Notwithstanding Exclusion 6.2 'Aggravated, Punitive or Exemplary Damages, Fines or Penalties', we will cover *you* for *claims* for compensatory civil penalties. Our total liability for the payment of compensatory civil penalties and all associated *claim expenses* under the policy shall not exceed \$250,000 in the aggregate for all *claims*.

However, we will not be liable to cover an *insured person* for any compensatory civil penalty:

- 3.2.1 for which we are legally prohibited at law from indemnifying the *insured person*;
- 3.2.2 based upon, attributable to or in consequence of any:
  - (a) wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
  - (b) gross negligence or recklessness; or
  - (c) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

### 3.3 Computer virus transmission

We agree to indemnify *you* for the inadvertent transmission of any *computer virus* or other program that contains instructions to initiate an event which causes modification of or damage to data memory or data media, provided that such *computer virus* or other program is not written by *your employee* or any *sub-contractor*.

Our total aggregate liability under this Extension of Cover shall not exceed \$100,000 in connection with all *claims*. The *deductible* applies to each *claim* under this extension.

### 3.4 Consultants, subcontractors and agents

We agree to indemnify *you* for any *compensation* and *claim expenses* resulting from a *claim* for *civil liability* arising from the conduct of any consultant, *sub-contractor* or agent of *yours*, for which *you* are legally liable, in the provision of the *services*. No indemnity is available to the consultant, *sub-contractor* or agent themselves.

### 3.5 Continuous cover

If *you* have neglected, through error or oversight only, in relation to an earlier policy issued of the same type as this one, then provided that *you* have maintained uninterrupted insurance of the same type since the expiry of that earlier policy, notwithstanding Exclusion 6.15.1 'Prior and pending', we will permit the matter to be reported under this policy and will indemnify *you* in respect of any *claim* arising from that matter, on the conditions that:

- 3.5.1 *you* have maintained without interruption, a professional indemnity insurance policy (by whatever name called) with an insurer to the present date;
- 3.5.2 *you* would have been indemnified under the professional indemnity insurance policy (by whatever name called) in force at the relevant time if the prior known fact had been notified to the applicable insurer when *you* first became aware of it;
- 3.5.3 neither the *claim* nor the prior known fact has earlier been notified to us or at any time to any insurer under any insurance policy;
- 3.5.4 there has been no fraudulent non-disclosure or misrepresentation to us in respect of the prior known fact; and
- 3.5.5 cover under this coverage extension will be pursuant to the terms, conditions, exclusions and limitations of the policy in force at the time *you* first became aware of the prior known fact, but only where such earlier policy affords no broader, greater or wider cover in respect of the *claim* than the provisions of this policy.

### 3.6 Contractual liability

Notwithstanding Exclusion – 6.5 'Contractual liability' we will indemnify *you* against *civil liability* arising from a *claim* under an indemnity and or hold harmless provision of a contract, to the extent that such *civil liability* arises from *your* performance of the *services*.

### 3.7 Court attendance costs

We agree to provide up to \$500 per day for court attendance costs incurred by an *insured person*, being a natural person, if such *insured person* is legally compelled to attend a civil proceeding as a witness in a *claim* covered by this policy.

Our total aggregate liability under this Extension of Cover for all court attendances by all witnesses in respect of all *claims* shall not exceed \$100,000 one *period of insurance*.

### 3.8 Defence costs for breach of contract

We agree to indemnify *you* in respect of all sums which *you* become legally liable to pay as damages and claimants' costs and expenses in respect of a *claim* arising due to:

- 3.8.1 the *products* or *services* not conforming in all material respects to any written specification forming part of the relevant contract.
- 3.8.2 the *services* having a material defect;
- 3.8.3 the *services* failing to meet any implied statutory term concerning, necessary quality, safety and/or fitness for purpose;
- 3.8.4 the failure to meet any express or implied statutory term concerning the use of reasonable care and skill.

### 3.9 Dishonesty

Notwithstanding Exclusion 6.7 'Dishonesty', we agree to indemnify *you* in respect of any *claim* for *civil liability* resulting from actual or alleged dishonest, fraudulent, criminal or malicious activity in the provision of the *services* by an *insured person*, an *employee* or *employees of yours* or any *sub-contractor*, provided that:

- 3.9.1 no indemnity is available to the dishonest *employee* themselves, or at all where *you* have knowingly engaged in or condoned such conduct;
- 3.9.2 for the purpose of this clause, *employee* shall mean a person or persons in *your* direct service, but shall exclude any principal or *director*; and
- 3.9.3 no indemnity is available in respect of any *claim* arising from or in any way connected with the loss of money, negotiable instruments including shares, bearer bonds, coupons, stamps, bank or currency notes.

### 3.10 Estates and legal representatives

We agree to indemnify the estate, heirs, legal representatives or assignees of any natural *insured person* who is incapable of managing their own affairs by reason of mental disorder or other incapacity or who is deceased, insolvent or bankrupt, in the same manner and to the same extent that the relevant *insured person* would be entitled to be indemnified in respect of a *claim* made against them.

This clause only provides an indemnity in accordance with the Insuring Clause in respect of *claims* solely based on the conduct of the relevant natural *insured person*. It does not respond where the conduct is that of an *insured person's* estate, heir, legal representative or assignee.

### 3.11 Extended reporting period

3.11.1 In the event of a non renewal of this policy, other than for non-payment of premium, *you* automatically have the right, without payment of any additional premium, to a single coverage extension under this policy for a period of 60 days after the expiry of the *period of insurance*, in relation to:

- (a) any *claim* made against any *insured person* during such 60 day period; and
- (b) any *inquiry* where the legal requirement on the *insured person* to attend first arises during such 60 day period,

but only with respect to a *claim* for *civil liability*, or an *inquiry*, resulting from *services* provided or allegedly provided prior to the expiry date of the *period of insurance*.

3.11.2 In the event of a non renewal of this policy, other than for nonpayment of premium, *you* shall have the right to a single coverage extension under this policy for a period of:

- (a) 12 months;
- (b) 24 months; or
- (c) 72 months;

after the expiry date of the *period of insurance* for:

- (d) any *claim* made against any *insured person* during the selected *extended reporting period*; or
- (e) any *inquiry* where the legal requirement on the *insured person* to attend first arises during such selected *extended reporting period*,

but only with respect to any *claim* for *civil liability*, or an *inquiry*, resulting from *services* provided or allegedly provided prior to the expiry date of the *period of insurance*.

Extension of Cover 3.11.2 'Extended reporting period' is subject to such terms and conditions we may decide. Further and subject to Extension of Cover 3.11.3 'Extended reporting period' below, cover is only available under this coverage extension if the applicable additional premium has been paid by *you*, as required by us.

If *you* select an *extended reporting period* as described above, *you* and the *insured persons* shall not have a right to cover under Extension of Cover 3.11.1 'Extended reporting period' above.

