

# Cyber, Security and Privacy Protection 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 is a 'Claims Made and Notified' insurance policy. It only provides cover if:

1. A *claim* is made against the *company*, 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 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

Your policy is a contract of insurance between you and Zurich and contains all the details of the cover that we provide.

Your 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 *submission*, 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 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 *submission*, the *schedule* and endorsements.

## Section 1 – Insuring Clauses

The coverage under Insuring Clauses 1.3 'Security and Privacy liability'; 1.6 'Internet Media liability' and 1.7 'Cyber fraud and Fraudulent impersonation' applies only to *loss, cyber fraud loss or fraudulent impersonation loss* from *claims* first made and reported to Zurich during the *period of insurance* or *extended reporting period*, if applicable, for *wrongful acts, cyber fraud or fraudulent induced transfer* occurring on or after the *retroactive date* and before the end of the *period of insurance*. *Defence expenses* covered by the policy are payable in addition to the applicable Limits of Liability.

### 1.1 Privacy breach costs

We will reimburse the *company* for the *privacy breach costs* the *company* incurs that directly result from a *privacy event*, provided such *privacy event* is first discovered on or after the inception date and is reported to us during the *period of insurance*.

### 1.2 Digital asset replacement and Betterment expenses

We will reimburse the *company* for any *digital asset replacement expenses* the *company* incurs due to the theft, alteration, modification, deletion, denial of access to, damage, corruption or destruction of *digital assets* caused by a *security event*, provided such *security event* first occurs during the *period of insurance*.

We will also reimburse the *company* for hardware betterment costs including but not limited to increased memory capacity or processing speed necessary to install a more secure and efficient version of the *company's* computer system, provided that these are:

- 1.2.1 restricted to standard technological advances; and
- 1.2.2 these are necessary to prevent the re-occurrence of the theft, alteration, modification, deletion, denial of access to, damage, corruption or destruction of *digital assets* caused by a *security event*, provided such *security event* first occurs during the *period of insurance*.

### 1.3 Security and Privacy liability

We will pay on behalf of the *insured* all *loss* which the *insured* becomes legally liable to pay on account of any *claim* first made against the *insured* and reported to us during the *period of insurance* or any *extended reporting period*, if applicable, for a *privacy wrongful act* or *security wrongful act*, provided such *privacy wrongful act* or *security wrongful act* first occurs on or after the applicable *retroactive date* and prior to the end of the *period of insurance*.

### 1.4 Business income loss and Dependent business income loss

We will pay the *company* any:

- 1.4.1 *business income loss, dependent business income loss*; and
- 1.4.2 *mitigation and extra expenses* the *company* sustains during the *period of restoration*, due to an *interruption of service*, provided such *interruption of service* first occurs during the *period of insurance*. The expiration of the *period of insurance* will not limit the length of the *period of restoration*.

### 1.5 Cyber extortion threat and payments

We will reimburse the *company* for any *extortion expenses* and *extortion payments* actually paid by the *company* that directly result from a *cyber extortion threat*, provided the *company* first receives such *cyber extortion threat* during the *period of insurance*.

## 1.6 Internet Media liability

We will pay on behalf of the *insured* all *loss* which the *insured* becomes legally liable to pay on account of any *claim* first made against the *insured* 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 *period of insurance*.

## 1.7 Cyber fraud and Fraudulent impersonation

We will pay to or on behalf of the *company* any *cyber fraud loss* or *fraudulent impersonation loss* incurred by an *insured* resulting directly for any *cyber fraud* or *fraudulent induced transfer*, first made against the *insured* and reported to us during the *period of insurance* or any *extended reporting period*, if applicable.

## Section 2 – Extensions of Cover

We agree to extend cover in accordance with the following extensions, subject to the terms, conditions and exclusions of this policy, unless expressly stated otherwise. No extension increases our *limit of liability*, unless expressly stated otherwise.

### 2.1 Company reputation cover

We will pay to or on behalf of the *company* any *company reputation protection expenses* that results from an *adverse media event* concerning an actual or alleged *security event* or *privacy event*, first made against the *insured* and reported to us during the *period of insurance* or any *extended reporting period*, if applicable.

The maximum that we will pay in the aggregate for *company reputation protection expenses* is the 'Company reputation protection expenses' sub-limit of liability specified in the *schedule*.

### 2.2 Continuous cover

If the *insured* has neglected, through error or oversight only, to notify any *claim* or circumstances which could and should have been notified under an earlier policy issued by us of the same type as this one, then, provided that the *insured* has maintained uninterrupted insurance of the same type with us since the expiry of that earlier policy, we will, notwithstanding Exclusion 7.1.1.1 'Prior and pending', accept the matter to be reported under this policy and indemnify the *insured* in respect of any *claim* arising from the matter, on the conditions that:

- 2.2.1 the indemnity will be subject to the applicable Limit of Liability of the earlier policy under which the matter should have been reported to us;
- 2.2.2 we may reduce the indemnity entitlement by the monetary equivalent of any prejudice which we have suffered as a result of the delayed notification;
- 2.2.3 the indemnity will be subject to all of the terms, conditions, definitions and exclusions, other than the Limit of Liability, contained in this current policy; and
- 2.2.4 the *insured* agrees that they will not seek indemnity from us in respect of any such *claim* under both policies issued by us.

### 2.3 Data breach notification costs

We will pay on behalf of the *company* all *privacy breach costs* incurred by the *insured*, in relation to the investigation, collation of information, preparation for and notification to comply with *privacy regulations* of any actual or suspected *privacy breach*.

The maximum that we will pay resulting from any one data breach is the 'Data breach notification costs' sub-limit of liability specified in the *schedule*.

## 2.4 Emergency costs

If our written consent cannot reasonably be obtained before any *company reputation protection expenses, privacy breach costs, digital asset replacement costs, mitigation and extra expenses* or *defence costs* are incurred with respect to any covered *loss* or *claim* we will give retrospective approval for such costs.

No excess will be applied to any *company reputation protection expenses, privacy breach costs, digital asset replacement costs, mitigation and extra expenses* or *defence costs* for 120 hours after the *insured* first discovered any actual or reasonably suspected *privacy event, security event* or *interruption of service* provided such costs are incurred through Zurich DigitalResolve.

The maximum that we will pay in the aggregate during the *period of insurance* is the 'Emergency costs' sub-limit of liability specified in the *schedule*.

## 2.5 Extended reporting periods

### 2.5.1 Automatic extended reporting period

If Zurich or the *policyholder* cancels or does not renew this policy, other than for non-payment of premium, we will provide an automatic extension of coverage for a period of 90 days immediately after the termination of the *period of insurance* with respect to any *claim* first made against any *insured* and reported to us in writing within such 90 day period ('Automatic Extended Reporting Period'), but only with respect to any *wrongful act* committed on or after the applicable *retroactive date* and before the earlier of a Takeover as defined in Clause 8.8.3, if applicable, or the termination of the *period of insurance*. No additional premium will be payable for such Automatic Extended Reporting Period.

### 2.5.2 Optional extended reporting period

If Zurich or the *policyholder* cancels or does not renew this policy, other than for non-payment of premium, the *policyholder* shall have the right, upon payment of the percentage shown in the *schedule* of the annual premium, to an extension of the coverage granted by this policy for the period shown in the *schedule* immediately following the termination of the *period of insurance* with respect to any *claim* first made against any *insured* and reported to us in writing within such period ('Optional Extended Reporting Period'), but only with respect to any *wrongful act* committed on or after the applicable *retroactive date* and before the earlier of a Takeover as defined in Clause 8.8.3, if applicable, or the termination of the *period of insurance*.

This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given to us within 90 days following the effective date of cancellation or non-renewal.

In the event of the purchase of the Optional Extended Reporting Period, the entire premium for the Optional Extended Reporting Period shall be deemed earned at its commencement.

### 2.5.3 Extended reporting period

The Automatic Extended Reporting Period and the Optional Extended Reporting Period, if purchased, shall be collectively referred to in this policy as the *extended reporting period*. Any *claim* first made during the *extended reporting period*, if applicable, shall be considered made during the *period of insurance*. The *extended reporting period* does not reinstate or increase the Limits of Liability, nor extend the *period of insurance*. If the Optional Extended Reporting Period is purchased, the Automatic Extended Reporting Period shall be included within and not in addition to the Optional Extended Reporting Period. A change in policy terms, conditions, exclusions or premiums shall not be considered a non-renewal for purposes of triggering the rights to the *extended reporting period*.

## 2.6 General Data Protection Regulations proceedings

We will pay on behalf of the *insured* all *loss* the *insured* incurs in responding to a *GDPR proceeding* that directly results from a *privacy event* or *privacy wrongful act* that takes place on or after the applicable *retroactive date* and before the end of the *period of insurance*.

The maximum that we will pay resulting from any one proceeding and in the aggregate is the 'GDPR Proceeding' sub-limit of liability specified in the *schedule*.

## 2.7 PCI Security Standards fines and penalties

We will pay on behalf of the *insured* any fines or penalties assessed by the PCI Security Standards Council alleging non-compliance with or violations of the Payment Card Industry Data Security Standard resulting from an audit conducted after a *privacy event* or *security event* has occurred.

The maximum that we will pay resulting from any one audit is the 'PCI Security Standards fines and penalties' sub-limit of liability specified in the *schedule*.

## 2.8 Regulatory proceeding defence costs and penalties

We will pay on behalf of the *insured* for all *loss* the *insured* incurs in responding to any *regulatory proceeding* first made against the *insured* and reported to us during the *period of insurance* or any *extended reporting period*, if applicable, for a *privacy wrongful act* or *security wrongful act* concerning a *privacy event*, provided such *privacy wrongful act* or *security wrongful act* concerning the *privacy event* first occurs on or after the applicable *retroactive date* and before the end of the *period of insurance*.

