

Zurich 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.

Zurich Security and Privacy Protection Policy

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' and 1.6 'Internet Media liability' applies only to *loss* from *claims* first made and reported to Zurich during the *policy period* or *extended reporting period*, if applicable, for *wrongful acts* occurring on or after the *retroactive date* and before the end of the *policy period*. *Defence expenses* will reduce and may exhaust the applicable Limits of Liability and apply to the *deductible*.

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* first occurs and is reported to us during the *policy period*.

1.2 Digital asset replacement expense

We will reimburse the *company* for any *digital asset replacement expenses* the *company* incurs due to the corruption or destruction of *digital assets* caused by a *security event*, provided such *security event* first occurs during the *policy period*.

1.3 Security and Privacy liability

We will pay on behalf of the *insured* all *loss* which the *insured* becomes legally obligated to pay on account of any *claim* first made against the *insured* and reported to us during the *policy period* 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 before the end of the *policy period*.

We will reimburse 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 *policy period* 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 a *privacy event* first occurs on or after the applicable *retroactive date* and before the end of the *policy period*.

1.4 Business income loss and Dependent business income loss

We will pay the *company* any *business income loss*, *dependent business income loss* 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 *policy period*.

1.5 Cyber extortion threat and Reward 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 *policy period*.

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 any *cyber extortion threat*, provided the *company* first receives such *cyber extortion threat* during the *policy period* and we consent in offering such reward prior to it being offered.

1.6 Internet Media liability

We will pay on behalf of the *insured* all *loss* which the *insured* becomes legally obligated to pay on account of any *claim* first made against the *insured* and reported to us during the *policy period* or any *extended reporting period*, if applicable, for an *electronic publishing wrongful act*, provided such *electronic publishing wrongful act* first occurs on or after the applicable *retroactive date* shown in the *schedule* and before the end of the *policy period*.

Section 2 – Definitions

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

2.1 Administrative error

administrative error means an error or omission committed by the *insured* or 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*.

2.2 Business income loss

business income loss means the:

- 2.2.1 net profit before income taxes that the *company* is prevented from earning due to an *interruption of service*; and
- 2.2.2 normal operating expenses incurred by the *company* (including payroll), but solely to the extent that such operating expenses must continue during the *period of restoration* and would have been incurred had there been no *interruption of service*.

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*;
- (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) *extra expenses*.

2.3 Claim

claim means:

- 2.3.1 a written demand against the *insured* for monetary damages or non-monetary or injunctive relief, including a written demand that the *insured* toll or waive a statutory limitation period;
- 2.3.2 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; or
- 2.3.3 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.

Solely with respect to *loss* reimbursement coverage afforded under the second paragraph of Insuring Clause 1.3, *claim* includes a *regulatory proceeding*.

2.4 Company

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

2.5 Company's computer system

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

- 2.5.1 the *company* leases, owns or operates;
- 2.5.2 that a *service provider* operates; or
- 2.5.3 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*.

2.6 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.

2.7 Cyber extortion threat

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

- 2.7.1 introduce *malicious code* into the *company's computer system*;
- 2.7.2 interrupt the *company's computer system* through a *denial of service attack*; or
- 2.7.3 disseminate, divulge, or improperly utilise any *personal information* or any other corporate information in the care, custody or control of any *insured* that is specifically identified as confidential and protected under a nondisclosure agreement or similar contract, taken as a result of the *unauthorised use* of or the *unauthorised access* to the *company's computer system*.

2.8 Damages

damages means any amount, including judgements and settlements, pre and post judgement interest, the *insured* is legally obligated to pay as the result of a *claim* against the *insured*. *Damages* include punitive, exemplary, or multiple damages to the extent such damages, 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.

Damages do 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) taxes, sanctions, fines or penalties, unless such fines or penalties are imposed pursuant to *privacy regulations* or result from a *regulatory proceeding*; or
- (vii) *privacy breach costs*.

2.9 Deductible

deductible means the amount stated in the *schedule* that shall 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 of the policy for *loss*.

2.10 Defence expenses

defence expenses means the reasonable and necessary 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* do not include salaries, wages, overhead or benefit expenses associated with the *company's* directors, officers or employees.

2.11 Denial of service attack

denial of service attack means a malicious attack by a third party which is designed to slow or completely interrupt access to a *computer system* or website by other third parties authorised to gain access to that *computer system* or website.

2.12 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.

2.13 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* do 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.