3.11.3 The rights contained in Extension of Cover 3.11.2 'Extended reporting period' shall terminate:

- (a) unless written notice of *your* intention to elect an *extended reporting period* described above is given to us by *you* no later than 30 days after the effective date of the non-renewal of this policy;
- (b) unless, as a condition precedent to the extended cover under Extension of Cover 3.11.2 'Extended reporting period' above, the additional premium is paid promptly as required by us. Once incepted, the entire premium for the *extended reporting period* shall be deemed fully earned at its commencement and is non-refundable; and
- (c) immediately upon the effective date of any professional indemnity contract of insurance or indemnity issued by us or any other insurer, which effectively replaces or renews the coverage afforded by this policy, either in whole or in part, or otherwise affords such coverage. This clause also applies to the cover under Extension of Cover 3.11.1 'Extended reporting period'.

3.11.4 *You* agree that if we offer renewal terms that are different to this policy (including but not limited to premium, *limit of liability* or other terms, conditions or exclusions) that this does not constitute a refusal by us to renew.

3.11.5 Nothing in this coverage extension increases the *limit of liability*.

3.11.6 '*You*' in this Extension of Cover means only the person(s) or parties shown as the Insured in the *schedule*.

### 3.12 Fair Trading Act

We agree to indemnify *you* for a *civil liability claim* alleging a breach of sections 9 to 14 of the Fair Trading Act 1986 or any similar trading legislation of the jurisdiction specified in the *schedule*.

### 3.13 Fee mitigation recovery

We agree to meet payment of *your* fee (or balance of the outstanding fee at the time the circumstances outlined within this clause arise and are submitted to us for consideration) where a client has expressed dissatisfaction with the *services* provided by an *insured person* and demonstrates reasonable grounds for such dissatisfaction and subsequent refusal to pay such fees (including amounts *you* are legally obligated to pay subcontractors at the time of the refusal to pay such fees) and threatens to bring a *claim* for *civil liability* against an *insured person* for a sum greater than the outstanding fee but agrees not to pursue such *claim* if *you* agree not to press for their outstanding fee. Our payment of the outstanding fee to *you* shall only be made if we believe that this shall avoid such a *claim* for a greater amount and approval to settle that *claim* in these circumstances has been received by *you* from us in writing.

The cover provided under this extension is sub-limited to \$100,000 any one *incident* and in the aggregate for all *incidents*. A separate *deductible* will apply to each *incident* under this extension.

If all attempts to avoid such a *claim* fail and a *claim* is made, it is agreed that the total amount payable by us (including any amount already paid) shall not exceed the *limit of liability*. You shall pay us any amount that is finally recovered from the client. We will only pay the part of any *claim* for *civil liability* that is covered by this policy.

### **3.14 First party copyright infringement**

We agree to indemnify *you* for any reasonable costs and expenses incurred in any proceedings for any injunction, damages or infringement of any copyright vested in by *you*, and notified to us during the *period of insurance*. Provided that we will not be required to incur any obligation to meet such costs where the cause of action is not one that is reasonable to pursue by *you*. In the event of any dispute arising between us, as to the reasonableness of pursuing any such cause of action, the opinion of a Queen's Counsel, the appointment of whom will be mutually agreed between us will be obtained and their decision will be binding. If we cannot agree on the appointment of a Queen's Counsel the chairman of the New Zealand Bar Association will appoint one.

Our total aggregate liability during any one *period of insurance* for this extensions of cover shall not exceed \$100,000 and shall be part of and not additional to the *limit of liability* as shown in the *schedule*.

The coverage provided by this extension is subject always to Exclusion 6.21 'Territorial Limits', even in the event that the exclusion has been deleted in respect of the remainder of coverage provided by this policy.

### **3.15 Intellectual property**

We will indemnify *you* in respect of any *claim* for *civil liability* arising from an unintentional infringement of copyright, trade marks, service marks, registered designs or any unintentional plagiarism or unintentional breach of confidentiality by an *insured person*.

The coverage provided by this extension is subject always to Exclusion 6.21 'Territorial Limits', even in the event that the exclusion has been deleted in respect of the remainder of coverage provided by this policy.

### **3.16 Internet media liability**

We agree to indemnify *you* for *compensation* and *claims expenses* resulting from any *claim* first made against *you* and reported to us during the *period of insurance* or any *extended reporting period*, if applicable, for an *electronic publishing wrongful act*, provided such *electronic publishing wrongful act* first occurs on or after the applicable *retroactive date* shown in the *schedule* and before the end of the policy period and arises solely from the provision of the *services*.

Our total aggregate liability under this Extension of Cover for any one *claim* and all *claims* shall not exceed \$100,000 during the *period of insurance*.

### **3.17 Inquiries**

We agree to indemnify *you* for *inquiry costs* incurred by an *insured person* in preparing for and attending an *inquiry*, provided that a notice requiring an *insured person* to attend the *inquiry* is first served upon the *insured person* during the *period of insurance* and reported to us during the *period of insurance*.

Our total aggregate liability for *inquiry costs* for all *inquiries* for all *insured persons* shall not exceed \$250,000 one *period of insurance*.

The Exclusions applicable to this policy apply to *inquiries* as if they were *claims*.

### **3.18 Joint venture**

We agree to indemnify *you* in respect of any *claim* for *civil liability* resulting from activities in which *you* have engaged in the provision of *services*, as a partner in a joint venture. No indemnity shall be available hereunder to the *joint venture partner(s)* themselves.



### 3.19 Libel, slander and defamation

We agree to indemnify *you* in respect of in respect of any *civil liability claim* for unintentional libel, unintentional slander or other unintentional defamation by an *insured person* in the provision of the *services*.

### 3.20 Licensee intellectual property rights

We agree to indemnify *you* in respect of any *claim* for *civil liability*, which would otherwise be excluded by reason of Exclusion 6.5 'Contractual liability', made by a *licensee* under any warranty or indemnity given by *you* or any *insured person* in respect of *your* ownership or ability to licence any *intellectual property rights*.

### 3.21 Limitation of liability contracts

Notwithstanding Claims Condition – 7.9 'Subrogation', we recognise that *you* will enter into contracts with other parties relating to the performance of the *services* which may waive or otherwise limit the liability of such parties. We agree that such contracts will not prejudice *your* rights to indemnity under this policy. However the cover provided by this extension shall not apply to contracts (whether written or otherwise) entered into as a result of a dispute which in any way involves *you*.

### 3.22 Loss of documents

Notwithstanding Exclusion 6.14 'Personal injury / property damage', we agree to indemnify *you* in respect of:

3.22.1 any *claim* for *civil liability* made against an *insured person* for loss, damage or destruction of any *documents* and/or computer records belonging to an *insured person* or for which *you* are legally responsible, where the loss, damage or destruction occurs in the provision of the *services* after the *retroactive date*; and

3.22.2 all reasonable costs and expenses incurred by *you* in replacing and/or restoring such *documents*.

However we shall only be liable:

- (i) where any such loss, damage or destruction is notified to us within 30 days of discovery by an *insured person* (and within the *period of insurance*) and rectification of which is undertaken as soon as practicable by an *insured person* with our prior written consent, such consent not to be unreasonably withheld;
- (ii) in respect of any *claim* under 3.22.1 nor for costs and expenses under 3.22.2 directly or indirectly arising out of or in connection with a *computer virus*, operational wear and tear or gradual deterioration however caused;
- (iii) in respect of any *claim* under 3.22.1 nor for costs and expenses under 3.22.2 directly or indirectly arising out of or in connection with any loss of money, negotiable instruments (including shares), bearer bonds, coupons, stamps, bank or currency notes.