The maximum that we will pay resulting from any one proceeding is the 'Regulatory Proceeding' sub-limit of liability specified in the *schedule*.

## 2.9 Reputational damage income loss

We will reimburse the *company* for the *reputational damage income loss* that results from an *adverse media event* concerning an actual or alleged *security event* or *privacy event* that first occurs and is reported to us during the *period of insurance* or any *extended reporting period*, if applicable.

The maximum that we will pay in the aggregate for *company reputation protection expenses* is the 'Reputational damage income loss' sub-limit of liability specified in the *schedule*.

## 2.10 Reward payments

We will reimburse the *company* for any reward the *company* pays to any person or entity, other than an external auditor of the *company* or an *insured person* who is an internal auditor of the *company* or who supervises or manages an external auditor of the *company*, for information leading to the arrest and conviction of any person who is making or has made a *cyber extortion threat*, provided the *company* first receives such *cyber extortion threat* during the *period of insurance* and we consent (such consent not to be unreasonably withheld or unreasonably delayed) in offering such reward prior to it being offered.

The maximum that we will pay resulting from any one *cyber extortion threat* is the 'Reward payments' sub-limit of liability specified in the *schedule*. No *deductible* applies to reward payments.

## Section 3 – Definitions

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

### 3.1 Administrative error

*administrative error* means an error or omission committed by the *insured* in the course of data processing, programming, maintenance, service, conversion or repair of *computer systems*, including the collection, compilation, processing, warehousing, mining, storage, or management of data.

*Administrative error* shall not mean errors or omissions in the design, development, integration, installation of *computer systems*.

### 3.2 Adverse media event

*adverse media event* means a communication via any medium, including but not limited to television, print, radio, electronic, or digital form of previously private or confidential information specifically arising from an actual or alleged *security event* or *privacy event* that threatens material damage to the *insureds* reputation.

*Adverse media event* does not include any:

- (i) a general security issue;
- (ii) an industry issue; or
- (iii) any specific competitor issue without any specific allegation regarding the *insured*.

### 3.3 Business income loss

*business income loss* means the:

- 3.3.1 net profit before income taxes that the *company* is prevented from earning due to an *interruption of service*; and
- 3.3.2 normal operating expenses incurred by the *company* (including payroll), 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*.

*Business income loss* does not include any:

- (i) contractual penalties;
- (ii) costs or expenses incurred to update, restore, replace or improve a *computer system* to a level beyond that which existed just before the *interruption of service*, however if the costs or expenses incurred to update, restore, replace or improve a *computer system* to a level beyond that which existed just before the *interruption of service* are the same or less than the costs or expenses which would be incurred to update, restore, replace or improve the *computer system* to the level which existed just before the *interruption of service*, the *insured* may, with our prior written consent elect to improve the *computer system* to that level;
- (iii) 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) *mitigation and extra expenses*.

### 3.4 Claim

*claim* means:

- 3.4.1 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;
- 3.4.2 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;
- 3.4.3 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;
- 3.4.4 for the avoidance of doubt, *claim* includes but is not limited to credit card reissuance costs that the *insured* is legally liable to pay in respect of a *claim*; or
- 3.4.5 for the avoidance of doubt, *claim* includes *loss* reimbursement for coverage afforded under a *regulatory proceeding* and a *GDPR proceeding*.

### 3.5 Company

*company* means, singularly or collectively, the *policyholder* and its *subsidiaries*.

### 3.6 Company's computer system

*company's computer system* means a *computer system*:

- 3.6.1 the *company* leases, owns or operates;
- 3.6.2 that a *service provider* operates; or
- 3.6.3 owned by employees of the *company* or *service provider*, but only while such *computer system* is operated:
  - (a) on behalf of such *company* or *service provider*; and
  - (b) in compliance with published security policies of such *company* or *service provider*, to provide services to the *company*.



### 3.7 Company's reputation protection expenses

*company reputation protection expenses* mean the reasonable fees, costs, charges and expenses incurred with our prior written consent (such consent not to be unreasonably withheld or delayed) by the *company*, for an external public relations or crisis management consultant (which shall not be a law firm) specifically to mitigate the adverse publicity or potential adverse publicity to the *company* as a direct result of a *privacy wrongful act* or *security wrongful act*.

*Company reputation protection expenses* shall end once the external public relations or crisis management consultant advises the *company* that these expenses no longer are required or six (6) months after the event first occurred, whichever occurs first.

### 3.8 Computer system

*computer system* means interconnected electronic, wireless, web or similar systems, including computer hardware, *software* and the *electronic data* stored thereon, as well as associated input and output devices, mobile devices, data storage devices, servers, media libraries, networking equipment, components, firmware and electronic backup facilities, including systems accessible through the internet, intranets, extranets or virtual private networks. *Computer system* also means any if the foregoing that are part of an Industrial Control System.

### 3.9 Cyber extortion threat

*cyber extortion threat* means a threat or connected series of threats made by someone other than the *company's* directors, officers or employees to:

- 3.9.1 introduce or maintain *malicious code* into the *company's computer system*;
- 3.9.2 restrict, hinder access or interrupt the *company's computer system* through a *denial of service attack*;
- 3.9.3 encrypt, corrupt, erase or otherwise make unavailable *electronic data*; or
- 3.9.4 disseminate, divulge, or improperly utilise any *personal information* or any other confidential corporate information in the care, custody or control of any *insured* that is not available or known to the general public, obtained as a result of the *unauthorised use* of or the *unauthorised access* to the *company's computer system*; or
- 3.9.5 destroy, corrupt, deny access to or disseminate, divulge, or improperly utilise the *insured's* non public corporate information in the care, custody or control of the *insured* or *service provider*, taken as a result of the *unauthorised use* of or the *unauthorised access* to the *company's computer system*.

### 3.10 Cyber fraud

*cyber fraud* means:

- 3.10.1 any fraudulent or dishonest misuse or manipulation by a *fraudulent third party* of the *computer system*, programs or funds transfer systems owned or operated by *company*; or
- 3.10.2 any *fraudulent induced transfer* instructions by a *fraudulent third party* to debit an account maintained by an *insured* at a financial institution.

### 3.11 Cyber fraud loss

*cyber fraud loss* means the direct financial loss by theft of:

- 3.11.1 any *money, securities* or *property* sustained by an *insured*; or
- 3.11.2 any *money, securities* or *property* which is under the control and custody of the *insured* and for which the *insured* is legally liable,

as a direct result of a *cyber fraud*.

### 3.12 Cyberterrorism

*cyberterrorism* means the use of information technology to execute attacks or threats against the *company's network security* by any person or group, whether acting alone, or on behalf of, or in connection with, any individual, organization, or government, with the intention to:

- 3.12.1 cause harm;
- 3.12.2 intimidate any person or entity; or
- 3.12.3 cause destruction or harm to critical infrastructure or data, in pursuit of political, financial, religious or ideological objectives.

### 3.13 Damages

*damages* means any amount, including judgments and settlements, pre and post judgment interest, the *insured* is legally liable to pay as the result of a *claim* against the *insured*. *Damages* include punitive, exemplary, or multiple damages to the extent such damages are insurable under the internal laws of any applicable jurisdiction most favorable to the *insured*, including without limitation the jurisdiction in which the *company*, the *insured persons*, Zurich, this policy or such *claim* is located.

*Damages* does not include:

- (i) *defence expenses*;
- (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 cost to design, upgrade, maintain, or improve a *computer system*, including correcting any deficiencies or problems;
- (v) principal, interest or other money paid or due as the result of any loan, lease or extension of credit;
- (vi) fines or penalties, unless such:
  - (a) fines or penalties are imposed pursuant to *privacy regulations* or result from a *regulatory proceeding*; or
  - (b) fines or penalties alleging non-compliance with or violations of the Payment Card Industry Data Security Standard, and only if such fines or penalties are assessed as a result of an audit conducted after a *privacy event* has occurred that would otherwise be covered under this Policy, and only in jurisdictions where insurable,and only if such fines or penalties are insurable under the internal laws of any applicable jurisdiction most favorable to the *insured*, including without limitation the jurisdiction in which the *company*, the *insured persons*, Zurich, this policy or such *claim* is located; or
- (vii) *privacy breach costs*.

### 3.14 Deductible

*deductible* means the amount stated in the *schedule*, which will be the responsibility of the *company*, as applicable, to pay in respect of each *claim* made against the *insured* and submitted for cover under Insuring Clauses 1.1 and/or 1.2 and/or 1.3 and/or 1.4 and/or 1.5 and/or 1.6 and/or 1.7 of the policy for *loss*, *cyber fraud loss* or *fraudulent impersonation loss*.

### 3.15 Defence expenses

*defence expenses* mean the reasonable legal advisor fees, costs, charges and expenses incurred by or on behalf of the *insured* in the defence or appeal of a *claim*. *Defence expenses* does not include salaries, wages, overhead or benefit expenses associated with the *company's* directors, officers or employees.

### 3.16 Denial of service attack

*denial of service attack* means a malicious attack that is designed to slow, suspend, degrade or completely interrupt access to a *computer system* or website.

### 3.17 Dependent business income loss

*dependent business income loss* means the *business income loss* sustained by the *company* as a direct result of an *interruption of service* caused directly by a *security event* to the *service provider's computer system*, but only if such *security event* would have been covered under this policy if such *service provider* had been the *company*, applying the same terms and conditions herein.

