



**Policy** Wording

# Cyber Liability



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## Section A – Introduction

### 1. About this Policy

This policy is designed to cover some but not all cyber risks that can impact business computer systems.

The policy consists of:

- (a) this policy document, and
- (b) the Schedule, and
- (c) any endorsements or warranties that the Company applies, and
- (d) the information the Insured has provided in the Proposal.

### 2. Duty of Disclosure

When the Insured applies for insurance, they have a legal duty of disclosure. This means the Insured or anyone acting on the Insured's behalf must tell the Company everything they know (or could be reasonably expected to know) that a prudent insurer would take into account in deciding:

- (a) to accept or decline the insurance, and/or
- (b) the premium to charge and/or
- (c) the terms and conditions of the insurance.

This is an ongoing duty for the duration of this policy and any renewal thereof.

If the Insured or anyone acting on the Insured's behalf breaches this duty, the Company may treat this policy as being null and void and of no effect.

### 3. Defined Words

If a word is capitalised it has a specific meaning as described in Section I – Definitions.

### 4. Headings

The headings in this policy are for ease of reference only. They have no bearing in the construction or interpretation of the policy.

## Section B – Insurance Agreement

In consideration of the payment of the agreed premium to the Company and in reliance on the Proposal, which shall be the basis of this insurance, the Company agrees to indemnify the Insured in the manner and to the extent described in this policy.

## Section C – Coverage

### 1. Breach of Statutory Duties Relating to E-Commerce

The Company will pay, on behalf of the Insured, all sums which the Insured becomes legally obliged to pay as compensation (including liability for claimants' costs and expenses) and Defence Costs resulting from any claim first made against the Insured during the Period of Insurance and notified to the Company in writing as soon as reasonably possible and in any event during the Period of Insurance as a direct result of a breach, by or on behalf of the Insured, of any statutory duty relating to the security or management of information collected or created in the course of Electronic Commerce.

### 2. Business Interruption

The Company agrees to reimburse the Insured for Business Interruption Loss incurred as the direct result of any Cyber Event first discovered during the Period of Insurance and notified to the Company in writing as soon as reasonably possible and in any event during the Period of Insurance.

This Section C2. is subject to the Sub-Limit and to the Time Excess both specified in the Schedule.

### 3. Cyber Crime

The Company will pay the Insured for Loss first discovered during the Period of Insurance and notified to the

Company in writing as soon as reasonably possible and in any event during the Period of Insurance by reason of transferring, paying or delivering any funds, establishing any credit, debiting any bank account, or use of a fraudulent electronic signature, directly caused by the fraudulent input, fraudulent destruction or fraudulent modification of electronic data:

- (a) in the Insured's Computer System; or
- (b) in the Computer System of any Service Provider; or
- (c) during electronic transmission between, stored within or being run within any of the Computer Systems in (a) or (b) above,

committed by a Third Party with the clear intention of causing the Insured Loss.

This Section C3. is subject to the Sub-Limit specified in the Schedule.

### 4. Computer Virus Transmission and Hacking

The Company will pay, on behalf of the Insured, all sums which the Insured becomes legally obliged to pay as compensation (including liability for claimants' costs and expenses) and Defence Costs resulting from any Claim first made against the Insured during the Period of Insurance and notified to the Company in writing as soon as reasonably possible and in any event during the Period of Insurance as a direct result of:

- (a) a Hacking Attack or Virus that has emanated from or passed through the Insured's Computer Systems; or
- (b) a Hacking Attack or Virus that restricts or prevents access to the Insured's Computer Systems' by Third Parties authorised by the Insured to gain such access; or
- (c) the loss or theft of the Insured's data or data for which the Insured is liable or alleged to be liable, arising directly from a Hacking Attack or Virus.

### 5. Cyber Extortion Cover

The Company will pay Cyber Extortion Costs arising solely from a Security Threat first made against the Insured during the Period of Insurance and notified to the Company in writing as soon as reasonably possible and in any event during the Period of Insurance.

Any Cyber Extortion Costs paid under this Section C5. shall be subject to relevant legal requirements and in co-operation with and under the direction of any appropriate criminal enforcement or other authority where required.

This Section C5. is subject to the Sub-Limit specified in the Schedule.

Exclusions F16.(d) and F16.(e) do not apply to this Section C5.

### 6. Multimedia Liability

The Company will pay, on behalf of the Insured, all sums which the Insured becomes legally obliged to pay as compensation (including liability for claimants' costs and expenses) and Defence Costs resulting from any claim first made against the Insured during the Period of Insurance and notified to the Company in writing as soon as reasonably possible and in any event during the Period of Insurance as a direct result of unintentional:

- (a) libel, slander or defamation;
- (b) invasion of or interference with the right to privacy, including those of Employees, or commercial appropriation of names or likeness;
- (c) plagiarism, piracy or misappropriation of ideas;
- (d) infringement of copyright, domain name, commercial title or slogan, the dilution or infringement of trademark, service mark, service name or trade name;

all arising directly from:

- (i) the Insured's Internet and Email Content; or
- (ii) the Insured's digital Promotional Material; or
- (iii) Third Party digital content downloaded, shared or distributed from the Insured's Computer Systems.

## 7. Privacy

The Company will pay, on behalf of the Insured, all sums which the Insured becomes legally obliged to pay as compensation (including liability for claimants' costs and expenses) and Defence Costs for any claim first made against the Insured during the Period of Insurance as a direct result of a Cyber Event which is notified to the Company in writing as soon as possible and in any event during the Period of Insurance in respect of:

- (a) Personal Information
  - the breach, by or on behalf of the Insured, in respect of any natural person, of any Privacy Obligations.
- (b) Commercially Confidential Information
  - any actual or alleged unauthorised disclosure, loss or theft of Commercially Confidential Information, by or on behalf of the Insured.
- (c) Employee Information
  - the breach, by or on behalf of the Insured, of any Privacy Obligations relating to any Employee as a direct result of the Insured's failure to maintain the confidentiality and/or security of any:
    - (i) Computer Records pertaining to such Employee; and/or
    - (ii) data or information pertaining to such Employee stored on the Insured's Computer Systems.
- (d) Information Outsourced
  - (i) the breach of Privacy Obligations in respect of, or;
  - (ii) any actual or alleged unauthorised disclosure, loss or theft of,

Personal Information or Commercially Confidential Information in the care, custody or control of any Service Provider pursuant to a written contract with the Insured.