The *limit of liability* for this feature applies to all *claims* covered under 3.22.1 above, inclusive of *claim expenses*, and costs and expenses under 3.22.2 above, in the aggregate.

### 3.23 Loss mitigation

We agree to indemnify *you* for the direct costs and expenses necessarily and reasonably incurred by *you*, in taking action necessary to rectify, or mitigate the effects of any act, error or omission causing an *incident* in connection with the provision of *services*, that otherwise would be the subject of a covered *claim* under this policy, provided always that *you*:

2.23.1 first discover such act error or omission during the *period of insurance* and notified us of such act error or omission during the *period of insurance*.

2.23.2 notify us during the *period of insurance* of *your* intention to take such action and obtains our prior written consent (which shall not be unreasonably withheld) before incurring any direct costs or expenses.

Payments provided under this extension, shall not include any *claim expenses*. Any costs and expenses paid under this Extension of Cover shall be part of and not in addition to the *limit of liability* as shown in the *schedule*.

Our total aggregate liability under this Extension of Cover for these direct costs and expenses in respect of all *incidents* shall not exceed \$100,000 any one *period of insurance*.

### **3.24 Merger / takeover / sale / winding-up of insured – run-off coverage**

If during the *period of insurance*, you are subject to a merger, takeover, sale or winding-up, then coverage in accordance with the Insuring Clauses shall continue through to the expiry of this policy, but shall apply only for any *claims for civil liability* resulting from *services* provided or allegedly provided prior to the effective date of the merger, takeover, sale or winding-up.

Upon *your* application and subject to our written agreement prior to expiry of the *period of insurance*, and subject to payment of any additional premium required by us (to be paid in full immediately upon expiry of this *period of insurance*), cover provided in accordance with this feature may be extended for an additional period of insurance, as may be determined by agreement between both of us.

### **3.25 Network security liability**

We agree to indemnify *you* in respect of all sums which *you* become legally liable to pay for *compensation* and *claims expenses* in respect of a *claim* arising due to:

- 3.25.1 breach of confidence;
- 3.25.2 negligent or inadvertent onward transmission of any *computer virus*;
- 3.25.3 inability of any *third party* with whom *you* have a written contract to access *your* network or services due to inadequate bandwidth, server capacity or other negligent act of *yours*;
- 3.25.4 negligent failure to secure *your computer system* or network infrastructure which results in *unauthorised access*.

Our total aggregate liability under this Extension of Cover for any one *claim* and all *claims* shall not exceed \$100,000 during the *period of insurance*.

### **3.26 Newly created / acquired subsidiary**

We agree to indemnify in accordance with the Insuring Clause any new *subsidiary* created or acquired by *you* during the *period of insurance*. The following terms apply to this extension:

- 3.26.1 cover only applies to *civil liability claims* made against the new *subsidiary* within a period of 60 days from the date of the creation or acquisition of the *subsidiary*;
- 3.26.2 cover only applies to such *claims* resulting from *services* provided or allegedly provided subsequent to the date of acquisition or creation of the *subsidiary*;
- 3.26.3 during the time in 3.26.1 above, *you* shall supply such additional information relating to the new *subsidiary* as may be required by us and pay any additional premium as may be required to enable us to continue coverage to the expiry date of the policy.

### **3.27 Past subsidiary**

We agree to indemnify in accordance with the Insuring Clause those entities which were once a *subsidiary* but have since ceased to be a *subsidiary*. Coverage in this respect shall only apply to *claims for civil liability* resulting from *services* provided or allegedly provided between the date of acquisition or creation of the former *subsidiary* by *you* and the date such *subsidiary* ceased to be a *subsidiary*.

### **3.27 Previous business**

If *you* request it before the *period of insurance*, and the terms and conditions we offer are accepted by *you*, including the payment of any premium required by us for this Extension of Cover, we agree to indemnify any former partner, *director*, *employee* and the predecessors of *your business* but only in respect of conduct whilst providing *services* on *your* behalf or any *subsidiary* of *yours*.

### 3.29 Principal's indemnity

To the extent that it is contractually required of *you*, we shall also indemnify any Principal in regards to *services* undertaken by or on *your* behalf for any *civil liability claim* against a Principal, provided that:

- 3.29.1 the *claim* is such that if made upon *you*, and *you* would be entitled to indemnity under this policy;
- 3.29.2 we shall have the conduct and control of all *claims* for which the Principal seeks indemnity hereunder or from *you*;
- 3.29.3 this policy shall not extend to provide cover in respect of the Principal's own *civil liability* or other events not covered by this policy and the terms and conditions of this policy otherwise apply.

For the purpose of this clause, the Principal shall be deemed to be an *insured person*. Nothing in this clause shall preclude *you* (not being the Principal) from the right to indemnity under this policy should the Principal instigate proceedings against *you* for a *claim* which results from the provision of *services*, in the Principal's own right.

### 3.30 Privacy liability

We agree to indemnify *you* for reasonable costs incurred by *you* with our prior written consent for:

- 3.30.1 *privacy breach costs*;
- 3.30.2 *notification costs*;
- 3.30.3 *credit monitoring costs*;
- 3.30.4 *regulatory privacy fines and penalties*,

directly resulting from a *privacy event*, provided such *privacy event* first occurs and is reported to us during the *period of insurance*.

Our total aggregate liability under this Extension of Cover for any one *claim* and all *claims* shall not exceed \$100,000 during the *period of insurance*.

### 3.31 Public relation expenses

We agree to indemnify *you* for the reasonable fee, costs and expenses to retain the services of a public relations consultant for the sole purpose of protecting *your* reputation that has been brought to question as a direct result of a *claim* covered by this policy. The following terms apply to this extension:

- 3.31.1 *you* must notify us within 30 days of first becoming aware of *your* reputation being brought into question and provide full written details outlining the circumstances surrounding the *incident*; and
- 3.31.2 during the time in 3.31.1 above, we must have given prior written consent to retain the services of such public relations consultants.

Our total aggregate liability under this Extension of Cover for all public relations expenses in respect of all *claims* shall not exceed \$100,000 any one *period of insurance*.

### 3.32 Reduction of deductible

Notwithstanding the provisions of Claims Condition 7.6 'Settlement of claims and Deductible', where the *deductible* for this policy is \$20,000 or less, we agree to reduce it by 50% in respect of any *claim* where such *claim* is settled or disposed of in accordance with *your* obligations under this policy without the involvement of any lawyer for any party, including but not limited to *you*, any *third party* or us.