### 3.18 Digital assets

*digital assets* means *electronic data*, *software*, audio files, and image files stored on the *company's computer system*, and the capacity of such *computer system*. *Digital assets* does not include accounts, bills, evidences of debts, *money*, valuable papers, records, abstracts, deeds, manuscripts or other documents, except if they have been converted to *electronic data*, and then only in that form.

### 3.19 Digital asset replacement expenses

*digital asset replacement expenses* mean the reasonable expenses the *company* incurs to replace, restore, recreate or recollect *digital assets* from written records or partially or fully matching *electronic data* due to their theft, alteration, modification, deletion, denial of access to, damage, corruption or destruction from a *security event*, including any disaster recovery, computer forensic investigation efforts or costs to purchase replacement licences for programs as a consequence of destruction or damage or inability to access the control *software*, subject to Clause 8.7.2.

*Digital asset replacement expenses* does not include:

- (i) any expense incurred to update, replace, restore, or otherwise improve *digital assets* to a level beyond that which existed prior to the *loss event*, unless the expenses which would be incurred to update, restore, recreate, replace or otherwise improve *digital assets* to a level beyond that which existed prior to the *security event* are the same or less than the expenses which would be incurred to update, restore, recreate, replace or otherwise improve *digital assets* to the same level which existed prior to the *security event*, the *insured* may, with our prior written consent (such consent not to be unreasonably withheld or unreasonably delayed) elect to improve the condition to that level;
- (ii) any expense incurred to identify or remediate *software* program errors or vulnerabilities, or costs to update, replace, upgrade, restore, maintain or improve any *computer system*;
- (iii) any expense incurred to research and develop *digital assets*, including trade secrets;
- (iv) the economic or market value of *digital assets*, including trade secrets;
- (v) any other consequential loss or damage; or
- (vi) any costs incurred without our consent.

### 3.20 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*.

### 3.21 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.

### 3.22 Electronic publishing wrongful act

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

- 3.22.1 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;
- 3.22.2 plagiarism, false light or false advertising resulting from *electronic publishing* activities;
- 3.22.3 violation of the right of privacy or seclusion or right of publicity of any person other than an *insured person* 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;
- 3.22.4 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 *electronic publishing* activities; or
- 3.22.5 unauthorised use of titles, formats, performances, style, characters, plots or other protected material resulting from *electronic publishing* activities.

### 3.23 Extended reporting period

*extended reporting period* means that period described in Section 2, '2.5 Extended reporting periods'.

### 3.24 Extortion expenses

*extortion expenses* means the reasonable expenses, including forensic expenses, incurred by the *company*, with our prior consent (such consent not to be unreasonably withheld or unreasonably delayed), that are directly attributable to a *cyber extortion threat*.

### 3.25 Extortion payments

*extortion payments* means *money*, digital currencies or other consideration paid to a third party whom the *company* reasonably believe to be responsible for *cyber extortion threat*, provided that:

- 3.25.1 our consent is obtained prior to making such *extortion payments*; and
- 3.25.2 such *extortion payments* are made to avoid, defend, preclude, resolve or terminate the *cyber extortion threat*.

### 3.26 Fraudulent induced transfer

*fraudulent induced transfer* means loss of *money*, *securities* or *property*, on deposit in the *company's* own account, resulting directly from a transfer resulting from the good faith reliance upon a fraudulent *transfer instruction*:

- 3.26.1 transmitted to the *company* or employee or independent contractor of the *company* via an electronic mail, telefacsimile, telephone or other written instruction received by the *company* or employee or independent contractor of the *company* that is not in collusion with the *fraudulent third party* of the fraudulent *transfer instruction*; and
- 3.26.2 that purports, and reasonably appears, to have originated from:
  - (a) an employee or independent contractor of the *company* specifically authorised by the *company* to make such instruction; or
  - (b) a *vendor* authorised by the *company*;but the *fraudulent third party* of the *transfer instruction* was not, in fact, such employee, independent contractor or *vendor* but someone impersonating such and the impersonated employee, independent contractor or *vendor* had no knowledge or consent of such fraudulent *transfer instruction* received by the *company*; and
- 3.26.3 containing a misrepresentation of material fact reasonably relied upon that directs the *company* or employee of the *company* to transfer, pay, or to change the method, destination or account for payments to such employee, independent contractor or *vendor* referenced in item 3.26.2 above.

### 3.27 Fraudulent impersonation loss

*fraudulent impersonation loss* means direct financial loss of any *money, securities* or *property* sustained by an *insured* as a direct result of a *fraudulent induced transfer*.

### 3.28 Fraudulent third party

*fraudulent third party* means any person or entity other than the *insured* or *vendor* fraudulently impersonating:

3.28.1 an *insured*;

3.28.2 a *vendor*; or

3.28.3 the financial institution of an *insured* or *vendor*,

for the purposes of obtaining an unauthorised transfer of *money, securities* or *property*.

### 3.29 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.

### 3.30 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.

### 3.31 Hardware betterment costs

hardware betterment costs mean reasonable costs and expenses the company incurs to replace or improve the company's computer system hardware including any disaster recovery, or computer forensic investigation efforts as a consequence of a security event, subject to Clause 8.7.2.

*hardware betterment costs* does not include:

- (i) physical damage to *property*;
- (ii) any expense incurred to research and develop the computer hardware, including trade secrets;
- (iii) the economic or market value of computer hardware, including trade secrets;
- (iv) any consequential loss or damage; or
- (v) any costs incurred without our consent (such consent not to be unreasonably withheld or unreasonably delayed).

### 3.32 Insured

*insured* means the *company* and the *insured persons*.

### 3.33 Insured person

*insured person* means any natural person who has been, now is, or shall be:

- 3.33.1 a director, officer, trustee, employee, temporary employee or voluntary unpaid worker of the *company* acting in such capacity or the functional equivalent thereof;
- 3.33.2 an independent contractor of the *company*, other than a *service provider*, but solely with respect to a *wrongful act* committed within the scope of such person's duties on behalf of the *company* performed pursuant to a written contract with the *company*; or
- 3.33.3 a spouse or domestic partner (under any applicable law or formal program established by the *company*) of any person identified in 3.33.1 above, but solely if a *claim* made against such person identified in 3.33.1 is also made against such spouse or domestic partner due to:
  - (a) such spouse's or domestic partner's status as a spouse or domestic partner of the *insured person*; or

- (b) such spouse's or domestic partner's ownership interest in property that the claimant seeks as recovery for alleged *wrongful acts* of the *insured person*,

provided the *insured person* shall not include a lawful spouse or domestic partner with respect to a *claim* against that spouse or domestic partner for his or her own *wrongful acts*.

*Insured person* shall also include the estates, heirs, legal representatives or assigns of any person identified above who is deceased, incompetent, insolvent or bankrupt.

### **3.34 Interrelated security events**

*interrelated security events* means all *security events* which are continuous or repeated or which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.

### **3.35 Interrelated wrongful acts**

*interrelated wrongful acts* mean all *wrongful acts* that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.

### **3.36 Interruption of service**

*interruption of service* means the actual and measurable interruption, suspension, failure, degradation or delay in the performance of the *company's computer system*, if directly caused by a *security event* or *administrative error*. *Interruption of service* also means a voluntary shutdown of the *company's computer system* when such action is taken to minimise, avoid or mitigate a *security event* or *administrative error*.

### **3.37 Loss**

*loss* means *damages* and *defence expenses*.

### **3.38 Malicious code**

*malicious code* means unauthorised, corrupting, or harmful *software* designed to damage a *computer system*, including but not limited to computer viruses, trojan horses, keystroke loggers, cookies, spyware, adware, worms, and logic bombs.

### **3.39 Mitigation and Extra expenses**

*mitigation and extra expenses* means:

- 3.39.1 the reasonable, including forensic expenses, incurred by the *company* during the *period of restoration* to minimise, avoid or reduce an *interruption of service*, provided that such expenses are over and above the *company's* normal operating and payroll expenses and do not exceed the amount of loss that otherwise would have been payable as *business income loss* or *dependent business income loss*; and
- 3.39.2 the reasonable additional costs of employing contract staff or overtime costs for *insured persons* in order to continue business during the *interruption of service*, which would otherwise have been handled in whole or in part by the original *service provider*.

*Mitigation and extra expenses* does not include:

- (i) any costs or expenses to correct any deficiencies or problems with any *computer system* or remediate *software* errors or vulnerabilities;
- (ii) any costs or expenses to update, restore, replace or improve any *computer system* to a level beyond that which existed just before the *interruption of service*, unless such costs or expenses are standard technological advancements included within any newer computer systems such as increases memory capacity or process speed;
- (iii) any contractual penalties; or
- (iv) *digital asset replacement expenses*, *hardware betterment costs*, *extortion expenses* or *extortion payments*.

### **3.40 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.

### **3.41 Named parent**

*named parent* means the legal entity designated in the *schedule* under the Master Policy if applicable.

### **3.42 Network security**

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

### **3.43 Period of insurance**

*period of insurance* means the period of time shown in the *schedule*, subject to any prior termination of the policy.

### **3.44 Period of restoration**

*period of restoration* means the period from the date and time that a *computer system* first suffered an *interruption of service* to the date and time such *computer system* was restored, or could have been restored with reasonable speed, to substantially the level of operation that had existed prior to such *interruption of service*, provided that in no event shall such period exceed 120 days. The expiration date of the *period of insurance* will not cut short the length of the *period of restoration*.

### **3.45 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.

### **3.46 Policyholder**

*policyholder* means the legal entity stated in the policy *schedule*, and who is the contracting party to this policy.