## 8. System Damage

The Company will pay Rectification Costs incurred:

- (a) in retrieving, repairing, restoring or replacing any of the Insured's Computer Records (or any other Computer Records for which the Insured is responsible) that have been destroyed, damaged, lost, altered, distorted, erased or mislaid (and which after diligent search cannot be found);
- (b) in repairing, restoring or replacing any of the Insured's Computer Systems that have been destroyed, damaged, altered, distorted, erased or mislaid (and which after diligent search cannot be found),

as a direct result of any Cyber Event first discovered by an Insured during the Period of Insurance and notified to the Company in writing as soon as reasonably possible and in any event during the Period of Insurance.

This Section C8. is subject to the Sub-Limit specified in the Schedule

## Section D - Automatic Extensions

The following policy extensions are included automatically and are subject to the policy terms, unless otherwise stated.

### 1. Advancement of Defence Costs

- (a) If the Company elects not to take over and conduct the defence or settlement of any claim, then the Company will pay all Defence Costs provided that:

- (i) the Company has not denied indemnity under the policy and where indemnity is denied, only up to the point of any denial of indemnity; and
- (ii) the Company's written consent is obtained prior to the Insured incurring such Defence Costs (such consent shall not be unreasonably delayed or withheld).

- (b) The Insured on whose behalf or for whose benefit Defence Costs were paid, shall repay to the Company, and the Company reserves the right to recover all such Defence Costs, in the event and to the extent that:

- (i) an express admission is made by the Insured or any person authorised to make such an admission on behalf of the Insured, of any of the conduct as set out in Exclusion F28; or
- (ii) it is established, directly or indirectly, by judgment or other final adjudication, that conduct of the type as set out in Exclusion F28. occurred.

### 2. Brand Protection Cover

The Company will pay reasonable Public Relations Costs incurred to avert or mitigate damage to the Insured's reputation or its commercial brands caused by a Cyber Event that is indemnified under this policy.

This Extension D2. is subject to the Sub-Limit specified in the Schedule.

### 3. Continuity

- (a) The Company will indemnify the Insured for any claim otherwise indemnified by this policy, arising from a Known Circumstance (notwithstanding Exclusion F15. of this policy) provided that:
  - (i) there has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such Known Circumstance;
  - (ii) the Company was the cyber liability insurer of the Insured when the Insured first knew of such Known Circumstance;
  - (iii) the Company continued without interruption to be the Insured's cyber liability insurer up until this policy came into effect;
  - (iv) had the Company been notified of the Known Circumstance when the Insured first knew of it, the Insured would have been indemnified under the Company's policy in force at that time but is not now entitled to be indemnified by that policy, and the Insured would (but for Exclusion F15. of this policy) otherwise be indemnified under this policy; and
  - (v) the Known Circumstance has not previously been notified to the Company or to any other insurer.
- (b) If the Insured could have given notice of the Known Circumstance under any other policy of insurance with any other insurer, then this extension does not apply.
- (c) The Company's liability under this extension is reduced to the extent of any prejudice the Company suffers as a result of any delayed notification of the Known Circumstance to the Company.
- (d) The Limit of Indemnity or Sub-Limit applicable to the indemnity provided under this extension is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph 2.(a)(ii) above, or under this policy. The terms of this policy otherwise apply.

**4. Extended Reporting Period**

In the event that this policy is not renewed or is cancelled for any reason other than non-payment of premium then the Insured has until such time as the Insured effects another insurance policy which provides indemnity for substantially the same risk as this policy, either with the Company or any other insurer(s), or a period of thirty (30) days commencing on the day immediately following expiry/cancellation of this policy, whichever is sooner, to notify the Company in writing of any claims made against or Losses discovered by, the Insured during the Period of Insurance.

Indemnity under this Extension D4.:

- (a) does not reinstate or increase the Limit of Indemnity or extend the Period of Insurance; and
- (b) will only apply to acts, errors or omissions, Cyber Events or Loss arising before the end of the Period of Insurance or the cancellation date of this policy where this policy has been cancelled; and
- (c) is limited to claims arising from acts, errors or omissions, Cyber Events or Loss which occurred on or after the Retroactive Date specified in the Schedule.

**5. Former Subsidiaries Run-Off Cover**

The Company will indemnify any former Subsidiary of the Insured provided that such indemnity shall only apply to claims arising out of:

- (a) the conduct of the Insured Business; and
- (b) acts, errors or omissions, Cyber Events or Loss which occurred after the Retroactive Date specified in the Schedule and prior to the date on which such Subsidiary ceased to be a Subsidiary of the Insured.

**6. Merged and/or Newly Acquired Subsidiaries**

The Company will indemnify entities which are merged with or acquired by the Insured provided that:

- (a) such indemnity shall only apply in respect of the conduct of substantially the same type of Insured Business as indemnified by this policy.
- (b) this indemnity is only for a maximum of thirty days from the date of the merger or acquisition (or until the policy expires if that is sooner).
- (c) the Company may agree to extend this period (subject to additional premium) after receipt of a satisfactory Proposal in respect of the merged or acquired entity.
- (d) the Retroactive Date as specified in the Schedule for such indemnity is deemed to be the date of the merger with or acquisition by the Insured unless the Company otherwise agrees in writing.

