



# Cyber Liability Insurance Policy

## CYBER LIABILITY INSURANCE POLICY

In consideration of the premium charged, the **Underwriters** and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

### SECTION 1: INSURING AGREEMENTS

#### 1.1 Business Interruption Loss

The **Underwriters** shall reimburse the **Named Insured** the actual **Business Interruption Costs** incurred by the **Named Insured** during the **Period of Restoration** due to a **Network Attack** commencing during the **Policy Period** and reported to the **Underwriters** in accordance with the terms of this Policy.

This coverage is subject to a Sublimit of Liability as specified in Item 4. of the Schedule.

#### 1.2 Third Party Liability

The **Underwriters** shall pay on behalf of the **Insured**, the **Loss** from any **Claim** first made against the **Insured** during the **Policy Period**, or any applicable Extended Reporting Period, and reported to the **Underwriters** in accordance with the terms of this Policy, for any **Privacy Wrongful Act**, or **Network Security Wrongful Act** or **Media and Social Media Wrongful Act**.

This coverage is subject to a Sublimit of Liability as specified in Item 4. of the Schedule.

#### 1.3 First Party Crime: Hacker Theft Cover

The **Underwriters** shall indemnify the **Insured** for any **Hacker Theft Loss** sustained by the **Insured** as a direct result of **Hacker Theft**: (a) first discovered or suspected during the **Policy Period**, or any applicable Extended Reporting Period, by any member of the **Company's** risk management department, legal department, IT department or HR department, or any senior manager of any other department; and (b) reported to the **Underwriters** in accordance with the terms of this Policy.

This coverage is subject to a Sublimit of Liability as specified in Item 4. of the Schedule.

#### 1.4 Data Forensic Expenses and Costs to Restore

The **Underwriters** shall reimburse the **Insured** the actual **Data Forensic Expenses** and **Costs to Restore** incurred by the **Insured** due to a **Wrongful Act** during the **Policy Period** and reported to the **Underwriters** in accordance with the terms of this Policy.

This coverage is subject to a Sublimit of Liability as specified in Item 4. of the Schedule.

#### 1.5 Breach Consultation Services

The **Underwriters** shall pay on behalf of the **Insured**, for **Breach Consultation Services** arising from an actual or potential **Privacy Wrongful Act**, which takes place during the **Policy Period** and is reported to the **Underwriters** in accordance with the terms of this Policy.

This coverage is subject to a Sublimit of Liability as specified in Item 4. of the Schedule.

## 1.6 Breach Response Services (Notification, Credit and ID Monitoring)

The **Underwriters** shall pay on behalf of the **Insured**, for **Breach Response Services** arising from a **Privacy Wrongful Act** or **Network Security Wrongful Act** which takes place during the **Policy Period** and is reported to the **Underwriters** in accordance with the terms of this Policy.

Such expenses are not eligible for coverage under this Insuring Agreement 1.6 in the event such expenses are covered as **Loss** under Insuring Agreement 1.2.

This coverage is subject to a Sublimit of Liability as specified in Item 4. of the Schedule.

## 1.7 Public Relations

The **Underwriters** shall reimburse the **Insured** the **Public Relations Expenses** incurred by the **Insured** in connection with a **Public Relations Event**, which first takes place, or is reasonably anticipated to take place, during the **Policy Period** and is reported to the **Underwriters** in accordance with the terms of this Policy.

This coverage is subject to a Sublimit of Liability as specified in Item 4. of the Schedule.

## 1.8 Network Extortion Coverage

The **Underwriters** shall reimburse the **Insured** the amounts which the **Insured** actually pays to any person or entity for services to avoid, defend, preclude or resolve a **Network Extortion** first occurring during the **Policy Period** and reported to the **Underwriters** in accordance with the terms of this Policy.

This coverage is subject to a Sublimit of Liability as specified in Item 4. of the Schedule.

## 1.9 Data Forensic Expenses

The **Underwriters** shall reimburse the **Insured** for **Data Forensic Expenses** first incurred by the **Insured** during the **Policy Period** due to the misappropriation, disclosure or release of information which the **Insured** reasonably believes might result in a **Claim** for a **Privacy Wrongful Act** or a **Network Security Wrongful Act** and is reported to the **Underwriters** in accordance with the terms of this Policy.