### **3.47 Pollutants**

*pollutants* means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued under legislation, regulations or by an environmental protection authority (including but not limited to any such legislation, regulations or authority in New Zealand, Australia, the United Kingdom, the United States of America or the European Union). 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 mycotoxins, spores, scents or by-products produced or released by fungi, but not any fungi 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.

### **3.48 Privacy breach costs**

*privacy breach costs* mean the reasonable fees, costs, charges and expenses incurred by the *company* (whether voluntarily or otherwise) with our prior written consent (such consent not to be unreasonably withheld or unreasonably delayed), within 24 months of the *insured* first having knowledge of a *privacy event* for the purposes of retaining an accountant, legal advisor, forensics firm and /or a PCI Forensics Investigator (PFI), public relations consultant or other third party expert to:

- 3.48.1 conduct a computer forensic analysis to investigate the *company's computer system* to determine:
  - (a) the cause and extent of such *privacy event*;
  - (b) whether a *security wrongful act* may be the cause of such *privacy event*; or
  - (c) compliance with the Payment Card Industry Data Security Standards;

- 3.48.2 determine indemnification obligations under any written contract with respect to a *wrongful act* by a *service provider* in connection with such *privacy event*;
- 3.48.3 determine if the *company* is obligated to notify affected individuals, customers, clients or other legal entities including any applicable regulatory agencies of such *privacy event*;
- 3.48.4 notification to comply with *privacy regulations* of any actual or suspected *privacy breach*;
- 3.48.5 effect compliance with any *privacy regulation* under the applicable *privacy regulation* most favorable to the affected individuals;
- 3.48.6 notify the affected individuals, customers, clients or other legal entities including any applicable regulatory agencies of such *privacy event* and establish new account numbers for the affected individuals;
- 3.48.7 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 the *insured's* business or personal reputation in response to negative publicity following such *privacy event*;
- 3.48.8 procure credit monitoring services and identification theft insurance for the affected individuals in responding to such *privacy event*; or
- 3.48.9 procure call centre services to handle inquiries from and provide information to affected individuals, customers, clients or other legal entities in responding to such *privacy event*.

*Privacy breach costs* does not include:

- (i) regular or overtime wages, salaries or fees of the *company's* directors, officers, employees, temporary employees or voluntary unpaid workers;
- (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.

### **3.49 Privacy event**

*privacy event* means:

- 3.49.1 an unauthorised modification, disclosure, loss or theft of:
  - (a) *personal information* in the care, custody or control of any *insured* or *service provider*; or
  - (b) corporate information in the care, custody or control of any *insured* or *service provider* that is not available or known to the general public;
- 3.49.2 a violation of any *privacy regulation*; or
- 3.49.3 the unauthorised or wrongful collection of *personal information*.

### **3.50 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.

### **3.51 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 *company* is legally responsible, or a *service provider*, that results in a *privacy event*.

### **3.52 Professional services**

*professional services* means those acts or services requiring specialised knowledge, skill or professional judgment, which the *insured* renders to others pursuant to a written agreement and for a fee or other consideration.



### **3.53 Property**

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

### **3.54 Property damage**

*property damage* means loss of or physical damage to *property*, including all resulting loss of use of that *property*, or loss of use of *property* that has not been physically injured. *Property damage* does not mean physical injury to, loss or destruction of *electronic data*.

### **3.55 Reputational damage income loss**

*reputational damage income loss* means the net profit before income taxes that the *company* is prevented from earning due to:

3.55.1 termination of the *company's* service contracts with one or more of the *company's* clients; or

3.55.2 reduction in the value of the *company's* business and brands,

where such loss arises directly from an *adverse media event* concerning an actual or alleged *security event* or *privacy event*.

*Reputational damage income loss* does not include:

- (i) any contractual penalty;
- (ii) expenses incurred to identify or remediate software program errors or vulnerabilities;
- (iii) circumstances resulting from an actual interruption or suspension of an *insured's* business directly caused by an *administrative error*;
- (iv) *defence expenses*;
- (v) circumstances arising out of liability to any third party;
- (vi) *company reputation protection expenses*;
- (vii) other consequential loss or damage;
- (viii) *mitigation and extra expenses*; or
- (ix) *privacy breach costs*.

### **3.56 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.

### **3.57 Retroactive date**

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

### **3.58 Schedule**

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

### **2.59 Securities**

*securities* means 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*.

### **3.60 Security event**

*security event* means any *unauthorised access to, unauthorised use of, introduction of malicious code into, or denial of service attack* upon, the *company's computer system*, that results in:

3.60.1 an *interruption of service*; or

3.60.2 the theft, alteration, modification, corruption or destruction of *digital assets* or other corporate information in the care, custody or control of any *insured* that is not available or known to the public.

### **3.61 Security wrongful act**

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

3.61.1 the theft, alteration, modification, corruption or destruction of *electronic data* on the *company's computer system*;

3.61.2 the *unauthorised access to or unauthorised use of the company's computer system*;

3.61.3 the denial of an authorised user's access to the *company's computer system*, unless such denial of access is caused by a mechanical or electrical failure outside the control of the *insured*;

3.61.4 the participation by the *company's computer system* in a *denial of service attack* directed against a third party's *computer system*; or

3.61.5 the transmission of *malicious code* from the *company's computer system* to a third party's *computer system*.

### **3.62 Service provider**

*service provider* means a business the *company* does not own, operate, or control, but that the *company* engages for a fee pursuant to a written contract to perform services related to the conduct of the *company's* business, including but not limited to:

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

3.62.2 hosting or facilitating the *company's* internet website; or

3.62.3 providing other services to the *company* including but not limited to administrative functions, human relations, marketing or other outsourced services.

### **3.63 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*.

### **3.64 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:

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

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

3.64.3 holds 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 with those of the *policyholder* pursuant to the Financial Reporting Act 2013 or the applicable New Zealand accounting standard.

### **3.65 Submission**

*submission* means:

3.65.1 any information and/or statements or materials; and/or

3.65.2 any proposal form completed and signed by any *insured* (including any attachments thereto, information included therewith or incorporated therein),

requested by or supplied to us by or on behalf of the *policyholder* in connection with this policy.

### **3.66 Terrorism**

*terrorism* means:

3.66.1 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:

(a) involves violence against one or more persons;

(b) involves damage to *property*;

(c) endangers life other than that of the person committing the action; or

(d) creates a risk to health or safety of the public or a section of the public.

3.66.2 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 3.66.1 above.

### **3.67 Transfer instruction**

*transfer instruction* means an instruction directing an *insured* to transfer *money, securities or property*.

### **3.68 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.

### **3.69 Unauthorised use**

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

### **3.70 Vendor**

*vendor* means any entity or natural person from whom an *insured* purchases goods or services under a written contract, for a fee or other monetary consideration. However, *vendor* does not include any financial institution, asset manager, broker-dealer, armoured motor vehicle company, or any similar entity.

### **3.71 Waiting hours retention**

*waiting hours retention* means the dollar amount of *business income loss, dependent income loss and mitigation and extra expenses* incurred by an *insured* during the Waiting Period shown in the *schedule*.

### **3.72 Wrongful act**

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

## Section 4 – Limits of Liability

### 4.1 The maximum liability of Zurich:

- 4.1.1 for all payments other than *defence expenses* under all Insuring Clauses purchased under this policy is the amount shown in the *schedule* as the Maximum Policy Aggregate Limit of Liability; and
  - 4.1.2 where the insured's liability exceeds the available Maximum Policy Aggregate Limit of Liability, we will only pay such proportion of the *defence expenses* as the available Maximum Policy Aggregate Limit of Liability bears to the insured's liability.
- 4.2 Subject to 4.1 above, the maximum liability of Zurich for all *privacy breach costs* from each *privacy event* and from all *privacy events* in the aggregate under Insuring Clause 1.1, if purchased, is the amount shown in the *schedule*.
- 4.3 Subject to 4.1 above, the maximum liability of Zurich for all *digital asset replacement and expenses* from each *security event* and from all *security events* in the aggregate under Insuring Clause 1.2, if purchased is the amount shown in the *schedule*.
- 4.4 Subject to 4.1 above, the maximum liability of Zurich for all *damages* from each *claim* and all *claims* in the aggregate under Insuring Clause 1.3, if purchased is the amount shown in the *schedule*.
- 4.5 Subject to 4.1 above, the maximum liability of Zurich for all *business income loss, dependent business income loss and mitigation and extra expenses* from any one *security event* or *administrative error* and from all *security events* and *administrative errors* in the aggregate under Insuring Clause 1.4, if purchased is the amount shown in *schedule*.
- 4.6 Subject to 4.1 above, the maximum liability of Zurich for all *extortion expenses* and *extortion payments* from any one *cyber extortion threat* and in the aggregate under Insuring Clause 1.5, if purchased is the amount shown in the *schedule*.
- 4.7 Subject to 4.1 above, the maximum liability of Zurich for all *damages* resulting from each *claim* and all *claims* in the aggregate under Insuring Clause 1.6, if purchased is the amount shown in the *schedule*.
- 4.8 Subject to 4.1 above, the maximum liability of Zurich for all *cyber fraud loss* or *fraudulent impersonation loss* resulting from each *claim* and all *claims* in the aggregate under Insuring Clause 1.7, if purchased is the amount shown in the *schedule*.
- 4.9 Subject to 4.1 above, the Extensions of Cover, if operative shall be part of, and not in addition to, the amount shown in the *schedule* as the Maximum Policy Aggregate Limit of Liability.
- 4.10 The Limit of Liability, other than *defence expenses* available during the *extended reporting period*, if exercised shall be part of, and not in addition to, the amount shown in the *schedule* as the Maximum Policy Aggregate Limit of Liability.