**7. Payment Card Industry Fines and Penalties**

The Company agrees to pay fines or penalties attributable to the Insured's failure to comply with the Payment Card Industry Data Security Standard (PCI DSS), provided the Insured has taken all reasonable steps to be compliant with the PCI DSS.

This Extension D7. is subject to the Sub-Limit specified in the Schedule

Exclusion F9.(a) does not apply to this Extension D7.

**8. Personal Reputation Cover**

The Company will pay reasonable Public Relations Costs incurred to avert or mitigate damage to the reputation of any past or present director, company secretary, chief executive officer, chief operating officer, chief financial officer, chief risk or compliance officer, chief information security officer, chief information officer, chief technology officer or general counsel of the Insured caused by a Cyber Event that is insured by this policy.

This Extension D8. is subject to the Sub-Limit specified in the Schedule

**9. Privacy Breach Notification and Loss Mitigation**

The Company will pay or reimburse reasonable Privacy Breach Costs incurred with the Company's prior written consent, (which shall not be unreasonably delayed or withheld), as a direct result of a Cyber Event, provided that the Insured incurred such costs in order to:

- (a) fulfil a legal obligation; or
- (b) mitigate the effects of a Cyber Event for which the Insured would be entitled to indemnity under Section C7. of this policy.

The Company's liability shall be \$25,000 per breach but subject to the Sub-Limit specified in the Schedule in the aggregate for all breaches during the Period of Insurance. Exclusion F9.(a) does not apply to this Extension D9.

**10. Privacy Fines and Investigations**

The Company will pay, to the extent it is permitted to by law any:

- (a) fine or penalty payable by the Insured as a direct result of a breach by the Insured of its Privacy Obligations; and/or
- (b) Regulatory Investigation Costs into such breach.

When notice of such Regulatory Investigation is first received by the Insured it must be notified to the Company in writing as soon as reasonably possible during the Period of Insurance.

This Extension D10. is subject to the Sub-Limit specified in the Schedule.

Exclusion F9.(a) does not apply to this Extension D10.

**11. Reward Expenses**

The Company agrees to pay Reward Expenses incurred as a direct result of a Cyber Event first discovered during the Period of Insurance and notified to the Company in writing as soon as reasonably possible and in any event during the Period of Insurance.

This Extension D11. is subject to the Sub-Limit specified in the Schedule.

**Section E - Basis of Settlement****1. Limit of Indemnity**

The Limit of Indemnity applies to any one claim under any section of the policy and, subject to this Section E, applies in the aggregate to the total cost of all claims during the Period of Insurance.

**2. Sub-Limits**

If Sub-Limits are specified then the applicable Sub-Limit specified in the Schedule and not the Limit of Indemnity applies. The Sub-Limits are included within, and not in addition to, the Limit of Indemnity

**3. Defence Costs**

The Company will pay Defence Costs in addition to the Limit of Indemnity or Sub-Limit, up to a maximum of 25% of the Limit of Indemnity for any one claim which applies in the aggregate to the total cost of Defence Costs for all claims during the Period of Insurance.

**4. Limit of Indemnity for Multiple Insureds**

The Limit of Indemnity and Sub-Limits and Defence Costs apply notwithstanding that there is more than one Insured indemnified under this policy, or if more than one Insured causes or contributes to any circumstances giving rise to a claim under this policy

**5. Multiple Related Claims**

Multiple claims based on, arising out of and or attributable to:



- (a) one original source or cause; and/or
  - (b) one act, error or omission; and/or
  - (c) a series of related acts, errors or omissions;
- shall be deemed to arise out of one event [(a), (b) or (c) above] and only one Limit of Indemnity or Sub-Limit, one aggregate allocation of Defence Costs and one Excess will apply.

#### 6. The Excess

The Company only provides indemnity (up to the Limit of Indemnity or Sub-Limit as applicable) for that part of any claim including Defence Costs above the Excess specified in the Schedule.

### Section F – Exclusions

The Company will not pay any claim:

#### 1. Aircraft, Watercraft and Vehicles

for property damage to or legal liability arising out of ownership, maintenance, operation, use, loading or unloading by the Insured, or by any person in the course of his/her employment by any Insured, of any aircraft, or any watercraft, or any motor vehicle.

#### 2. Asbestos

based upon, directly or indirectly arising from, or attributable to asbestos in whatever form or quantity.

#### 3. Assumed Duty or Obligation

based upon, directly or indirectly arising from, or attributable to:

- (a) a liability under a contractual warranty, guarantee or undertaking (unless such liability would have existed regardless of the contractual warranty, guarantee or undertaking); or
- (b) circumstances where a right of contribution or indemnity has been given up by an Insured, but only to the extent of the prejudice suffered by the Company in those circumstances; or
- (c) circumstances where someone has done work or provided services under an arrangement or agreement with an Insured which limits any potential right for an Insured to receive contribution or indemnity, but only to the extent that the Company is prejudiced in those circumstances; or
- (d) any liability which an Insured agrees to accept in connection with the Insured Business which is more onerous than that which the Insured would otherwise have at common law, but only to the extent of the prejudice the Company suffers because of that agreement; or
- (e) any business which is not the Insured Business.

#### 4. Bodily Injury and Property Damage

based upon, directly or indirectly arising from, or attributable to:

- (a) bodily injury, sickness, disease or death of any person except as may be indemnified under Coverage C6, Multimedia Liability; or
- (b) destruction of or damage to tangible property (including loss of use thereof) except as may be indemnified under Coverage C8, System Damage.

#### 5. Credit/Debit Card Transactions

based upon, directly or indirectly arising from, or attributable to:

- (a) any request from the Insured's acquiring bank for funds; or
- (b) fines as a result of fraudulent credit or debit card transactions.

This exclusion shall not apply to any claims indemnified by Section C7. of this policy.