### 3.33 Reinstatement

In the event that the *limit of liability* under this policy has been entirely exhausted during the *period of insurance*, by *claims* for *civil liability* indemnified or other amounts for which we have agreed to indemnify, the *limit of liability* will be reinstated in the same amount, once only, conditional upon the following:

- 3.33.1 that the reinstated *limit of liability* shall only apply to *claims* for *civil liability* which do not arise out of and do not have any connection with the source or originating cause of any of the *claims* already paid or payable out of the original *limit of liability*;
- 3.33.2 that all other terms, conditions, exclusions and limitations of the policy shall continue to apply, in the same manner, in respect of *claims* to which the reinstated *limit of liability* applies;
- 3.33.3 that the *insured persons* have satisfied us that they have no other valid and collectible excess or other insurance to call upon, after exhaustion of the original *limit of liability*, or that all such insurance (including any automatic reinstatement entitlement to which those policies may be subject) has also been exhausted by *claims* indemnified or for which the insurers in question have agreed to indemnify;
- 3.33.4 that *you* make the request for reinstatement and satisfy all requirements relating to it, before the expiry of the *period of insurance*; and
- 3.33.5 there shall be no reinstatement at all of any sub-limit of liability.

## 4. Optional Extension of Cover

Cover is provided, and on the same terms and in the same manner as in the Insuring Clause (except as expressly stated), for the Optional Extension of Cover described below. This Optional Extension of Cover is subject to all other provisions of this policy, including any additional terms stipulated in connection with it and shall apply only if they are specifically noted as 'Included' in the *schedule*.

### 4.1 Fidelity

Notwithstanding Exclusion 6.7 'Dishonesty', we agree to provide indemnity to *you* against loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to *you* or for which *you* are legally liable where any such loss is sustained in consequence of any dishonest or fraudulent act or omission of any *insured person*. Provided always that:

- 4.1.1 such loss is first discovered by *you* during the *period of insurance* and is notified in writing to us as soon as reasonably practicable after the date of such discovery (but never beyond the expiry date of the *period of insurance*);
- 4.1.2 we shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the *insured person* concerned;
- 4.1.3 we shall not be liable to indemnify any *insured person* who committed or condoned any dishonest or fraudulent conduct in consequence of which the loss occurred;
- 4.1.4 *you* shall bear the burden of adducing satisfactory proof to substantiate any loss hereunder (including any legal, investigative, accounting or other costs incurred in such process) and we will be under no obligation to provide indemnity to *you* until such time as we are satisfied that such loss has, in fact, been sustained;
- 4.1.5 all interrelated individual dishonest or fraudulent acts or omissions shall be deemed to constitute a single loss and a single *deductible* shall apply to such loss; and
- 4.1.6 our total aggregate liability under this Optional Extension of Cover for any one loss and all losses shall not exceed \$250,000 during the *period of insurance*.



## 5. Definitions

When used in this policy, its *schedule* and its endorsements the following definitions shall apply:

### 5.1 Act of terrorism

*act of terrorism* means any act, or preparation in respect of action, or threat of action, or the use any *computer virus*, denial of service attack or other attack using electronic means, against people, property (including *documents* or computer records, 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(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:

- 5.1.1 involves violence against one or more persons;
- 5.1.2 involves damage to property;
- 5.1.3 endangers life other than that of the person committing the action;
- 5.1.4 creates a risk to health or safety of the public or a section of the public; or
- 5.1.5 is designed to interfere with or to disrupt an electronic system.

### 5.2 Aircraft

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

### 5.3 Avionics industry

*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.

### 5.4 Business

*business* means all *your* activities and operations other than *information technology and telecommunication services* stated in the *schedule*.

### 5.5 Circumstances

*circumstances* means an *incident*, fact or matter which may give rise to a *claim*.

### 5.6 Civil liability

*civil liability* means liability of an *insured person* on any civil cause of action for *compensation*, based solely on the provision of, or failure to provide, the *services* by an *insured person*. It does not include any liability, of whatever nature and however arising, for aggravated, punitive or exemplary damages or for civil or criminal penalties, fines or sanctions.

### 5.7 Claim

*claim* means any oral or written demand for *compensation* from a *third party* which is received by an *insured person*, including but not limited to a civil proceeding commenced by the service of a statement of claim, writ, complaint or similar pleading, or an arbitration or other alternative dispute resolution proceeding.

All *claims* arising directly or indirectly out of or in connection with the same source or originating cause shall be considered to constitute a single *claim*, for the purposes of the *limit of liability* and the *deductible*.

### 5.8 Claim expenses

*claim expenses* means all reasonable legal costs and expenses necessarily incurred with our prior written consent in the investigation, defence and settlement of any *claim* covered by this policy, except any internal or overhead expenses or costs incurred by an *insured person* and any salary or remuneration of any *employee*.

## 5.9 Compensation

*compensation* means monetary compensation, judgment or award which an *insured person* is legally obligated to pay, or a settlement negotiated with our prior written consent, but does not include *claim expenses*.

## 5.10 Computer system

*computer system* means computer hardware and software, and any electronic documents, information and/or computer records stored thereon, as well as associated input and output devices, data storage devices, networking equipment, components, firmware and electronic backup facilities, including systems accessible through the internet, intranets, extranets or virtual private networks.

## 5.11 Computer virus

*computer virus* means an executable program or computer code segment that is self-replicating, requires a host program or executable segment in which it can be contained, and which destroys or alters the host, program or other computer code or data, causing undesired program or *computer system* operation.

## 5.12 Credit monitoring costs

*credit monitoring costs* means the reasonable charges, costs, expenses and fees incurred with our prior written consent to monitor any account of those affected by the loss of any *personal information* for a period not exceeding 12 months from the date you first had knowledge of a *privacy event*.

## 5.13 Deductible

*deductible* means the amount *you* first bear in relation to each *claim* and is specified in the *schedule*. Where a *claim* involves different acts, errors or omissions, the *deductible* will apply to each such act, error or omission separately. The *deductible* applies to all amounts payable under this policy including the indemnity provided under any Extensions of Cover.

## 5.14 Deemed employee

*deemed employee* means any natural person who was or now is a contractor or consultant who:

- 5.14.1 has an oral or written contract with *you*, (including any *subsidiary of yours*), to perform *services* for and on *your* behalf; and
- 5.14.2 is a deemed worker under the workers compensation laws or accident compensation legislation in which the contractor or consultant is performing the *services*.

## 5.15 Director

*director* means any natural person who was or now is a director or officer of *yours* or any named *subsidiary of yours* (or the equivalent position in any jurisdiction) or who becomes a director or officer of *yours* or any named *subsidiary of yours* (or the equivalent position in any jurisdiction) during the *period of insurance*, including de jure, de facto and shadow directors.

## 5.16 Document

*document* includes all documents whether in soft or hard copy form (including stamps, currency coins, bank notes and bullion, travellers cheques, cheques, postal orders, money orders, securities and the like) belonging to an *insured person* or for which *you* are legally responsible, whilst in custody of an *insured person*, or in the custody of any person to or with whom they have been entrusted, lodged or deposited by *you* in the ordinary course of the *business* performed by an *insured person*. For the avoidance of doubt, *document* does not include *data*.

## 5.17 Electronic publishing

*electronic publishing* means the reproduction, publication, dissemination, transmission or release of information, including electronic data, image files, audio files or text, on *your* internet website, provided that such information must have been developed by or for *you* or acquired by *you* for *your* use.