## Section 5 – Deductible and Single claim

- 5.1 We will only pay *loss* in excess of the applicable *deductible* for each *claim*, up to the applicable Limit of Liability. We will pay *defence expenses* in respect of each *regulatory proceeding* and in respect of all *regulatory proceedings* in the aggregate in excess of the applicable *deductible* for each *regulatory proceeding*. We may, however, elect to pay all or any part of the *deductible* to effect a settlement of any *claim* covered hereunder and, upon notice of such action by us, the *insured* must promptly reimburse Zurich for the *deductible* paid by us.
- 5.2 We will only pay *privacy breach costs* in excess of the applicable *deductible* for each *privacy event*, up to the applicable Limit of Liability.
- 5.3 We will only pay *digital asset replacement expenses* and *hardware betterment costs* resulting from any one *security event* in excess of the applicable *deductible* up to the applicable Limit of Liability.
- 5.4 We will only pay *business income loss, dependent business income loss and mitigation and extra expenses* resulting from any one *security event* in excess of the applicable *deductible* up to the applicable Limit of Liability. The applicable *deductible* is the greater of:
- 5.4.1 the dollar *deductible* amount; or
  - 5.4.2 the *waiting hours retention*.

The *business income loss, dependent business income loss and mitigation and extra expenses* applicable to the *deductible* shall be computed as of the start of the *interruption of service*.

- 5.5** We will only pay *extortion expenses* and *extortion payments* resulting from any one *cyber extortion threat* in excess of the applicable *deductible* up to the applicable Limit of Liability. We will pay reward payments resulting from any one *cyber extortion threat* up to the Limit of Liability for reward payments, which is subject to the Limit of Liability. No *deductible* applies to reward payments.
- 5.6** We will only pay *cyber fraud loss* or *fraudulent impersonation loss* resulting from any *cyber fraud* or *fraudulent induced transfer* in excess of the applicable *deductible* up to the applicable Limit of Liability.
- 5.7** All *interrelated security events* shall be deemed one *security event* and shall be deemed to first occur at the time the earliest *security event* of the *interrelated security events* first occurs. In the event any one *security event* triggers more than one Insuring Clause, the highest applicable *deductible* shall apply to such *security event* and the amount payable by us with respect to such *security event* shall be limited to the amount of the Limit of Liability of that Insuring Clause corresponding to the highest *deductible*.
- 5.8** All *claims* arising out of the same *wrongful act* and all *interrelated wrongful acts* shall be deemed one *claim*. All such *claims* shall be deemed to be first made as of the date the first of such *claims* was made against the *insured* and shall be subject to a single *deductible* and applicable Limit of Liability and to the Maximum Policy Aggregate Limit of Liability.

## Section 6 – Defence and Settlement

- 6.1** It shall be the duty of Zurich and not the *insured* to take all reasonable steps to defend any *claim*.
- 6.2** The *insured* may not incur any *defence expenses* or settle any *claim*, or otherwise admit or assume any liability or obligation, without our consent, such consent not to be unreasonably withheld. Zurich will not be liable for any *defence expenses*, settlement, liability or obligation to which it has not consented.
- We may investigate any *claim* as we deem necessary and make any settlement or compromise of any *claim* as we deem expedient with the *insured's* consent, such consent not to be unreasonably withheld.
- 6.3** If we recommend a settlement of a *claim* on terms acceptable to the claimant and the *insured* refuses to consent to such settlement then, subject to the applicable Limit of Liability, our liability for such *claim* will not exceed:
- 6.3.1 the amount for which the *claim* could have been settled by us including *defence expenses* up to the date the *insured* refused to settle such *claim*; plus
- 6.3.2 seventy percent (70%) of any:
- (a) *damages*; and
- (b) *defence expenses*,
- in excess of the amount in clause 6.3.1 above, incurred in such *claim*. The remaining *damages* and *defence expenses* will be borne by the *insured* at its own risk uninsured.
- 6.4** We shall have the right, to defend any *regulatory proceeding* or *GDPR proceeding* on the *insured's* behalf. The *insured* may not incur any *defence expenses* in any *regulatory proceeding* without our consent, such consent not to be unreasonably withheld. Zurich will not be liable for any *defence expenses* to which we have not consented. Zurich has the right to associate in the defence of, and may investigate any such *regulatory proceeding* as it deems necessary.

## Section 7 – Exclusions

Zurich will not pay any *loss*, *cyber fraud loss* or *fraudulent impersonation loss* or any *privacy breach costs* resulting from any *claim* made against any *insured*, any *privacy breach costs* the *company* incurs resulting from a *privacy event* or any *digital asset replacement expenses*, *hardware betterment costs*, *business income loss*, *dependent business income loss*, *mitigation and extra expenses*, *extortion expenses*, *extortion payments*, *cyber fraud* or *fraudulent induced transfer* or reward or any other amount claimed under any Insuring Clause of this policy:

### 7.1 Bodily injury

based upon, arising out of or attributable to any actual or alleged bodily injury, mental anguish, emotional distress, pain and suffering, shock, humiliation, sickness, disease or death of any person or *property damage*.

However this exclusion does not apply to mental anguish, emotional distress, pain and suffering, or shock resulting from a *privacy event*.

## 7.2 Conduct

based upon, arising out of or attributable to:

- 7.2.1 any dishonest, fraudulent, criminal, or malicious *wrongful act* committed by an *insured*;
- 7.2.2 any intentional or knowing violation of law committed by an *insured*; or
- 7.2.3 any gaining of any profit, remuneration, or financial or non-financial advantage by an *insured* to which the *insured* was not legally entitled.

However, we will pay *defence expenses* and defend such *claim* until there is:

- (a) a final adjudication of a court, arbitration court or at the *regulatory proceeding*; or
- (b) written admission of the insured,

which establishes any of 7.2.1, 7.2.2 or 7.2.3 above. In this event, the insured shall reimburse us for any defence expenses paid by us on behalf of such insured resulting from such claim.

In applying this exclusion, no *wrongful act* of, or knowledge possessed by, an *insured person* shall be imputed to any other *insured person*, however the *wrongful act* of, or knowledge possessed by, the Chief Executive Officer, Chief Financial Officer, General Counsel or risk manager of the *company*, or any *insured person* in a functionally equivalent position, shall be imputed to the *company*.

## 7.3 Contractual liability

based upon, arising out of or attributable to any contractual liability or obligation or any breach of any contract, including any liability of others assumed by any *insured*.

However this exclusion shall not apply:

- 7.3.1 if such liability would have attached to the *insured* even in the absence of such contract; or
- 7.3.2 to any obligation to maintain the confidentiality or security of *personal information* or other confidential corporate information in the care, custody or control of any *insured* that is not available or known to the general public, if such liability arises out of a *privacy wrongful act* or a *security wrongful act*.

## 7.4 Cost estimation

based upon, arising out of or attributable to:

- 7.4.1 incomplete disclosure of the *insured's* fees; or
- 7.4.2 any guarantee, representation or promise the *insured* makes relating to contract price, costs, cost savings, return on investment or profitability, including the *insured's* failure to meet cost guarantees, representations, or contract price.

## 7.5 Deceptive practices

based upon, arising out of or attributable to:

- 7.5.1 the actual or alleged inaccurate or misleading description of the price or quality or fitness or purpose of the *insured's* products, including *software*; or
- 7.5.2 the rendering of or failure to render *professional services*.

## 7.6 Failure of utilities

based upon, arising out of or attributable to any mechanical or electrical failure, interruption or outage, however caused, 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 however:

- 7.6.1 in respect of any *loss* or *privacy breach costs*, this exclusion shall not apply to any failure, interruption, or outage of telephone, cable or telecommunications under the *insured's* direct control which is the result of an *insured's wrongful act* or a *denial of service attack* directed against the *company's computer systems*.

7.6.2 in respect of any *digital asset replacement expenses* or *hardware betterment costs*, this exclusion shall not apply to any failure, interruption, or outage of telephone, cable or telecommunications under the *company's* direct control.

## 7.7 Failure to comply

based upon, arising out of or attributable to licensing fees or royalties ordered, directed or agreed to be paid by the *insured* pursuant to a judgement, 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, in respect to Insuring Clause 1.6 'Internet Media liability' only.

## 7.8 Government action

based upon, arising out of or attributable to seizure, confiscation, expropriation, nationalisation, or destruction of a *computer system* by order of any governmental authority.

## 7.9 Intellectual property

based upon, arising out of or attributable to any actual or alleged theft, infringement, dilution, violation or misappropriation of:

7.9.1 any patent or trade secret, however, this exclusion shall not apply to the extent any *claim* alleges an inadvertent disclosure of a trade secret that constitutes a *privacy event*; or

7.9.2 except with respect to the cover provided under Insuring Clause 1.6 'Internet Media liability', any copyright, service mark, trade name, trade mark or other intellectual property of any third party.

## 7.10 Pollution

based upon, arising out of or attributable to:

7.10.1 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

7.10.2 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.