#### 6. Discrimination

based upon, directly or indirectly arising from, or attributable to any actual or alleged discrimination of any kind including, but not limited to, discrimination on the basis of race, colour, religion, age, sex, disability, pregnancy, marital status, political affiliations or ideology, sexual orientation or preference.

#### 7. Enforcement Order

based upon, directly or indirectly arising from, or attributable to any failure by an Insured to respond to or comply with an Enforcement Order.

#### 8. Failure or Fitness of Goods or Services

based upon, directly or indirectly arising from, or attributable to:

- (a) the failure by an Insured to supply goods or services; or
- (b) the supply by an Insured of goods or services of inferior quality,

in breach of any contractual obligation, whether express or implied by law.

#### 9. Fines and Penalties, Duties and Tax.

based upon, directly or indirectly arising from, or attributable to:

- (a) any fines and penalties including civil penalties; or
- (b) income tax; or
- (c) customs duties, excise duty, stamp duty; or
- (d) sales tax, goods and service tax;

assessed, levied or imposed by law.

This Exclusion F9.(a) shall not apply to Sections D7. D9. and D10.

#### 10. Foreign Jurisdictions

- (a) first brought in or determined pursuant to the laws of, the United States of America or Canada, or their territories or protectorates; or
- (b) arising out of the enforcement of judgments, orders or awards obtained in or determined pursuant to the laws of the United States of America or Canada, or their territories or protectorates; or
- (c) where the law of the United States of America or Canada, or their territories or protectorates is applied to any of the issues in any matter the subject of indemnity under this policy.

but always subject to the 'Territorial Limits' specified in the Schedule.

#### 11. Government Confiscation

based upon, directly or indirectly arising from, or attributable to the confiscation, commandeering, requisition, destruction of or damage to Computer Systems by order of a government de jure or de facto, or by any public authority for whatever reason.

#### 12. Insolvency

based upon, directly or indirectly arising from or attributable to the insolvency, bankruptcy or liquidation of an Insured or a Service Provider contracted by an Insured.

#### 13. Intellectual Property Rights Infringement

based upon, directly or indirectly arising from, or attributable to the actual or alleged infringement of any Intellectual Property Right except as specifically indemnified under Section C6. of this policy.

#### 14. Internet Infrastructure Failure

based upon, directly or indirectly arising from, or attributable to any failure of external networks, cables, internet infrastructure or internet services including but not limited to online data hosting services, Internet Service

Providers (ISPs), Domain Name Services (DNS) and cloud service providers.

This exclusion shall only apply to Sections C2. and C8.

**15. Known Claims and Circumstances**

based upon, directly or indirectly arising from, or attributable to any Known Circumstance at the inception of this policy whether or not disclosed in the Proposal.

**16. Pollution, Nuclear Risks, War and Terrorism**

based upon, directly or indirectly arising from, or attributable to:

- (a) the Insured or anyone on behalf of or at the direction of the Insured discharging, dispersing, releasing or permitting Pollutants to escape into or upon land, the atmosphere, or any water course or body of water; or
- (b) ionising radiations or contamination by radioactivity from any nuclear material; or the hazardous properties of any nuclear explosive, assembly or component; or
- (c) war, invasion, acts of foreign enemies, civil or military uprisings, hostilities (even if war is not declared), or government power being taken unlawfully; or property being taken, damaged or destroyed by a government or public or local authority; or
- (d) any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense; or
- (e) any action in controlling, preventing, suppressing, retaliating against, or responding to any Act of Terrorism.

**17. Profit**

based upon, directly or indirectly arising from, or attributable to any trading loss or trading liability including those arising from the loss of any client or account or business.

This exclusion shall not apply to Business Interruption Loss indemnified under Section C2. of this policy.

**18. Punitive and Exemplary Damages**

for, directly or indirectly arising from, or attributable to punitive, aggravated or exemplary damages.

**19. Related Parties**

against an Insured brought by or on behalf of:

- (a) any other Insured; or
- (b) any company in respect of which any Insured holds (beneficially or otherwise) more than 10% of the voting shares or rights and/or an executive role; or
- (c) any trust in respect of which any Insured is a trustee and/or beneficiary and/or has a direct or indirect financial interest; or
- (d) any other person, firm or incorporated body having control of 10% or more of the voting shares or rights or an executive role in the operation of the Insured.

**20. Retroactive Limitation**

arising out of any act, error or omission, Cyber Event or Loss occurring before the Retroactive Date specified in the Schedule.

**21. Scheduled Downtime and Outages**

based upon, directly or indirectly arising from, or attributable to any scheduled downtime, planned outages or idle period of Computer Systems or parts thereof.

**22. Software**

based upon, directly or indirectly arising from, or attributable to any use of illegal or unlicensed software

**23. Supply/Infrastructure Failures**

based upon, directly or indirectly arising from, or attributable to any satellite failures, electrical or mechanical failures and/or interruption including, but not limited to, electrical disturbance, spike, brownout or blackout, outages to gas, water, telephone, cable, telecommunications, or other infrastructure, unless such infrastructure is under the Insured's operational control and such claim is as a direct result of any Cyber Event.

**24. Trade Debt**

based upon, directly or indirectly arising from, or attributable to a liability to pay trading debts or the repayment of any loan.

**25. UN Sanctions**

based upon, directly or indirectly arising from, or attributable to the provision of indemnity or a benefit under this Policy to the extent that the provision of such indemnity or benefit would contravene any sanction, prohibition or restriction under any United Nations resolutions or the trade or economic sanctions, law or regulations of the European Union, United Kingdom or United States of America.

**26. Unfair Trade Practices**

based upon, directly or indirectly arising from, or attributable to any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws, or false, deceptive or misleading advertising.

**27. Wear and Tear**

based upon, directly or indirectly arising from, or attributable to any wear and tear, drop in performance or the ageing of electronic equipment and other property used by the Insured as a result of normal operation or progressive deterioration or which can or may be covered by a maintenance agreement with an appropriate Service Provider.