### **5.18 Electronic publishing wrongful act**

*electronic publishing wrongful act* means any actual or alleged:

- 5.18.1 libel, slander, trade libel or disparagement resulting from the *electronic publishing* of material that defames a person or organisation or disparages a person's or organisation's goods, *products* or *services*;
- 5.18.2 plagiarism, false light or false advertising resulting from *your electronic publishing* activities;
- 5.18.3 violation of the right of privacy or seclusion or right of publicity of any person other than *you* resulting from the *electronic publishing* of material that publicly discloses private facts relating to such person or commercially appropriates such person's name or likeness;
- 5.18.4 infringement of a copyright, title, slogan, trademark, trade name, trade dress, mark, service mark or service name including, without limitation, infringement of domain name, deep-linking or framing, resulting from *your electronic publishing* activities; or
- 5.18.5 unauthorised use of titles, formats, performances, style, characters, plots or other protected material resulting from *your electronic publishing* activities.

### **5.19 Employee**

*employee* means any person, other than a *director* or partner of *yours*, who is or has been under a contract of employment, or is a *deemed employee*, or apprenticeship or any work experience or similar scheme with *you*, in connection with the *services* provided by *you*. This definition does not include *sub-contractors*.

### **5.20 Extended reporting period**

*extended reporting period* means the relevant period arising or offered under Extension of Cover 3.11 'Extended reporting period'.

### **5.21 Incident**

*incident* means an event occurring within the *period of insurance* which causes *your* reputation and skill in the conduct of the *business* to be brought into question.

### **5.22 Information technology and telecommunication services**

*information technology and 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 and any other services we may endorse on the *schedule*.

### **5.23 Insured person**

*insured person* means:

- 5.23.1 the person(s) or parties shown as the Insured in the *schedule*;
  - 5.23.2 all *subsidiaries* named in the *schedule*;
  - 5.23.3 any current *director*, partner or *employee* of the persons or parties in 5.23.1 and/or 5.23.2 above, but only whilst providing *services* on behalf of the persons or parties in 5.23.1 and/or 5.23.2 above; and
  - 5.23.4 any parties covered under 'Extensions of Cover',
- but only while engaged in *your business* and not for any other purpose or activity.

### **5.24 Intellectual property rights**

*intellectual property rights* means copyright, trademarks, design rights or registered domain names but does not include patent or trade secrets.

## **5.25 Internet operations**

*internet operations* means:

- 5.25.1 transfer of computer data or programmes by use of electronic mail systems by *you* or *your employees*, including for the purpose of this definition only, part-time and temporary staff, *sub-contractors* and others within *your* organisation whether or not such data or programmes contain any malicious or damaging code, including but not limited to *computer virus*, worm, logic bomb, or trojan horse;
- 5.25.2 access through *your* network to the world wide web or a public internet site including but not limited to chat rooms, blogs, discussion boards, by *you* or *your employees*, including for the purposes of this definition only, part-time and temporary staff, contractors and others within *your* organisation;
- 5.25.3 access to *your* intranet (meaning internal company information and computing resources) which is made available through the world wide web for *your* customers or others outside *your* organisation; and
- 5.25.4 the operation and maintenance of *your* web site.

## **5.26 Inquiry**

*inquiry* means any hearing related to the provision of the *services* by an *insured person* if the findings from such inquiry or hearing could lead to a *claim* being made against an *insured person* which may be covered under this policy.

## **5.27 Inquiry costs**

*inquiry costs* means reasonable legal, assessors, adjusters and expert witness costs incurred with our written consent but do not include any *insured person's* or *employee's* salaries, wages, travel or accommodation expenses.

## **5.28 Joint venture partner(s)**

*joint venture partner* means any person or entity with whom *you* are engaged in a common adventure, the profits of which are to be shared between *you* and that other person or entity, including any jointly owned corporation incorporated or designated for the purpose.

## **5.29 Licensee**

*licensee* means any party who enters into a license agreement with *you*.

## **5.30 Limit of liability**

*limit of liability* means, the Limit of Liability stated in the *schedule*.

## **5.31 North America**

*North America* means:

- 5.31.1 the United States of America and Canada; and
- 5.31.2 any state or territory incorporated in, or administered by, the United States of America or Canada.

## **5.32 Notification costs**

*notification costs* means the reasonable charges, costs, expenses and fees necessarily incurred with our consent in advising any individual of the compromising of any *personal information*.

## **5.33 Period of insurance**

*period of insurance* means the Period of Insurance stated in the *schedule*.



#### 5.34 Personal information

*personal information* means any information from which a living individual may be uniquely and reliably identified, including an individual's name, telephone number, email address, tax file number, medicare number, medical or healthcare data or other protected health information, driver's license number or account number, credit card number, debit card number, access code or password that would permit access to that individual's financial account 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.

#### 5.35 Personal injury

*personal injury* means bodily injury, death, sickness, disease, shock, fright, mental anguish or mental injury.

#### 5.36 Pollutants

*pollutants* means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals or waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.

#### 5.37 Privacy breach costs

*privacy breach costs* means the reasonable and necessary fees, costs, charges and expenses incurred by *you* (whether voluntarily or otherwise) within 24 months of *you* first having knowledge of a *privacy event* for the purposes of retaining an accountant, legal advisor or other third party to:

- 5.37.1 conduct a computer forensic analysis to investigate the *your computer system* to determine the cause and extent of such *privacy event*; or
- 5.37.2 determine if *you* are obligated to notify affected individuals or applicable regulatory agencies of such *privacy event*;
- 5.37.3 effect compliance with any *privacy regulation* under the applicable *privacy regulation* most favorable to the affected individuals;
- 5.37.4 notify the affected individuals or applicable regulatory agencies of such *privacy event* and establish new account numbers for the affected individuals;
- 5.37.5 plan, implement, execute and manage a public relations campaign to counter or minimise any actual or anticipated adverse effects of negative publicity from such *privacy event* or to protect or restore *your business* or personal reputation in response to negative publicity following such *privacy event*.

*Privacy breach costs* do not include:

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

#### 5.38 Privacy event

*privacy event* means:

- 5.38.1 an unauthorised disclosure, loss or theft of:
  - (a) *personal information* in *your* care, custody or control; or
  - (b) corporate information in *your* care, custody or control that is specifically identified as confidential and protected under a nondisclosure agreement or similar contract; or
- 5.38.2 a violation of any *privacy regulation*.

#### **5.39 Privacy regulation**

*privacy regulation* means any legislation, regulation or by-law, including any amendments thereto, associated with the control and use of personally identifiable financial, medical or other sensitive information, or any other legislation, regulation or by-law associated with identity theft or privacy.

#### **5.40 Property damage**

*property damage* means:

- 5.40.1 physical injury to or loss of or destruction of tangible property including loss of use of that property at any time resulting therefrom;
- 5.40.2 loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by physical damage to or destruction of other tangible property.

#### **5.41 Proposal**

*proposal* means any information and/or statements or materials supplied to us including any application form completed and signed by *you* and any attachments thereto.

#### **5.42 Regulatory privacy fines and Penalties**

*regulatory privacy fines and penalties* means civil fines, penalties or sanctions imposed as a direct result of any *privacy event* solely where such fines, penalties or sanctions are insurable at law.

#### **5.43 Retroactive date**

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

#### **5.44 Schedule**

*schedule* means the Schedule attaching to and forming part of the policy, including any *schedule* substituted for the original *schedule*.