2.14 Digital asset replacement expenses

digital asset replacement expenses means the reasonable and necessary expenses the *company* incurs to replace, restore or recollect *digital assets* from written records or partially or fully matching *electronic data* due to their corruption or destruction from a *security event*, including any disaster recovery or computer forensic investigation efforts, subject to Clause 8.7.2.

Digital asset replacement expenses do 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*;
- (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.

2.15 Electronic data

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

2.16 Electronic publishing

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

2.17 Electronic publishing wrongful act

electronic publishing wrongful act means any actual or alleged:

- 2.17.1 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;
- 2.17.2 plagiarism, false light or false advertising resulting from *electronic publishing* activities;
- 2.17.3 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;
- 2.17.4 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
- 2.17.5 unauthorised use of titles, formats, performances, style, characters, plots or other protected material resulting from *electronic publishing* activities.

2.18 Extended reporting period

extended reporting period means that period described in Section 6.

2.19 Extortion payments

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

- 2.19.1 our consent is obtained prior to making such *extortion payments*;
- 2.19.2 such *extortion payments* are made to terminate the *cyber extortion threat*; and
- 2.19.3 such *extortion payments* do not exceed the amount of *business income loss* we reasonably believe would have been incurred had such *extortion payments* not been made.

2.20 Extortion expenses

extortion expenses means the reasonable and necessary expenses incurred by the *company*, with our prior consent, that are directly attributable to a *cyber extortion threat*.

2.21 Extra expenses

extra expenses means the reasonable and necessary 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*.

Extra expenses does not include:

- (i) any costs or expenses to correct any deficiencies or problems with any *computer system* or to identify or remediate *software* errors or vulnerabilities;
- (ii) any costs or expenses to update, restore, replace or improve any *computer system* to a level beyond that which existed just before the *interruption of service*;
- (iii) any contractual penalties; or
- (iv) *digital asset replacement expenses*, *extortion expenses* or *extortion payments*.

2.22 Insured

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

2.23 Insured person

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

- 2.23.1 a director, officer, or employee of the *company* acting in such capacity or the functional equivalent of a director, officer or employee acting in such capacity;
- 2.23.2 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
- 2.23.3 a spouse or domestic partner (under any applicable law or formal program established by the *company*) of any person identified in 2.23.1 above, but solely if a *claim* made against such person identified in 2.23.1 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.

2.24 Interrelated security events

interrelated security events means all *security events* which are based upon, arise from or are a consequence of the same or related facts, circumstance or events or a series of the same or related facts, circumstances or events.

2.25 Interrelated wrongful acts

interrelated wrongful acts means all *wrongful acts* that are based upon, arise from or are a consequence of the same or related facts, circumstance or events or a series of the same or related facts, circumstances or events.

2.26 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*.

2.27 Loss

loss means *damages* and *defence expenses*.

2.28 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.

2.29 Named parent

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

2.30 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*.

2.31 Personal information

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

2.32 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 30 days.

2.33 Policyholder

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

2.34 Policy period

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

2.35 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, odor, 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.

2.36 Privacy breach costs

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

- 2.36.1 conduct a computer forensic analysis to investigate the *company's computer system* to determine:
 - (a) the cause and extent of such *privacy event*; or
 - (b) whether a *security wrongful act* may be the cause of such *privacy event*;
- 2.36.2 determine indemnification obligations under any written contract with respect to a *wrongful act* by a *service provider* in connection with such *privacy event*;
- 2.36.3 determine if the *company* is obligated to notify affected individuals or applicable regulatory agencies of such *privacy event*;
- 2.36.4 effect compliance with any *privacy regulation* under the applicable *privacy regulation* most favorable to the affected individuals;
- 2.36.5 notify the affected individuals or applicable regulatory agencies of such *privacy event* and establish new account numbers for the affected individuals;

- 2.36.6 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*;
- 2.36.7 procure credit monitoring services and identification theft insurance for the affected individuals in responding to such *privacy event*; or
- 2.36.8 procure call centre services to handle inquiries for the affected individuals in responding to such *privacy event*.

Privacy breach costs do not include:

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

2.37 Privacy event

privacy event means:

2.37.1 an unauthorised 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 specifically identified as confidential and protected under a nondisclosure agreement or similar contract; or

2.37.2 a violation of any *privacy regulation*.

2.38 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.

2.39 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*.

2.40 Professional services

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

2.41 Property damage

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

2.42 Regulatory proceeding

regulatory proceeding means:

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

2.43 Retroactive date

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

2.44 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.

2.45 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:

2.45.1 an *interruption of service*; or

2.45.2 the alteration, corruption or destruction of *digital assets* or other corporate information in the care, custody or control of any *insured* that is specifically identified as confidential and protected under a nondisclosure agreement or similar contract.