**28. Wilful or Dishonest Acts of Principals**

based upon, directly or indirectly arising from, or attributable to any dishonest, fraudulent, criminal, malicious or reckless act or omission committed by any:

- (a) Principal; or
- (b) Employee or any Third Party with the solicitation, enticement, intervention, participation, assistance, cooperation or knowledge or approval of any Principal or Employee, unless such Principal or Employee is a former Principal or Employee at the time of the wilful, malicious, reckless or dishonest act or omission.

**Section G - General Conditions**

**1. Assignment**

The Insured may not assign this policy or any benefit or interest under this policy without the Company's prior written consent.

**2. Authority**

The Insured specified in the Schedule is deemed to be an agent of each Insured in all matters relating to this policy.

**3. Breach of Any Condition**

If the Insured, or any one acting on the Insured's behalf breaches any of the terms and/or conditions of this policy, the Company may:

- (a) decline the claim either in whole or in part, and/or
- (b) declare this policy to be null and void and of no effect.



**4. Cancellation**

The Insured may cancel this policy at any time by notifying the Company in writing. If they do, the Company will refund any premium that is due to the Insured based on the unused portion of the Period of Insurance. The Insured must pay any outstanding premium due for the expired portion of the Period of Insurance.

The Company may cancel this policy by giving the Insured or its broker notice in writing or by electronic means, at the Insured's, or its broker's, last known address. The policy will be cancelled from 4pm on the 30th day after the date of the notice. The Company will refund the Insured any premium based on the unused portion of the Period of Insurance.

**5. Change in Circumstances**

If the Insured becomes aware that any of the information in the Proposal has materially changed then the Insured must advise the Company as soon as practicable. In this event the Company reserves its right to amend terms, conditions or the premium of this policy.

**6. Change of Terms**

The Company may change the terms of this policy by giving the Insured, or its broker, notice in writing or by electronic means, at the Insured's, or its broker's, last known address. Unless otherwise specified in the notice the change in terms will take effect from 4pm on the 30th day after the date of the notice.

**7. Currency**

Any amounts shown in this policy or in the Schedule are in New Zealand dollars, unless otherwise specified in the Schedule.

**8. GST**

If on receipt of any payment for indemnity under this Policy the Insured is liable to pay tax under Section 5(13) of the Goods and Services Tax Act 1985 or its equivalent, re-enactment or substitution the Company will indemnify the Insured for the cost of that tax over and above the Limit of Indemnity or Sub-Limit otherwise stated in the policy provided that such tax is recoverable in full by the Company.

**9. Legislation Changes**

Any reference to any Act of Parliament or subordinate rules referred to in this policy includes any amendments made to or substitutions for that Act.

**10. Other Insurance**

If the Insured is entitled to indemnity under any other insurance except for:

- (a) any additional sum which is payable over and above such other insurance, or
- (b) any contribution that the Company is obliged to make by law which contribution shall be in proportion to the respective limits of liability of the policies,

this policy does not indemnify the Insured's liability or loss at all if the liability or loss is indemnified to any extent under any other insurance policy. The Company will not contribute towards any claim under any other insurance policy.

**11. Policy Disputes**

The law of New Zealand applies to disputes in respect of this policy and the New Zealand Courts shall have exclusive jurisdiction.

**12. Reasonable Care**

The Insured must take reasonable care at all times to avoid circumstances that could result in a claim.

**13. Territory Covered by this Policy**

This policy applies to acts, errors or omissions, Cyber Events, or Loss occurring anywhere in the world unless specified otherwise in the Territorial Limits specified in the Schedule.

**14. True Statements and Answers**

It is a condition precedent to the Company's liability to provide indemnity under this policy that true statements and answers must be given, whether by the Insured or any other person on behalf of the Insured, when:

- (a) applying for this insurance, and/or
- (b) notifying the Company of any change in circumstances, and/or
- (c) making any claim under this policy, and communicating with the Company or providing any information regarding the claim.

**Section H - Settlement of Claims****1. Allocation of Defence Costs**

If a claim is insured only partly by this policy, then the Company will attempt to ensure fair and proper allocation of the Defence Costs for insured and uninsured portions. If the parties are unable to agree upon the allocation of the Defence Costs then that allocation shall be decided by a lawyer that the Company and the Insured agree to instruct, whose determination shall be binding upon all parties. The cost of the lawyer's determination is to be taken as part of the Defence Costs indemnified under this policy. If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.

**2. Apportionment**

If the Company pays Defence Costs or other costs and/or expenses in excess of the maximum amount payable under the policy, then:

- (a) the Insured must refund to the Company all amounts in excess of the maximum amount payable, or
- (b) the Company can offset that payment against what they must pay the Insured under this policy.

**3. Claim Defence**

If the lawyer appointed to defend the Insured advises that the claim should not be defended, then the Company is not required to defend a claim against the Insured unless a second lawyer that the Company and the Insured agree to instruct, advises that the claim should be defended. If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society. In formulating his or her advice, the lawyer must be instructed to consider the:

- (a) economics of the matter, and
- (b) damages and costs likely to be recovered, and
- (c) likely costs of defence, and
- (d) prospects of successfully defending the claim.

The cost of the second lawyer's opinion is to be taken as part of the Defence Costs indemnified under this policy. If the second lawyer advises that the claim should be settled and if the terms of settlement that the Company recommend are within limits that are reasonable (in the second lawyer's opinion, and in the light of the matters he/she is required to consider), then:

- (i) the Insured cannot object to the settlement, and
- (ii) the Insured must immediately pay the Excess.

**4. Consent**

The Insured must obtain the Company's agreement before:

- (a) incurring any expense in connection with any claim under this policy, or
- (b) negotiating, paying, settling, admitting or denying any claim against it, or
- (c) doing anything that may prejudice the Company.