## 7.11 Prior and Pending

based upon, arising out of or attributable to:

7.11.1 any fact, circumstance, or situation which has been the subject of any written notice given under any insurance policy or any policy of which this policy is a direct or indirect renewal or replacement, or any policy expiring prior to the inception date of this policy;

7.11.2 any act, error or omission or *wrongful act*, *cyber extortion threat*, fact, circumstance or situation occurring prior to:

(a) the inception date of this policy;

(b) the inception date of the first policy in an uninterrupted series of privacy and security liability insurance policies continuously issued by Zurich to the *company* of which this policy is a renewal, whichever inception date is earlier; or

(c) the *retroactive date*,

if on or before such earlier inception date or *retroactive date* the *insured* knew or could have reasonably foreseen that such *wrongful act*, *cyber extortion threat*, fact, circumstance or situation would give rise to a *claim* or *privacy event*; or

7.11.3 any written demand, suit or proceeding pending, or order, decree or judgement entered, against any *insured* on or prior to the effective date of this policy or the effective date of any policy issued by Zurich of which this policy is a continuous renewal or a replacement policy alleging or derived from the same or substantially the same *wrongful act*, *interrelated wrongful acts*, *interrelated security events*, fact, circumstance or situation underlying or alleged therein.

### **7.12 Related entity**

where the *claim* is brought by or on behalf of, or at the behest or for the benefit of any *insured*.

However this exclusion shall not apply to any *claim* brought by:

7.12.1 any *insured person* in his or her capacity:

- (a) as a customer or client of the *company*; or
- (b) as an employee or independent contractor of the *company* for a *privacy event* relating to the unauthorised disclosure of such employee's or independent contractor's *personal information*; or

7.12.2 an entity other than the *company* if any *insured person* served as a director or officer of such entity at the time the *wrongful act* took place.

However this exclusion does not apply to any *digital asset replacement expenses* or *hardware betterment costs*.

### **7.13 Spam**

based upon, 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 or federal, state or foreign statute, law, ordinance or regulation that prohibits or limits the sending, transmitting, communication or distribution of material or information in any foreign jurisdiction.

However this exclusion shall not apply to any *loss* from any *claim* made against any *insured*, resulting from a *security wrongful act*.

### **7.14 Theft, Loss or Transfer**

based upon, arising out of, or attributable to loss, transfer or theft of *money, securities, or property* of the *insured* or others whilst in the care, custody, or control of the *insured*.

However this exclusion does not apply to Insuring Clause 1.7 'Cyber fraud and Fraudulent impersonation'.

### **7.15 Theft of digital rewards**

based upon, arising out of or attributable to the theft of computer or video game points, earnings awards or other intangible property, in respect to Insuring Clause 1.6 'Internet Media liability' only.

### **7.16 Third party advertising services**

based upon, arising out of or attributable to advertising services performed by the *insured* on the *insured's* internet website on behalf of others, in respect to Insuring Clause 1.6 'Internet Media liability' only.

### **7.17 Unauthorised file sharing**

based upon, arising out of or attributable to 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, in respect to Insuring Clause 1.6 'Internet Media liability' only.

### **7.18 War and Terrorism**

based upon, arising out of or attributable to war including undeclared or civil war, terrorism, warlike action by a military force including action in hindering or defending against an actual or expected attack by any government, sovereign or other authority using military personnel or other agents, or insurrection, rebellion, revolution, riot, usurped power, or action taken by governmental authority or any other political or terrorist organisation in hindering or defending against any of these.

However this exclusion does not apply to *cyberterrorism*.



## 7.19 Warranties

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

- 7.19.1 breach of any warranty, guarantee, or promise of fitness or suitability, whether express, implied, constructive, oral or written; or
- 7.19.2 inaccurate, inadequate, or incomplete description of the price of the *company's* goods, products or services; or
- 7.19.3 failure of any goods, products or services to conform with an advertised quality or performance.

However in respect to 7.19.1 above, this exclusion shall not apply to any *loss* or any *privacy breach costs* resulting from any *claim* made against any *insured*, any *privacy breach costs* the *company* incurs resulting from a *privacy event* or any other amount claimed under any other Insuring Clause, in the absence of such warranty, guarantee, or promise.

## Section 8 – General Conditions

### 8.1 Alteration and Assignment

No change in, modification of, or assignment of interest under this policy shall be effective except when made by an endorsement issued by Zurich and made a part of this policy.

### 8.2 Applicable law

In the event of any dispute relating to the construction, interpretation and/or meaning of the terms and provisions of this policy, it has been agreed that such disputes shall be exclusively governed by the law applicable in New Zealand.

### 8.3 Authorisation

By acceptance of this policy, the *policyholder* agrees to act on behalf of the *insureds* with respect to the termination of this policy, payment of premiums, receiving of any return premiums that may become due under this policy, the agreement to and acceptance of endorsements and the giving or receiving of any notices including but not limited to notices for *claims* or events provided for in this policy. All *insureds* agree that the *policyholder* shall act on their behalf.

### 8.4 Bankruptcy

Bankruptcy or insolvency of the *insured* or of the *insured's* estate will not relieve Zurich of our obligations under this policy nor deprive us of our rights or defences under this policy.

In the event of liquidation or reorganisation proceeding is commenced by or against a *company* pursuant to the Insolvency Act 2006 (NZ), as amended or any similar foreign, state or local law, the *company* and the *insured persons* hereby:

- 8.4.1 waive and release any automatic stay or injunction which may apply in such proceeding to this policy or its proceeds under such bankruptcy law, and
- 8.4.2 agree not to oppose or object to any efforts by Zurich, the *company*, or any *insured person* to obtain relief from any such stay or injunction.

### 8.5 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:

- 8.5.1 the law requires disclosure in the financial statements or annual reports of the payment of premium by the *policyholder*; or
- 8.5.2 Zurich consents in writing to the disclosure of the existence and/or terms of this policy.

### 8.6 Co-operation

8.6.1 The *insured* agrees to provide Zurich with all information, assistance and co-operation as we and our defence counsel may reasonably request concerning any *claim* or circumstance, *privacy event*, or any other amount claimed under this policy, including attending hearings and trials and otherwise assisting in securing and giving documentation and evidence and obtaining the attendance of witnesses. The *insured* agrees to do nothing that may prejudice Zurich or our actual or potential rights of recovery.

8.6.2 As soon as practicable after the *insured* gives us notice of any *claim*, circumstance, *privacy event*, *security event* or any other amount claimed under this policy, the *insured* must also give us copies of reports, photographs, investigations, pleadings and all other papers in connection therewith.

## 8.7 Insured's duty and Valuation

### 8.7.1 Maintenance of insured property

The *company* agrees that any protection provided for the safety of any insured property shall be maintained in good order during the *period of insurance* and shall be in use at all relevant times, and such protection shall not be withdrawn or altered to the detriment of our interests without our consent.

### 8.7.2 Valuation of digital asset replacement expenses

- (a) If the *company* cannot restore *digital assets* but can recollect such *digital assets*, then *digital assets replacement expenses* shall be limited to the actual cost the *company* incurs to recollect such *digital assets*.
- (b) If the *company* cannot restore or recollect *digital assets*, then *digital assets replacement expenses* shall be limited to the actual cost the *company* incurs to reach this determination.

### 8.7.3 Business income loss and Dependent business income loss

*Business income loss* and *dependent business income loss* will be calculated on an hourly basis based on the actual *business income loss* and *dependent business income loss* the *company* sustains during the time period in which the *company's computer system* is affected by the *interruption of service* or *administrative error*. In determining the amount of net profit or loss and expenses covered under Insuring Clause 1.4, we will give due consideration to the net profit or loss of the *company* before the *interruption of service* or *administrative error* occurred and the probable net profit or loss of the *company* if no *interruption of service* or *administrative error* had occurred. However, such net profit or loss calculations shall not include, and this cover shall not cover, net income that would likely have been earned as a result of an increase in the volume of the *company's* business due to favourable business conditions caused by the impact of any event similar to a *security event* suffered by other businesses. The *company* will provide Zurich with access to all relevant sources of information, including, but not limited to:

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

### 8.7.4 Reputational Damage Income Loss

*reputational damage income loss* will be calculated on an hourly basis based on the actual *reputational damage income loss* the *company* sustains during the *period of insurance*. In determining the amount of net profit or loss and expenses covered under *reputational damage income loss*, we shall give due consideration to the net profit or loss before the *adverse media event* occurred and the probable net profit or loss if no *adverse media event* had occurred. However, such net profit or loss calculations shall not include, and this cover shall not cover, net income that would likely have been earned as a result of an increase in the volume of the *company's* business due to favourable business conditions caused by the impact of any event similar to an *adverse media event* suffered by other businesses. The *company* will provide us with access to all relevant sources of information, including, but not limited to:

- (a) the *company's* financial records, tax returns, accounting procedures;
- (b) documentation of the trends and variations in, or other circumstances affecting the *company* before or after the *adverse media event* that would have affected you had no *adverse media event* happened;
- (c) bills, invoices and other vouchers; and
- (d) deeds, liens and contracts.

#### 8.7.5 Valuation of Cyber fraud and fraudulent impersonation Loss

(a) Securities

In no event will we be liable in respect of *securities* for more than the actual cash value thereof at the close of business on the business day proceeding the day on which the loss was discovered.

(b) Books of accounts and records

In the case of loss of or damage to *property* consisting of books of accounts or other records other than *electronic data* used by the *company* in the conduct of the business, we will be liable if such books or records are actually reproduced and then for not more than the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data which will have been furnished by the *company* in order to reproduce such books and other records.

(c) Electronic data

In the event that a loss as covered in the destruction, erasure or theft of *electronic data* used by the *company* while such data is stored within the *company's computer systems*, we will be liable if such data is actually reproduced and cover hereunder will only apply to the cost of labour for the actual transcription or copying of data, which will have been furnished by the *company* in order to reproduce such *electronic data*.

(d) Foreign currency

If a foreign currency being a currency other than the currency in is involved in a loss sustained by an *insured*, then for the purpose of any calculation required in the settlement of a loss the rate of exchange will be the rate as offered by the New Zealand dollars as reported in the National Business Review on the date of such settlement.