#### **5.45 Services**

*services* means *information technology and telecommunication services* performed by *you* or on *your* behalf for a fee or for which a fee would ordinarily be charged.

#### **5.46 Sub-contractors**

*sub-contractors* means independent consultants or sub-contractors who provide *services* to an *insured person* under a written contract. This definition does not include any *employee*.

#### **5.47 Subsidiary**

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

- 5.47.1 control or controlled the composition of the board of directors; and/or
- 5.47.2 control or controlled more than half of the voting power; and/or
- 5.47.3 hold or held more than half of the issued share capital or other ownership of the entity,

and shall in any event include any company or legal entity whose financial accounts are required to be consolidated within *yours* pursuant to the Financial Reporting Act 2013 or the applicable New Zealand Accounting Standards.

#### **5.48 Territorial limits**

*territorial limits* means anywhere in the world (subject to the limitations set out in any Exclusion).

#### **5.49 Third party**

*third party* means any natural person or persons, firm or firms, individual, partnership, organisation or corporation, other than an *insured person*, and shall not include any associated, parent or *subsidiary of yours*, or any other person or entity having a financial or executive interest in an *insured person*.

#### **5.50 Unauthorised access**

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

#### **5.51 You or Your**

*you* or *your* means the person(s) or parties referred to in sub-paragraphs 5.23.1, 5.23.2 and/or 5.23.3 of the definition of *insured person*, as applicable, but only while engaged in the *business* and not for any other purpose or activity.

### **6. Exclusions**

We will not pay anything under this policy, including *claim expenses*, in respect of:

#### **6.1 Anti-competitive behaviour**

any *claim* in connection with any actual or alleged breach of any anti-competitive, anti-trust, unfair competition, or restraint of trade law, legislation or regulation.

#### **6.2 Aggravated, Punitive or Exemplary damages, Fines or Penalties**

6.2.1 any fines, taxes, penalties, treble or other multiple compensatory damages, exemplary, punitive, liquidated or aggravated damages; or

6.2.2 the return, restitution or offset of fees, expenses or costs paid or payable to an *insured person*; or

6.2.3 any liability or other damages deemed uninsurable in law.

#### **6.3 Avionics**

any *claim* directly or indirectly arising out of or in connection with the supply of *services* directly or indirectly to the *avionics industry*.

#### **6.4 Blasphemy / obscenity**

any *claim* arising out of actual or alleged blasphemy or obscenity or that arises in any way from pornography or its production or use via an *insured person's internet operations*.

#### **6.5 Contractual liability**

any *claim* arising from or in connection with:

6.5.1 any contractual liability or assumed liability, unless *you* would in any event be legally liable in the absence of such contractual or assumed liability;

6.5.2 any liability assumed by *you* under any guarantee or warranty unless *you* would in any event be legally liable in the absence of such contractual or assumed liability; or

6.5.3 any trading debt incurred by *you*.

#### **6.6 Directors and officers**

any *claim* directly or indirectly arising from or in connection with an *insured person* acting in the capacity of a *director* or officer of a company, association or other legal entity.

### **6.7 Dishonesty**

any *claim* arising out of, based upon, attributable to or as a consequence of any, intentional, dishonest, fraudulent, criminal or malicious act committed by an *insured person*.

### **6.8 Economic valuation**

any *claim* directly or indirectly based upon, attributable to, arising out of, resulting from or in any manner related to the rendering of or failure to render any work in:

- 6.8.1 valuation of stocks, bonds or any negotiable instruments;
- 6.8.2 economic analysis, whether computer assisted or not;
- 6.8.3 economic and/or financial forecasting, whether computer assisted or not;
- 6.8.4 economic and/or financial simulations, whether computer assisted or not;
- 6.8.5 electronic transfer or electronic manipulation of negotiable instruments;
- 6.8.6 transfer of money or funds.

### **6.9 Employer's liability**

- 6.9.1 any *claim* for any bodily injury, sickness, disease, nervous shock, mental disorder or death of any actual or *deemed employee of yours* or for the destruction or loss or damage to any tangible property belonging to an actual or *deemed employee*, including loss of use thereof, arising in the course of their employment;
- 6.9.2 any *claim* arising out of any obligation for which *you* or any carrier as its Insurer may be liable under any workers' compensation, unemployment compensation, employer's liability, disability benefits law or any other similar law.

### **6.10 Insolvency**

any *claim* made against an *insured person*, where all or part of such *claim* is directly or indirectly based upon or attributable to the insolvency of the *insured person* or its suppliers and/or *sub-contractors*.

### **6.11 Manufacturing / efficacy / faulty workmanship**

any *claim*, *loss* or other amount comprising, directly or indirectly arising out of or in connection with:

- 6.11.1 the repair, replacement, diminished utility or lack of efficacy for their intended purpose of any goods designed, manufactured, imported, sold, constructed, installed, distributed, treated, serviced, altered, repaired or supplied by *you*;
- 6.11.2 the cost of remedying any defect in any goods designed, manufactured, imported, sold, constructed, installed, distributed, treated, serviced, altered, repaired or supplied by *you*;
- 6.11.3 any cost of or expense incurred in withdrawing a product or good from sale or recalling any product or good; or
- 6.11.4 any element of any of *your* own costs or profit that may be included in the cost of rectifying any defects in work performed by *you* or on *your* behalf.

### **6.12 Money and negotiable instruments**

any *claim* directly or indirectly arising from or in connection with any loss of money, negotiable instruments including shares, bearer bonds, coupons, stamps, bank or currency notes. This exclusion will not apply if Optional Extension of Cover 4.1 'Fidelity' is operative.

### **6.13 Owners and occupiers liability**

any *claim* directly or indirectly arising from or in connection in any way whatsoever with the occupation, leasing or ownership of any real or other property (whether mobile or immobile) by *you*.



#### **6.14 Personal injury / Property damage**

6.14.1 any liability for *personal injury* suffered or incurred by any entity or person; and/or

6.14.2 any loss of property or *property damage*,

other than as the direct result of *services* having been or being performed, undertaken or provided by *you* or on *your* behalf.

#### **6.15 Prior and pending**

any *claim* made against, or in any way intimated to, *you* and/or any *insured person* prior to the commencement of the *period of insurance* or directly or indirectly arising from or attributable to:

6.15.1 any facts or *circumstances* of which *you* and/or an *insured person* were aware or of which a reasonable person in the circumstances would have been aware, prior to the commencement of the *period of insurance*, as matters out of which a *claim* against an *insured person* might possibly arise;

6.15.2 any facts or *circumstances* reported to an insurer under any insurance policy entered into before the commencement of the *period of insurance*; or

6.15.3 any facts disclosed to any insurer in any proposal for insurance prior to the commencement of the *period of insurance*.

#### **6.16 Radioactive / pollution / asbestos contamination**

any *claims* directly or indirectly arising out of or in connection with:

6.15.1 ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or component thereof. For the purpose of this Exclusion 6.16 combustion shall include any self-sustaining process of nuclear fission;

6.16.2 seepage, pollution or contamination of any *pollutant* by whatever nature and however occurring;

6.16.3 mould, legionella bacteria or any other organism or substance found upon any premises however it came to be there;

6.16.4 asbestos or any material or property containing or alleged to contain asbestos, in whatever form or quantity and however arising;

6.16.5 silicon or silica, or any material, substance or property derived from or containing or allegedly containing silicon or silica, in whatever form or quantity and however arising.