**5. Co-operation**

When making a claim, as a condition precedent to indemnity, the Insured agrees to co-operate with the Company in its investigations and to provide all information reasonably requested by the Company.

**6. Defence of Third Party Claims**

In accepting a claim made against the Insured by a Third Party, subject to Section H3, the Company has the sole right (which shall be a condition precedent to the Insured's right to be indemnified) to:

- (a) instruct its own lawyers to act on behalf of the Insured. The appointed lawyers will report directly to the Company
- (b) act in the Insured's name and on the Insured's behalf to defend, negotiate or settle the claim at the Company's discretion and at its own expense
- (c) publish a retraction or apology (in the case of defamation proceedings).

**7. Discharge of Liability**

In respect of any claim the Company may elect at any time to pay the Insured:

- (a) the maximum amount payable under the policy, or
- (b) any lesser sum that a claim can be settled for.

Upon such payment (including any Defence Costs or other costs or expenses already incurred up to the Company's date of election), the Company's responsibility to the Insured under the policy is discharged in full.

**8. Dishonesty**

If the Insured's claim is dishonest or fraudulent in any way, the Company at its sole discretion may:

- (a) decline the claim either in whole or in part, and/or
- (b) declare this policy to be null and void and of no further effect from the date of the dishonest or fraudulent act.

**9. Do Not Admit Liability**

The Insured must not:

- (a) admit liability, or
- (b) do or say anything that may prejudice the Company's ability to defend the claim against the Insured or take recovery action in the Insured's name.

**10. Indemnity Costs**

Any costs or expenses incurred by the Company to determine its liability under this policy will not form part of the Defence Costs or other fees, costs and expenses otherwise indemnified by this policy.

**11. Minimise the Loss**

The Insured must take all reasonable steps to avoid or diminish any loss or liability and avoid any further related loss or liability.

**12. Notify the Police**

The Insured must immediately notify and co-operate with the Police if criminal activity is involved or suspected in respect of any claim.

**13. Notify the Company**

If the Insured becomes aware of any event that is likely to give rise to a claim under this policy they must as soon as possible notify the Company. If such notification is given, any claim arising from the circumstances so notified will be deemed to have been made and notified to the Company during the Period of Insurance.

In the case of a Cyber Event the Insured should immediately contact the Cyber Event 'Response Service' specified in the Schedule.

**14. Retention of Evidence**

The Insured must not destroy or dispose of any property or information that is or could be relevant to a claim.

**15. Subrogation**

Upon the Company agreeing to indemnify any part of the Insured's claim under this policy, the Company is entitled to assume the Insured's legal right of recovery. In undertaking such recovery the Company will include the Excess, and any other uninsured losses suffered by the Insured. The Insured agrees to pay their proportionate share of the recovery costs relative to the insured and uninsured parts of the amounts, and subsequently any proceeds of the recovery will be shared on the same proportional basis, except that the Company will reimburse the Insured's Excess before apportionment. The Insured must fully co-operate with any recovery process failing which the Company may recover from the Insured the amount paid in relation to the claim.

**16. Waiver of Professional Privilege**

If the Company instructs any lawyer to investigate or defend any claim against the Insured, the Insured authorises the lawyer to provide to the Company any documents, information or advice in respect of the claim, including in relation to indemnity; and the Insured waives any privilege to the extent necessary to give full effect to the Company's entitlement in this respect.

**Section I - Definitions**

The definitions apply to the plural and any derivatives of the Capitalised words.

**1. Act of Terrorism**

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

- (a) involves violence against one or more persons; or
- (b) involves damage to property; or
- (c) endangers life other than that of the person committing the action; or
- (d) creates a risk to health or safety of the public or a section of the public.

**2. Authority**

means any official regulator, government body or government agency having legal authority to conduct a Regulatory Investigation.

**3. Business Interruption Loss**

means the lesser of the amount:

- (a) specified in the Schedule as the sub-limit for C2. Business Interruption; and
- (b) determined by the Company as the difference between the:

- (i) Revenue, including advertising revenue, that the Company reasonably determines has been lost solely and directly as a result of a failure in the Insured's capability to use the Insured's Computer Systems or access the Insured's Computer Records, plus the Increased Cost of Working incurred by the Insured; and
- (ii) costs that the Insured would have incurred to generate such Revenue but have not in fact incurred (including the cost of raw materials, and other saved costs).

This amount shall be determined by the Company based on an analysis of the Revenue generated and costs generating such Revenue during each month of the twelve (12) months prior to the Cyber Event and taking into account reasonable projection of future Revenue and costs and all material changes occurring in market conditions which would affect the future Revenue and costs generated, less any savings, had no Cyber Event occurred.

Where the Insured has not completed the first year's trading, the amount shall be determined by the Company based on an analysis of the Revenue generated and costs of generating such Revenue during each month from the commencement of the Insured's business prior to the Cyber Event and taking into account reasonable projection of future Revenue and costs and all material changes in market condition which would affect the future Revenue and costs generated, less any savings, had no Cyber Event occurred.

#### 4. **Commercially Confidential Information**

means any information other than Personal Information:

- (a) which is not in the public domain or publicly available; and
- (b) where disclosure may undermine the economic interest or competitive position of the owner of the information.

#### 5. **Company**

means Vero Liability Insurance Limited.

#### 6. **Computer Records**

means electronically stored data including magnetic tape, software or computer programs for or in respect of a Computer System used in the course of the conduct of the Insured Business.

#### 7. **Computer System**

means all electronic computers including operating systems, software, hardware firmware and all communication and open system networks, websites wherever hosted, off-line media libraries and data backups used in the course of the conduct of the Insured Business.