(e) Other property

In no event will we be liable as respects other *property* not included in the above for more than the actual cash value thereof at the time of loss or for more than the actual cost of repairing such other property or of replacing it with property or material of like quality and value. Provided that the actual cash value of such other *property* held by the *company* as a pledge, or as collateral for an advance or a loan will be deemed not to exceed the value of the *property* as determined and recorded by the *company* when making the advance or loan nor in the absence of such record the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

### 8.8 Material changes to the company

#### 8.8.1 Acquisition or Formation of Subsidiary

- (a) If, during the *period of insurance*, the *policyholder* acquires or forms any *subsidiary*, then the coverage of this policy shall automatically apply to such organisation and its *insured persons* from the date of such acquisition or formation, unless such organisation has revenues representing more than 25% of the *company's* revenues respectively.
- (b) If the *policyholder* acquires or forms any *subsidiary* not described in (a) above, coverage for such organisation shall be conditional upon:
1. the *policyholder* notifying us in writing within 90 days of the acquisition or formation of such organisation;
  2. Zurich receiving full information including a proposal which we deem necessary;
  3. the *policyholder's* agreement to any modification and/or premium adjustment to this policy which we may require with respect to such organisation;
  4. our agreement in writing to provide such coverage; and
  5. the *policyholder's* payment of any additional premium when due.
- (c) Coverage under this policy for any *subsidiary* formed or acquired during the *period of insurance* and its *insured persons* will apply only to *wrongful acts*, *privacy events* or *regulatory proceedings* occurring after the *policyholder's* acquisition or formation of such *subsidiary*.

### 8.8.2 Cessation of Subsidiaries

If any organisation ceases to be a *subsidiary* at any time prior to or during the *period of insurance*, then cover under this policy shall continue in respect of such *subsidiary* and any *insured person* thereof but only in respect of *wrongful acts* or conduct for any *wrongful act* by any such organisation or persons, any *privacy event* or *regulatory proceeding* involving such organisation or persons or any other amount claimed under any other Insuring Clause incurred or sustained by any such organisation or persons prior to the date such entity ceased to be a *subsidiary* and during the time such entity was a *subsidiary* and otherwise covered under this policy.

### 8.8.3 Acquisition or Bankruptcy of Policyholder

If during the *period of insurance* any of the following events occur:

- (a) the acquisition by any person or entity or affiliated group of persons or entities of 50% or more of the *policyholder's* issued and outstanding voting securities representing the present right to vote for the election of the *policyholder's* directors;
- (b) the acquisition, divestiture or sale of more than 50% of the *company's* assets or liabilities (as reflected in the *policyholder's* most recent consolidated financial statement) by or to any person or entity or affiliated group of persons or entities;
- (c) the appointment of a receiver, conservator, trustee, liquidator, rehabilitator or any similar official for or with respect to the *policyholder*; or
- (d) the *policyholder's* merger with or consolidation into any other entity such that the *policyholder* is not the surviving entity;

(such events referred to herein as a 'Takeover') then such coverage as existed under this policy before the Takeover will continue in full force and effect for any *wrongful act*, *privacy event* or *regulatory proceeding* occurring before such Takeover, but coverage will cease with respect to any *wrongful act*, *privacy event* or *regulatory proceeding* occurring after such Takeover.

The occurrence of a Takeover will not affect the *insured's* right to purchase an *extended reporting period* unless all premium due for the remainder of the *period of insurance* has not been fully paid within 30 days of the effective date of such event, in which case the *insured* will have no right to purchase the *extended reporting period*.

## 8.9 Notices

### 8.9.1 Notice of Claim

The *insured* must give us written notice of any *claim* made against the *insured* as soon as practicable after it is made, but in no event later than:

- (a) 90 days after the termination of the *period of insurance*; or
- (b) the termination of the *extended reporting period*, if exercised.

### 8.9.2 Notice of Circumstances

If, during the *period of insurance*, the *insured* becomes aware of any specific *wrongful act* which may reasonably give rise to a future *claim* covered under this policy and gives written notice to us during the *period of insurance* of:

- (a) the identity of the potential claimants;
- (b) a description of the anticipated *wrongful act* allegations;
- (c) the identity of the *insureds* allegedly involved;
- (d) the circumstances by which the *insureds* first became aware of the *wrongful act*;
- (e) the consequences which have resulted or may result; and
- (f) the nature of the potential damages;

then any *claim* which arises out of such *wrongful act* shall be deemed to have been first made at the time such written notice was first received by us.

### 8.9.3 Notice of a Privacy Event and Insured's Duties

- (a) The *insured* will notify us using the Zurich Digital Resolve emergency number we have provided and provide us with written notice of any *privacy event* during the *period of insurance* as soon as practicable after discovery, but in no event later than 60 days after the *insured* first becomes aware of such *privacy event*. Any notice to us of a *privacy event* shall not constitute notice of a *claim* or circumstance, unless such notice expressly states it also is a notice under 8.9.1 or 8.9.2 above.
- (b) In the event of a *privacy event* or any *claim* for coverage under any other endorsement to this policy, the *insured* must:
  1. take all reasonable steps to protect *computer systems, personal information, or confidential corporate information* from further loss or damage; and
  2. cooperate with us in our investigation.

### 8.9.4 Notice of a Security Event and Insured's Duties

- (a) Following a *security event*, the *company* will notify us using the Zurich Digital Resolve emergency number we have provided and provide us with written notice as soon as practicable of such *security event*, but in no event later than 60 days after the occurrence of such *security event*.

The *company* agrees to take all reasonable steps and measures to limit or mitigate *business income loss* and *dependent business income loss*.

Within 6 months or as otherwise agreed after the occurrence of any such *security event*, the *insured* must furnish us with a written proof of the *company's* claimed loss, duly sworn to, with full particulars.
- (b) No legal proceedings for the recovery of any amount may be brought prior to the expiration of 60 days after the *insured's* original proof of loss is submitted to us or more than 24 months after the occurrence of the *security event* in question.

### 8.9.5 Notice of a Cyber Extortion Threat and Insured's Duties

Following a *cyber extortion threat*, the *company* will notify us using the Zurich Digital Resolve emergency number we have provided and provide us with written notice as soon as practicable of such *cyber extortion threat*, but in no event later than 30 days after the *company* first receives such *cyber extortion threat*.

### 8.9.6 Notice of a Cyber Fraud and Fraudulent Impersonation Loss and Insured's Duties

Following a *cyber fraud loss* or *fraudulent impersonation loss* the *company* will notify us using the Zurich Digital Resolve emergency number we have provided and provide us with written notice as soon as practicable of such *cyber fraud loss* or *fraudulent impersonation loss*, but in no event later than 60 days after the occurrence of such *cyber fraud loss* or *fraudulent impersonation loss*.

The *company* agrees to take all reasonable steps and measures to limit or mitigate *cyber fraud loss* or *fraudulent impersonation loss*.

Within 6 months or as otherwise agreed after the event of any such *cyber fraud loss* or *fraudulent impersonation loss*, the *insured* must furnish us with a written proof of the *company's* claimed loss, duly sworn to, with full particulars.

### 8.9.7 General Notice Provisions

Except as otherwise provided in this policy, all notices under any provision of this policy shall be in writing and given by prepaid express courier, certified mail, email or fax properly addressed to the appropriate party. Notice to the *insured* may be given to the *policyholder* at the address as shown in the *schedule*. Notice to Zurich shall be given to the applicable address shown in the *schedule*. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier, subject to proof of transmittal.

## 8.10 Other insurance

To the extent that any *loss, cyber fraud loss or fraudulent impersonation loss* is insured under:

8.10.1 those policies listed in the *submission* or endorsements to, the policy; or

8.10.2 any other policy entered into by the *insured*; or

8.10.3 any other policy effected on behalf of the *insured* or under which any *insured* is a beneficiary (but not a policy to which paragraph 8.10.2 applies),

coverage is only provided under this policy subject to its limitations, conditions, provisions and terms for such *loss, cyber fraud loss or fraudulent impersonation loss* excess of the coverage provided by any of the policies referred to in 8.10.1, 8.10.2 and 8.10.3.

## 8.11 Payments in respect of 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.

## 8.12 Policy interpretation

8.12.1 Titles of paragraphs or clauses in this policy are merely for reference purposes and will not limit, expand, or otherwise affect the provisions to which they relate;

8.12.2 Words and expressions in the singular include references to the plural and vice versa;

8.12.3 Words in italics have specific meaning and are defined in Section 3 of this policy;

8.12.4 Words that are not specifically defined in this policy have the meaning ordinarily attributed to them.

## 8.13 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:

8.13.1 Upon expiration of the *period of insurance* as set out in the *schedule*;

8.13.2 At such other time as may be agreed upon by Zurich and the *policyholder*;

8.13.3 Cancellation:

- (a) This policy may be cancelled by the *policyholder* by surrender thereof to Zurich or any of our authorised representatives, or by mailing to us written notice stating when, thereafter, cancellation shall be effective.
- (b) If this policy has been in effect for 60 days or more or is a renewal of a policy issued by Zurich, this policy may not be cancelled except for (a) above or for the following reasons:
  1. nonpayment of premium; or
  2. fraud or material misrepresentation affecting the policy.
- (c) Written notice of cancellation shall be mailed or delivered by us to the *policyholder* at least:
  1. 10 days prior to the effective date of cancellation, if this policy is cancelled for nonpayment of premium; or
  2. 60 days prior to the effective date of cancellation, if this policy is cancelled for any other reason.
- (d) If the *policyholder* cancels the policy, a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *policy period*. Under any other circumstances, the refund shall be computed pro rata.