#### **6.17 Related entities**

any *claim* made against *you* by or on behalf of:

6.17.1 any *insured person* (in whatever capacity), business venture or related or associated entity of *yours* which is owned, managed or operated directly or indirectly by any *insured person*; or

6.17.2 any person who at the time of the conduct giving rise to the *claim*, is a family member, unless such person is acting without the co-operation or solicitation of any *insured person*;

6.17.3 any *joint-venture partner* of *yours*;

6.17.4 any parent or controlling entity, successor or assign of *yours*;

6.17.5 any other person or entity, including but not limited to a trustee:

(a) who or which is controlled or operated by any *insured person*; or

(b) where any *insured person* who has a direct or indirect financial interest, including but not limited to where any *insured person* is a beneficiary of a trust.

#### **6.18 Retroactive date**

any *claim* directly or indirectly arising from or in connection with conduct of an *insured person* which has taken place or is alleged to have taken place prior to the *retroactive date*.

#### **6.19 Spam**

any *claim* directly or indirectly arising out of or attributable to any unsolicited electronic dissemination of faxes, emails, or other communications to multiple actual or prospective customers by the insured or any other third party, including actual or alleged violations of any anti-spam statute, law, ordinance or regulation relating to a person's or entity's right of seclusion or that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

#### **6.20 Superannuation trustee**

any *claim* directly or indirectly arising from or in connection with conduct of any *insured person* in the capacity of a superannuation trustee, including but not limited to in connection with any employee benefit plan or superannuation fund.

#### **6.21 Territorial limits**

6.21.1 any *claim* directly or indirectly arising out of or in connection with *your* conduct anywhere within the territorial limits of *North America*;

6.21.2 any legal proceedings which are brought before any court or tribunal having actual or purported jurisdiction within *North America*;

6.21.3 the enforcement of any judgment, order or award in or in connection with any proceeding brought before any court or tribunal having actual or purported jurisdiction within *North America*; or

6.21.4 any *claim* which is pursued by way of arbitration, mediation, conciliation, expert determination or any other form of alternative dispute resolution procedure taking place within or under the jurisdiction of *North America* or for the recovery of any award or costs issued or incurred in connection with any such procedure.

#### **6.22 War, Act of terrorism**

any liability caused by or arising out of the following regardless of any other cause or event contributing concurrently or in any other sequence by:

6.22.1 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 or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;

6.22.2 any *act of terrorism* or any action taken in controlling, preventing, suppressing or in any way relating to any *act of terrorism*.

## 7. Claims Conditions

The following Claims Conditions apply.

### 7.1 Advance payment of claim expenses

We will advance *claim expenses* incurred by an *insured person*, as they are incurred and prior to the final adjudication of the *claim*, where:

7.1.1 indemnity under this policy is confirmed in writing by us; or

7.1.2 at our absolute discretion, without admitting indemnity, we agree to advance such *claim expenses*.

All such payments shall be repaid to us by *you* (or where more than one *insured person* has received such payments, by such *insured persons* severally and according to their respective interests) in the event and to the extent that such *insured person* is not entitled to payment of such *claim expenses* under the terms and conditions of this policy.

### 7.2 Allocation

If both *compensation* covered by this policy and loss not covered by this policy are incurred, either because a *claim* includes both covered and uncovered matters or because a *claim* is made against *you* and others who are not insured under this policy (including those persons or entities referred to in the *schedule* as an Insured), we shall both use our best efforts to agree upon a fair and proper allocation between covered *compensation* payable and uncovered loss having regard to the relative legal and financial exposures attributable to the covered and uncovered parties and/or matters. We are only liable under this policy for amounts attributable to covered matters and parties, and our liability for *compensation*, including *claim expenses*, otherwise payable by us shall be reduced to reflect such fair and proper allocation.

If we both are unable to agree on an allocation of *claim expenses*, we shall, subject to Claims Condition 7.1 'Advance payment of claim expenses', advance *claim expenses* in accordance with that Condition. If the parties cannot agree on such allocation, we shall, in accordance with Claims Condition 7.1 'Advance payment of claim expenses', advance *claim expenses* which we believe to be covered under the policy until a different allocation is negotiated, arbitrated, judicially or otherwise determined.

If requested by *you*, we shall submit any dispute on allocation to a Queen's Counsel to be mutually agreed or, in default of agreement to be appointed by the President of the New Zealand Bar Association, on the basis that the Queen's Counsel shall determine the allocation according to his or her view of the fair and proper allocation, but having regard to the relative legal and financial exposures attributable to covered and uncovered matters and parties, and the overriding intention referred to in Claims Condition 7.2 'Allocation'. The costs of Queen's Counsel shall constitute *claim expenses* for the purposes of the policy and be part of and not in addition to the *limit of liability*.

Any such determined allocation of *claim expenses* on account of a *claim* shall be applied retroactively to all *claim expenses* on account of such *claim*, notwithstanding any prior advancement on a different basis. Any advancement of *claim expenses* shall be repaid to us by *you* severally according to *your* respective interests, if and to the extent that we determine that such amounts paid by us are not insured by this policy.

Any allocation or advancement of *claim expenses* in connection with a *claim* shall not pre-determine the allocation of other *compensation* on account of such *claim*. In any arbitration, suit or other proceedings between us and *you* no presumption shall exist as to a fair and proper allocation, but will be governed by the intention set out in this clause.

### 7.3 Multiple claims

All *claims* which directly or indirectly arise out of or are attributable to one *circumstance* or originating source or cause shall be treated as a single *claim* and shall be subject to one *limit of liability* and one *deductible*.

#### **7.4 Notice and proof of claim**

Upon the discovery of any *claim* for *civil liability* (whether or not the *insured person* believes the *claim* amount might fall below the applicable *deductible*) under this policy, the *insured persons* shall, at their own expense:

- 7.4.1 give notice in writing to us as soon as practicable after the *insured person* becomes aware of such matter and within 30 days thereafter provide, a written statement detailing all relevant information;
- 7.4.2 advise of the cause and the amount involved and any other proof or information with respect to the *claim* that may be reasonably required;
- 7.4.3 furnish to us details of any other insurance covering or which may cover the same loss;
- 7.4.4 take reasonable steps to prevent further loss;
- 7.4.5 at all reasonable times permit us or our agents to inquire into, investigate and examine the *circumstances* of any matter notified.

#### **7.5 Payments in respect to Goods and Services Tax**

All sums insured 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.

#### **7.6 Settlement of claims and Deductible**

We will only handle a *claim* if it exceeds the agreed *deductible*.

We have no obligation whatsoever, either to *you* or to any other person or entity, to pay any portion of the *deductible* on behalf of an *insured person*.

Within one month of a *claim* being settled, *you* undertake to reimburse us for all *claim expenses* that we have incurred within the amount of the *deductible*.