#### 8. **Cyber Event**

means any:

- (a) Hacking Attack or Virus;
- (b) malicious damage to the Insured's Computer Systems by an Employee;
- (c) failure of a Service Provider hosting the Insured's Computer Systems as a direct result of (a) or (b) above;
- (d) electrostatic build-ups or electromagnetic disturbances arising from a Hacking Attack.
- (e) failure of a direct or back-up power supply or under/over voltage but only if such power supply is owned, managed or controlled by the Insured or by a Service Provider and arising from a Hacking Attack;

- (f) legal liability to any Third Party arising from accidental damage to or destruction of the Insured's Computer Records because of operational error by an Employee or a Service Provider;

#### 9. **Cyber Extortion Costs**

means any:

- (a) monies (including crypto or virtual currencies) paid by the Insured in accordance with relevant legal requirements;
- (b) reasonable and necessary fees, costs and expenses that the Company incurs or the Insured incurs in negotiating, mediating and crisis-managing to terminate or end a Security Threat that might otherwise result in harm to the Insured; or
- (c) the cost to conduct an investigation to determine the cause of a Security Threat.

All of such monies, costs, fees and expenses shall only be paid or incurred with the Company's prior written consent (which shall not be unreasonably delayed or withheld).

#### 10. **Defence Costs**

means all reasonable and necessary legal fees, costs and expenses (including any expert costs where the choice of expert has been approved by the Company) that the Company incurs or the Insured incurs with the Company's prior written consent (which shall not be unreasonably delayed or withheld) in the investigation, defence or settlement of any claim made against the Insured.

#### 11. **Electronic Commerce**

means the transacting, disseminating or enabling the marketing, buying, selling or distribution of goods, services or information through the internet, the world wide web, private networks, intranets, extranets, wireless application protocol, email or instant messaging systems.

#### 12. **Employee**

means a natural person who is not a Principal, but who is or was, at the time the relevant act, error or omission occurred, a person who:

- (a) is under a contract of service with the Insured and is or was remunerated by the Insured for that service; or
- (b) is neither a party to a contract of service with the Insured, nor an independent contractor, but a party to a contract for services with the Insured for the provision of services to or on behalf of the Insured for reward; or
- (c) a volunteer worker, intern or student, each of whom is under the Insured's direction, control and supervision in the conduct of the Insured Business.

#### 13. **Enforcement Order**

means notice or order from any data protection authority, government authority, regulator, court, tribunal or other public body authorised to investigate, prosecute or otherwise enforce applicable laws or regulations relating to the collection, storage or processing of Computer Records, requiring the Insured to:

- (a) confirm compliance with any data protection and/or privacy law or regulation;
- (b) take specific measures to comply with any data protection and/or privacy law or regulation; or
- (c) refrain from processing any specified Computer Records or using any specified Computer System

#### 14. **Excess**

means the amount of any claim as specified in the Schedule which must be borne by the Insured.

#### 15. **Former Principal**

means a person who has been, but is no longer:

- (a) Principal or trustee of an Insured; or
- (b) the Principal of any corporate entities through which the Insured previously traded, in the course of the conduct of the Insured Business.

**16. Hacking Attack**

means any malicious or unauthorised electronic attack including, but not limited to, any brute force attack, phishing, denial of service attack initiated by any Third Party or by any Employee which is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of the Insured's Computer Systems or Insured's Computer Records.

**17. Increased Cost of Working**

means the additional expenditure necessarily and reasonably incurred for the purpose of:

- (a) avoiding or diminishing a loss of revenue, which but for the expenditure, would have taken place in consequence of the Cyber Event; or
- (b) resuming or maintaining the normal operation of the Insured's business.

**18. Insured**

means:

- (a) the Insured entity specified in the Schedule; and
- (b) any Subsidiary of the Insured;
- (c) any Principal, Former Principal, Employee or trustee of the Insured;
- (d) any person who is or becomes, during the Period of Insurance, a Principal or Employee or trustee of the Insured; and
- (e) the estate, spouse, heirs, legal representatives, successors or assigns of any Insured.

**19. Insured Business**

means the 'Insured Business' specified in the Schedule conducted by or on behalf of the Insured.

**20. Intellectual Property Right**

means any intellectual property right including but not limited to trademarks, trade secrets, broadcasting rights, domain names, commercial title or slogan, metatags and copyrights. Intellectual Property Right does not include any patent, trade secret or confidential information that came into the possession of any person prior to the date such person became an Employee, Principal or trustee of the Insured.

**21. Internet and Email Content**

means any text, images, video, interactive content or advertising material published on the Insured's website or contained within an email sent by an Insured or any advertising material produced by or on behalf of the Insured and published on a Third Party's website.

**22. Known Circumstance**

means any fact, situation or circumstance which:

- (a) an Insured was aware of at any time before the Period of Insurance or any material amendment or endorsement of the policy; or
- (b) a reasonable person in the Insured's position would have thought, at any time before the Period of Insurance or before any material amendment or endorsement of the policy, might result in someone making an allegation against an Insured in respect of a liability, Loss or costs, that might be indemnified by this policy or by any amendment or endorsement to this policy.

**23. Limit of Indemnity**

means the 'Limit of Indemnity' specified in the Schedule which shall be the Company's maximum liability under this

policy, in the aggregate during the Period of Insurance, subject to its terms, conditions and exclusions.

**24. Loss**

means direct loss of Money sustained by the Insured but excluding loss of profits, loss of income, loss of bargain, or other types of consequential loss.

**25. Money**

means any physical or electronic legally acceptable currency (excluding crypto or virtual currencies), coins or bank notes of a generally accepted value.

**26. Period of Insurance**

means the period specified in the Schedule defining the inception and expiry dates of this insurance.

**27. Personal Information**

means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is:

- (a) true or not; and
- (b) in a material form or not.

**28. Pollutant**

means any solid, liquid, gas or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkali, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

**29. Principal**

means a sole practitioner, a partner of a firm, or a director of a company, which practitioner, firm or company is indemnified by this policy.