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.

8.13.4 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 *period of insurance*.

#### **8.14 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.

#### **8.15 Severability and Non imputation**

In granting coverage under this policy, Zurich has relied upon the declarations, representations and warranties in the *submission*. All such declarations, representations and warranties are the basis of coverage under this policy and are incorporated into and constitute part of this policy. The *submission* shall be construed as a separate *submission* by each of the *insured persons*. No statement in the *submission* or knowledge possessed by any of the *insured persons* shall be imputed to any other *insured person* for the purpose of determining if coverage is available. The declarations, representations, and warranties in the *submission* and knowledge possessed by any director, officer, risk manager, General Counsel of the *company*, or any *insured person* serving in a functionally equivalent position, shall be imputed to the *company* for the purpose of determining if coverage is available for the *company*. This policy is void in any case of fraud by the *company* or any other *insured* at any time before or after a *loss, cyber fraud loss* or *fraudulent impersonation loss*. It is also void if the *company* or any other *insured*, at any time before or after a *loss, cyber fraud loss* or *fraudulent impersonation loss* intentionally conceals or misrepresents a material fact concerning the insurance provided by, property protected within, or any *claim* submitted under this policy.

#### **8.16 Subrogation and Recoveries**

In the event of any payment under this policy, Zurich shall be subrogated to the extent of such payment to all of the *insured's* rights of recovery, and the *insured* will execute all papers required and do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable us effectively to bring suit in the name of the *insured's*.

Zurich will waive its right to be subrogated to all of the *insured's* rights of recovery, provided the *insured* has waived their rights of recovery in a written contract or written agreement which is executed prior to a *loss, cyber fraud loss* or *fraudulent impersonation loss*.

All recoveries (except from sureties, insurance, reinsurance or indemnity taken by or for our benefit) obtained after any payment under this policy, less the actual cost of recovery, will be applied and distributed as follows:

- 8.16.1 first, to satisfy the *company's* liability for amounts which would have otherwise been paid under this policy but for being in excess of the applicable Limit of Liability;
- 8.16.2 second, to reimburse us for any amounts we paid; and
- 8.16.3 third, to the *company* to satisfy any *deductible* the *company* incurred.

#### **8.17 Territory limit**

This policy applies to *wrongful acts* occurring, *claims* made, *privacy events* and *security events* occurring, and any other *loss, cyber fraud loss* or *fraudulent impersonation loss*, cost, expense or damage claimed under any Insuring Clause, purchased under this policy anywhere in the world, to the extent permitted by the local applicable law.

#### **8.18 Valuation and foreign currency**

All premiums, limits of liability, sub limits, *deductibles*, retentions, *losses* and other amounts under this policy are expressed and payable in New Zealand currency. Except as otherwise provided, if judgment is rendered, settlement is denominated or another 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 other element of *loss* is due, respectively.

#### **8.19 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 *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.

## Section 9 – International Programs

### 9.1 Master program

This policy acts as a master Cyber, Security and Privacy Protection Insurance liability program to operate where International Program Policies have been issued at Zurich's request for the Limits of Liability and in the countries specified in the schedule and which are reinsured by Zurich.

### 9.2 Non-Aggregation of Limits of Liability Clause

It is hereby understood and agreed that corresponding to the liability of the policyholder, the insured and all subsidiaries to pay the aggregate premium for this policy and all International Program Policies, all contractual parties to this policy and all International Program Policies agree that for the purpose of the calculation of the Limits of Liability of this policy and all International Program Policies (combined), all payments of claims (or equivalent terms as defined under each International Program Policy) under:

9.2.1 this policy; and

9.2.2 all International Program Policies;

(or any combination of the above mentioned policies)

are added up and are limited to the amount of the Limit of Liability as indicated in the schedule (hereinafter called Aggregate Limit of Liability).

The Aggregate Limit of Liability shall be the maximum Limit of Liability and payment by Zurich, in the aggregate, for all loss (or equivalent terms as defined under each International Program Policy) payable under this policy and all International Program Policies combined. It is further understood and agreed that nothing in the Non-Aggregation of Limits of Liability Clause shall be construed to increase:

9.2.3 the Limit of Liability set forth in the schedule of any other International Program Policies, which shall remain our maximum liability under this policy; or

9.2.4 our Limit of Liability under this policy as set forth in the schedule of this policy, which shall remain our maximum liability under this policy.

### 9.3 Hold Harmless Agreement – Special Conditions regarding Aggregation

In the event that the Aggregate Limit of Liability (defined in Section 9.2) is exceeded by any and/or all payments under this policy and/or any or all International Program Policies, the policyholder shall reimburse Zurich and/or any partners of Zurich that issued any International Program Policy in respect of any claim (or equivalent terms as defined under each International Program Policy) paid by or which has been agreed to be paid by any of the insurers of the International Program Policies in excess of the Aggregate Limit of Liability.

Any amount payable due to the terms of this clause shall be paid by the party within twenty-eight (28) days of notice from the other party.

### 9.4 Notice and Authority for International Programs

It is agreed that the policyholder shall act on behalf of the insured's and each and every insured with respect to the issuance and development of this policy and all International Program Policies, including all terms, conditions, exclusions and limitations of such International Program Policies, including, but not limited to Section 9.2 above. It is further understood and agreed that the policyholder will inform the insured's of any International Program Policy to be issued.

### 9.5 Cancellation and Non-renewal of International Program Policies

All International Program Policies are coterminous, accordingly if this Policy is cancelled, rescinded or non-renewed then all other International Program Policies shall be deemed cancelled, rescinded or non-renewed with effect from the same date.



# Zurich DigitalResolve

DigitalResolve is a crisis management service, provided under your Zurich Cyber, Security and Privacy Protection Policy, offering a global one-stop shop that harnesses and manages the resources you need to recover from a damaging cyber event.

If an incident occurs, you can call our multilingual team, day or night. This will prompt a dedicated Incident Manager to appoint and coordinate cyber experts to support your business. This facility will also remain in place from notification to conclusion, managing the services and acting as your main point of contact throughout.

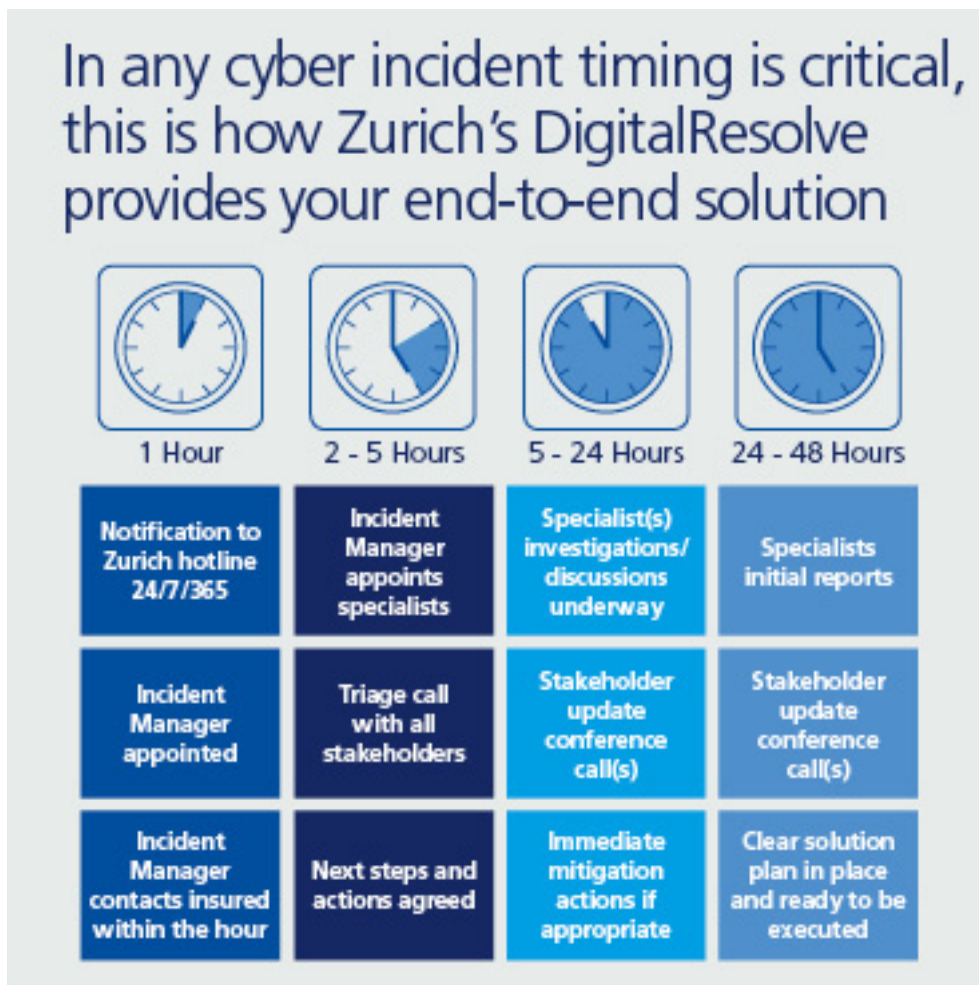
DigitalResolve can be reached 7 days a week and 24 hours a days and 365 days a year at the following numbers:

0800 ZCYBER or 0800 929237 in New Zealand;

1800 ZCYBER or 1800 929237 in Australia.

Overseas toll-number: +1 51 9 3400140

Then simply quote your company name and your policy number stated on your Zurich Cyber, Security & Privacy Protection policy schedule.



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