2.46 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:

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

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

2.46.3 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*;

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

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

2.47 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:

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

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

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

2.48 Software

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

2.49 Subsidiary

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

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

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

2.49.3 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 Companies Act 1993 (NZ) or the applicable New Zealand accounting standard.

2.50 Submission

submission means:

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

2.50.2 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.

2.51 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.

2.52 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.

2.53 Waiting hours retention

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

2.54 Wrongful act

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

Section 3 – Limits of Liability

- 3.1** The maximum liability of Zurich for all payments under all Insuring Clauses purchased under this policy is the amount shown in the *schedule* as the Maximum Policy Aggregate Limit of Liability.
- 3.2** Subject to 3.1 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*.
- 3.3** Subject to 3.1 above, the maximum liability of Zurich for all *digital asset replacement 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*.
- 3.4** Subject to 3.1 above, the maximum liability of Zurich for all *loss* from each *claim* and all *claims* in the aggregate under Insuring Clause 1.3, if purchased is the amount shown in the *schedule*.
- The maximum liability of Zurich for all *loss* from each *regulatory proceeding* and from all *regulatory proceedings* in the aggregate under Insuring Clause 1.3 is the amount shown in the *schedule* for *loss*, each *regulatory proceeding* and all *regulatory proceedings* in the aggregate and shall be part of and not in addition to the Limit of Liability.
- 3.5** Subject to 3.1 above, the maximum liability of Zurich for all *business income loss*, *dependent business income loss* 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*.
- 3.6** Subject to 3.1 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*.
- The maximum liability of Zurich for all reward payments for each *cyber extortion threat* under Insuring Clause 1.5 is the amount shown in the *schedule* for reward payments, which amount shall be part of and not in addition to the Limit of Liability.
- 3.7** Subject to 3.1 above, the maximum liability of Zurich for all *loss* resulting from each *claim* and all *claims* in the aggregate under Insuring Clause 1.6, if purchased is the amount shown in the *schedule*.
- 3.8** The Limit of Liability 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 4 – Deductible and Single claim

- 4.1** 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*, up to the Limit of Liability for Regulatory Proceeding Defence. 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.
- 4.2** We will only pay *privacy breach costs* in excess of the applicable *deductible* for each *privacy event*, up to the applicable Limit of Liability.
- 4.3** We will only pay *digital asset replacement expenses* resulting from any one *security event* in excess of the applicable *deductible* up to the applicable Limit of Liability.
- 4.4** We will only pay *business income loss*, *dependent business income loss* 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:
- 4.4.1 the dollar *deductible* amount; or
- 4.4.2 the *waiting hours retention*.
- The *business income loss*, *dependent business income loss* and *extra expenses* applicable to the *deductible* shall be computed as of the start of the *interruption of service*.
- 4.5** 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.
- 4.6** 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*.
- 4.7** 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 5 – Defence and Settlement

- 5.1** It shall be the duty of Zurich and not the *insured* to take all reasonable steps to defend any *claim*.
- 5.2** 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. Zurich's right and duty to defend ends when the applicable Limit of Liability is exhausted by payment of *loss*.
- 5.3** 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 the amount for which the *claim* could have been settled by Zurich plus *defence expenses* up to the date the *insured* refused to settle such *claim*.
- 5.4** We shall have the right, to defend any *regulatory 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 6 – Extended reporting period

6.1 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 60 days immediately after the termination of the *policy period* with respect to any *claim* first made against any *insured* and reported to us in writing within such 60 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 *policy period*. No additional premium shall be payable for such Automatic Extended Reporting Period.

6.2 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 *policy period* 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 *policy period*.

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 60 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.

6.3 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 *policy period*. The *extended reporting period* does not reinstate or increase the Limits of Liability, nor extend the *policy period*. 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*.

Section 7 – Exclusions

Zurich will not pay 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 *digital asset replacement expenses*, *business income loss*, *dependent business income loss*, *extra expenses*, *extortion expenses*, *extortion payments* 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 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:

- 7.2.1 if such liability would have attached to the *insured* even in the absence of such contract; or
- 7.2.2 to any obligation to maintain the confidentiality or security of *personal information* or corporate information that is specifically identified as confidential and protected under a non-disclosure agreement or similar contract solely if such liability arises out of a *privacy wrongful act* or a *security wrongful act*.

7.3 Cost estimation

based upon, arising out of or attributable to:

- 7.3.1 incomplete disclosure of the *insured's* fees; or
- 7.3.2 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.