**30. Privacy Breach Costs**

means reasonable and necessary fees, costs and expenses that the Company incurs or the Insured incurs with the Company's prior written consent (which shall not be unreasonably delayed or withheld) required to be incurred in respect of any Privacy Obligations and to fulfil any legal or regulatory obligation the Insured has to notify Third Parties of an actual or suspected breach of privacy in relation to any Personal Information and to mitigate the consequences of such breach.

**31. Privacy Obligations**

means the Insured's legal obligations arising directly from:

- (a) any privacy statement governing the handling of information on the Insured's Computer Systems;
- (b) any written contract between the Insured and a third party governing the processing and storage of credit card information on the Insured's Computer Systems;
- (c) any duty to use reasonable care and skill in the handling of Personal Information or credit card information (including breaches of the payment card industry data security standard);
- (d) any legal obligation to notify individuals of an actual or potential breach of their Personal Information;
- (e) statutory data protection regulations in the country or countries where the Insured operates, including industry-specific data protection and security regulations as they currently exist.

**32. Promotional Material**

means any marketing materials or tangible goods produced by or on behalf of the Insured for the purpose of marketing the Insured Business.

**33. Proposal**

means the information provided or the representations made, by the Insured or on the Insured's behalf to the Company when applying for this insurance including any

subsequent information requested or provided during the currency of the policy.

**34. Public Relations Costs**

means reasonable and necessary fees, costs and expenses that the Company incurs or the Insured incurs with the Company's prior written consent (which shall not be unreasonably delayed or withheld) as a result of the use of external public relations consultants appointed by the Company.

For the avoidance of doubt, Public Relations Costs does not include Employees' remuneration or the Insured's overhead expenses or any payments that the Insured has paid or is committed to paying as part of any service or maintenance contract.

**35. Rectification Costs**

means reasonable and necessary fees, costs and expenses that the Company incurs or the Insured incurs with the Company's prior written consent (which shall not be unreasonably delayed or withheld) as a result of the use of external consultants, contractors or advisers including but not limited to forensic or security consultants or any additional costs that the Insured incurs to pay its Employees.

For the avoidance of doubt, Rectification Costs does not include the basic salaries of Employees or the Insured's office expenses or any payments that the Insured has paid or agreed to pay as part of any service or maintenance contract.

**36. Regulatory Investigation**

means:

subject to Section D9. where applicable, any formal or official civil examination, investigation, inquiry, hearing or other civil proceedings ordered or commissioned by any Authority into the Privacy Obligations of the Insured commenced during the Period of Insurance:

- (a) requiring attendance before or the production of documents by the Insured to the Authority;
- (b) requiring questions to be answered by the Insured to the Authority;
- (c) identifying the Insured in writing as being subject to an examination, investigation, inquiry, hearing or other proceeding by an Authority.

Provided that:

- (i) notice of such Regulatory Investigation is first received by the Insured during the Period of Insurance and notified to the Company in writing as soon as possible and in any event during the Period of Insurance;
- (ii) a Regulatory Investigation shall be deemed to be first made when the Insured is first required to respond and/or attend or is the subject of the Regulatory Investigation;

For the avoidance of doubt Regulatory Investigation does not include any routine inspection, supervision, compliance or similar reviews or general industry-wide violation reviews of the Insured's business.

**37. Regulatory Investigation Costs**

means reasonable and necessary fees, costs and expenses that the Company incurs or the Insured incurs with the Company's prior written consent (which shall not be unreasonably delayed or withheld) in relation to any Regulatory Investigation.

**38. Retroactive Date**

means the date specified in the Schedule on or after which acts, errors or omissions, Cyber Events or Loss must have occurred in order for this Policy to respond to claims

in respect of or arising from such acts, errors or omissions, Cyber Events or Loss.

**39. Revenue**

means the amount of net profit or loss before tax which would have been earned or incurred had no Cyber Event occurred.

**40. Reward Expenses**

means reasonable and necessary consideration paid by the Company or by the Insured with the Company's prior written consent (which shall not be unreasonably delayed or withheld) to any party (other than a law enforcement officer or Authority) for information leading to a conviction of the perpetrator of a criminal offence arising out of a Hacking Attack.

**41. Schedule**

means the latest version of the schedule attached to this policy.

**42. Security Threat**

means any expressed and documented threat or connected series of threats by a Third Party to commit a local, cross border or trans-national attack against the Insured's Computer System for the purpose of demanding Money, securities or other tangible or intangible valuable property from the Insured.

**43. Service Provider**

means any Third Party contracted by the Insured who provides business process (including call centre, fulfilment and logistical support) and/or information technology services (including hosting, security management, co-location or collects, stores or processes the Insured's Computer Records) for the Insured.

**44. Sub-Limit**

means the limit of the Company's liability for each of the matters listed in the Schedule under 'Sub-limits' or in Section C or D of this policy.

**45. Subsidiary**

means any company or other incorporated entity which at the commencement of the Period of Insurance by virtue of New Zealand law was, or is, either directly or indirectly a subsidiary of any incorporated body specified in the Schedule as the Insured.

**46. Territorial Limits**

means the territories specified in the Schedule within which acts, errors or omissions, Cyber Events, or Loss must occur in order for this Policy to respond.

**47. Third Party**

means any person, partnership, company, corporation, incorporated society or other body corporate or entity who is not an Insured.

**48. Time Excess**

means the number of hours that must elapse, as stated in the Schedule, before the Insured is entitled to indemnity for a Business Interruption Loss. Any Business Interruption Loss incurred during the period of the Time Excess is to be borne by the Insured.

**49. Virus**

means any software code including but not limited to any logic bomb, trojan horse or worm that has been introduced by any Third Party or by any Employee and that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of the Insured's Computer Systems or Insured's Computer Records.