#### **7.7 Settlement of disputes**

We shall not require *you* to contest any *claim* unless a Queen's Counsel (to be mutually agreed upon between us and *you*) advises that such *claim* should be contested. In formulating such advice, Queen's Counsel shall take into consideration the economics of the matter (including potential *compensation* and *claim expenses*) and the prospects of *you* successfully defending the *claim*. The cost of such Queen's Counsel's opinion shall be deemed to be part of *claim expenses*.

In the event that we recommend settlement in respect of a *claim* and *you* do not agree that such *claim* should be settled, *you* may elect to contest such *claim* provided always that our liability shall not exceed the amount for which the *claim* could have been settled plus *claim expenses* incurred with our prior written consent up to the date of such election. *You* shall not unreasonably withhold consent to any settlement recommended by us.

#### **7.8 Settlement of claims and Negotiated settlements**

If we elect to do so, we may undertake on behalf of an *insured person* the handling and settlement of a *claim* if the amount of *compensation* to be paid is expected to exceed the applicable *deductible*.

The amount of *compensation* to be paid by us shall be based on a final decision of a court, a judicial authority or an arbitrator wherein an *insured person* is required to pay *compensation*. Settlements made under court approval or out of court shall be deemed equivalent if we have consented thereto in writing.

*You* shall neither admit nor settle any liability in whole or in part, nor incur *claim expenses*, charges and expenses without our prior written consent. An *insured person* is obliged to support us beyond the investigation of any matter notified, and not to do or omit to do anything which reduces or may reduce our rights. It is a condition of an *insured person's* right to be indemnified under this policy that an *insured person* shall give to us such information and co-operation as we reasonably require at an *insured person's* expense.

If we wish to settle a *claim* and an *insured person* is opposed to such settlement, our total aggregate payments for *compensation* and *claim expenses* under this policy shall be limited to the amount by which the *claim* could have been settled.

Legal fees and costs awarded to an *insured person* shall pass to us to the extent of our payments under this policy.

#### **7.9 Subrogation**

We will be subrogated to all rights of recovery of any *insured person's* against any person or organisation before or after any payment or indemnity under this policy. An *insured person* will give all such assistance in the exercise of rights of recovery as we may reasonably require. Such subrogated rights will first benefit us and then *you*.

*You* must refrain from doing anything that might prejudice our actual or potential rights of recovery against any party. Any amounts recovered by us, shall be allocated in the following order recovery costs, uninsured loss, *limit of liability* and *deductible*.

We agree not to exercise any such right against any of *your directors* or *employees* unless the *claim* is brought about or contributed to by the dishonest, fraudulent, reckless, criminal or malicious act or omission of the *director* or the *employee*.

#### **7.10 Valuation and Foreign currency**

All premiums, limits, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in New Zealand currency. Unless where otherwise provided, if judgment is rendered, settlement is denominated or an element of loss under this policy is stated in a currency other than New Zealand dollars, payment under this policy shall be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars as reported in the National Business Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.

#### **7.11 Waiver of privilege**

If we instruct any lawyer to investigate or defend any *claim* against any *insured person*, *you* authorise the lawyer to provide us any documents, information or advice in respect of the *claim*, 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 *claim* confidential, and not to take steps to waive privilege over them.



## 8. General Conditions

The following General Conditions apply to *your* policy.

### 8.1 Audit and Inspection

We may audit or inspect and have copies of any of *your* books, records, information and operations at any time upon reasonable notice to *you* as far as such books, records, information and operations relate to any notification under this policy.

### 8.2 Cancellation

- 8.2.1 *You* may cancel this policy at any time by giving notice in writing to us;
- 8.2.2 We may cancel this policy at any time by giving notice in writing to *you*, such cancellation to take effect within 30 days from the time of notification received by *you*;
- 8.2.3 Upon cancellation by *you* a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*;
- 8.2.4 Upon cancellation by us a refund of premium will be allowed pro rata for the unexpired *period of insurance*.

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.

### 8.3 Change of risk

Every change materially affecting the facts, circumstances and degree or amount of risk existing at the commencement of this insurance or at any subsequent renewal date shall be notified in writing to us as soon as such change comes to *your* notice or to any of *your* officers or representatives. On receipt of such notice we may vary the terms of this policy and/or charge such additional premium as we may determine appropriate.

### 8.4 Changes to the policy

The terms and conditions of this policy may only be altered by a written endorsement issued by us.

### 8.5 Fraudulent claim

If an *insured person* or anyone acting upon the *insured person's* behalf is in any way fraudulent in obtaining any benefit under this policy, we may deny or reduce our liability in respect of such *claim* and cancel the policy pursuant to General Conditions 8.2 'Cancellation'.

### 8.6 Late arising extensions

If during the *period of insurance* we develop a new standard wording providing enhancements of coverage to our base Technology and Communications Sectors Professional Indemnity Insurance policy in the country where *you* are domiciled and such wording is to be made available to our clients in such country for no additional premium, then the *you* shall have the right to the benefit of such new coverage enhancement, subject to all underwriting information or particulars as we may require, from the date of such availability.

### 8.7 Notice

Every notice or communication to us shall be in writing and sent to our office where the policy was issued.

### 8.8 Other insurance

If a *claim* or any other amounts covered under this policy are also potentially insured under any other valid policy(ies), prior or current, then this policy shall cover such *claim*, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such *claim* is in excess of the amount payable from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the *limit of liability* provided in this policy.

## **8.9 Plurals and titles**

The *proposal*, this policy, its *schedule* and any endorsements are one contract in which, unless the context otherwise requires:

- 8.9.1 headings are descriptive only, not an aid to interpretation;
- 8.9.2 singular includes the plural, and vice versa;
- 8.9.3 the male includes the female and neuter; and
- 8.9.4 references to positions, offices or titles shall include their equivalents in any jurisdiction in which a *claim* is made.

## **8.10 Premium**

Unless otherwise stated, the premium is adjustable. *You* shall, within 30 days after the expiry of each *period of insurance*, provide such information as we may require to adjust the premium. Any difference in premium shall be paid by or allowed to *you*, provided that the adjusted premium will not be less than any minimum premium specified in the *schedule*. *You* shall at all times allow us to inspect such records.

## **8.11 Proper law and Jurisdiction**

- 8.11.1 The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with the law of New Zealand.
- 8.11.2 In the event of any dispute arising under this policy including, but not limited, to its construction and/or validity and/or performance and/or interpretation, *you* will submit to the exclusive jurisdiction of any competent Court in New Zealand.

## **8.12 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 *you* or any other party to the extent that such cover, payment, service, benefit and/or any *business* or activity of *yours* which would violate any applicable trade or economic sanctions, law or regulation.

## **8.13 Severability and Non-imputation**

Where this policy insures more than one person or party, the *proposal* for insurance is construed as a separate application by each *insured person*. When determining whether coverage is available under this policy:

- 8.13.1 any failure by an *insured person* to comply with the duty of disclosure shall not be imputed to any other *insured person*, where the other *insured person* is innocent of and had no prior knowledge of the failure; and
- 8.13.2 for the purposes of the Exclusions (other than Exclusion 6.15 'Prior or Pending'), no facts pertaining to, conduct of or knowledge possessed by an *insured person* shall be imputed to any other *insured person*.

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