7.4 Deceptive practices

based upon, arising out of or attributable to:

- 7.4.1 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
- 7.4.2 the rendering of or failure to render *professional services*.

7.5 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:

- 7.5.1 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*.
- 7.5.2 in respect of any *digital asset replacement expenses*, this exclusion shall not apply to any failure, interruption, or outage of telephone, cable or telecommunications under the *company's* direct control.

7.6 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.

7.7 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.

7.8 Illegal data mining

based upon, arising out of or attributable to:

- 7.8.1 the illegal, unauthorised or wrongful collection of *personal information*, including the collection of *personal information* using cookies or *malicious code*; or
- 7.8.2 the failure to provide adequate notice that such *personal information* is being collected.

However this exclusion shall not apply if the collection of *personal information* is done by:

- (a) an *insured person* acting without the knowledge or approval of the *company's* directors or officers, or of any other *insured person* serving in a functionally equivalent position; or
- (b) a third party without the knowledge of the *company*.

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 Malicious act by employee

based upon, arising out of or attributable to:

- 7.10.1 any dishonest, fraudulent, criminal, or malicious *wrongful act* committed by an *insured*;
- 7.10.2 any intentional or knowing violation of law committed by an *insured*; or
- 7.10.3 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 final judgement, binding arbitration decision or finding of fact against such *insured* or an adverse admission under oath or plea of *nolo contendere* or no contest by such *insured* which establishes such dishonest, fraudulent, criminal or malicious *wrongful act*, intentional or knowing violation of law or profit, remuneration, or advantage. 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*.

Notwithstanding anything above to the contrary, we will not pay any *digital asset replacement expenses* based upon, arising out of or attributable to any dishonest, fraudulent, criminal, or malicious act, error or omission, or any intentional or knowing violation of law committed with the knowledge of any of the Chief Executive Officer, Chief Financial Officer, General Counsel or risk manager, or any other *insured person* in a functionally equivalent position.

7.11 Pollution

based upon, arising out of or attributable to:

- 7.11.1 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
- 7.11.2 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.

7.12 Prior and Pending

based upon, arising out of or attributable to:

- 7.12.1 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;
- 7.12.2 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
- 7.12.3 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.

7.13 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:

- 7.13.1 any *insured person* in his or her capacity:
- (a) as a customer or client of the *company*; or
 - (b) as an employee of the *company* for a *privacy event* relating to the unauthorised disclosure of such employee's *personal information*; or
- 7.13.2 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.

Provided this exclusion does not apply to any *digital asset replacement expenses*.

7.14 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 statute, law, ordinance or regulation relating to a person's or entity's right of seclusion or that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

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

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 Warranties

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

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

However in respect to 7.18.1 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 coverage in the absence of such warranty, guarantee, or promise.

7.19 Wear and Tear

based upon, arising out of or attributable to the ordinary wear and tear or gradual deterioration of any *computer system* or *digital assets*.

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 provisions of this policy, it is agreed that such disputes shall be exclusively governed by the law applicable in the New Zealand.

8.3 Authorisation

By acceptance of this policy, the *policyholder* agrees to act on behalf of the *insureds* with respect to the payment of premiums and the 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 notice provided for in this policy, including the giving of notice for any Optional Extended Reporting Period, and the *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 a 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 *policy period* 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.

8.8 Material changes to the company

8.8.1 Acquisition or Formation of Subsidiary

- (a) If, during the *policy period*, 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 10% 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 *policy period* 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 *policy period*, 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 *policy period* 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 *policy period* 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) 60 days after the termination of the *policy period*; or
- (b) the termination of the *extended reporting period*, if exercised.

8.9.2 Notice of Circumstances

If, during the *policy period*, the *insured* becomes aware of any specific *wrongful act* which may reasonably give rise to a future *claim* covered under this policy, the *insured* may give written notice to us during the *policy period* 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* must give us written notice of any *privacy event* during the *policy period* as soon as practicable after it occurs, but in no event later than 30 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;
 - 2. cooperate with us in our investigation; and
 - 3. allow us to question the *insureds* regarding the *insured's* books, records, and any other matters relating to such *claim* for coverage.

8.9.4 Notice of a Security Event and Insured's Duties

- (a) Following a *security event*, the *company* must provide us with prompt 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 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* must provide us with prompt 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 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* 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* 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 2 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 *policy period* 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.

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 *policy period*.

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*. It is also void if the *company* or any other *insured*, at any time before or after a *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* shall execute all papers required and shall 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*.

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*, 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 judgement 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 in accordance with the Reserve Bank of New Zealand on the date the final judgement 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.

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