Such expenses are not eligible for coverage under this Insuring Agreement 1.9 in the event such expenses are covered as **Loss** under Insuring Agreement 1.1, 1.2 or 1.4.

This coverage is subject to a Sublimit of Liability as specified in Item 4. of the Schedule.

## SECTION 2: DEFINITIONS

**2.1 “Advertising”** means electronic promotional material and media publicly disseminated on any **Website**, or material and media disseminated by other means which is a duplication of material or media already disseminated electronically, either by and on behalf of the **Insured** or by the **Insured** on behalf of others. **“Advertising”** includes banners and buttons, beacons and tracking, branding, click tags and cookies, co-branding, directory listings, flash sites, metatags and coded media, rectangles and pop-ups, search engine endorsements, sponsorships, skyscrapers, and endorsements and testimonials.

**2.2 “Affected Person”** means any natural person or **Employee** whose **Personal Information** was accessed by or disclosed to, or reasonably may have been accessed by or disclosed to, an unauthorised individual as a result of a **Privacy Wrongful Act**.

- 2.3** “**Bodily Injury**” means injury to the body, sickness, disease or death of any person. “**Bodily Injury**” also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, whether or not resulting from injury to the body, sickness, disease or death of any person.
- 2.4** “**Breach Consultation Services**” means any reasonable and necessary costs incurred by or on behalf of the **Insured** to:
- (a) determine the applicability of, and the **Insured’s** obligation to comply with, any **Breach Notification Law** and retain a qualified law firm, as set forth in the attached Appendix A;
  - (b) draft a notification letter to be sent to any **Affected Person** required to be notified by the **Insured**;
  - (c) retain a qualified forensics firm, as set forth in the attached Appendix A., to investigate, examine and analyse the **Named Insured’s Network** to determine the cause and source of the unauthorised misappropriation, mishandling, loss or disclosure of **Personal Information** or the unauthorised release of a third party’s confidential and proprietary information and the extent to which such **Personal Information** or the third party’s confidential and proprietary information was accessed;
  - (d) retain a qualified public relations firm, crisis management firm or law firm, as set forth in the attached Appendix A., to minimise potential harm arising from a **Public Relations Event**; and
  - (e) retain a qualified service provider, as set forth in the attached Appendix A., to provide **Breach Response Services**.
- 2.5** “**Breach Notification Law**” means any law which requires an entity to provide notice to any individual whose **Personal Information** was accessed by or disclosed to, or reasonably may have been accessed by or disclosed to, an unauthorised individual.
- 2.6** “**Breach Response Services**” means:
- (a) **Notice Services**;
  - (b) **Call Centre Services**;
  - (c) **Credit Monitoring Services**; and
  - (d) **Identity Theft Resolution Services**.
- 2.7** “**Business Income**” means the net profit or loss, before income taxes, that the **Insured** would have earned or incurred during the **Period of Restoration** had there not been a **Network Attack**.
- 2.8** “**Business Interruption Costs**” means the total sum of the following:
- (a) **Extra Expense**; and
  - (b) loss of **Business Income**.
- “**Business Interruption Costs**” do not include:
- (i) **Loss** or damage arising out of the **Named Insured’s** liability to any third party, for whatever reason;
  - (ii) fines, penalties, or taxes imposed on or levied against the **Named Insured**;
  - (iii) sums owed by the **Named Insured** pursuant to a contractual provision for liquidated damages, penalties, or a similar remedy;
  - (iv) legal costs or legal expenses of any nature incurred by the **Named Insured**;
  - (v) costs or expenses incurred by the **Named Insured** to update, upgrade, or otherwise improve the **Named Insured’s Network** or **Digital Assets** to a level

- (vi) of functionality better than that which existed prior to a **Network Attack**; or any decrease in revenue caused by unfavourable business or economic conditions.

**2.9** “**Business Operations**” means the **Named Insured’s** normal business activities that produce revenue for the **Insured** from the sale of goods or services.

**2.10** “**Call Centre Services**” means the establishment and operation of a call centre. Call centre employees shall provide information to **Affected Persons** regarding **Privacy Wrongful Acts, Public Relations Events, Credit Monitoring Services** and **Identity Theft Resolution Services**.

**2.11** “**Claim**” means any:

- (a) written demand for monetary, non-monetary, or injunctive relief;
- (b) civil proceeding in a court of law or equity, including any appeal therefrom, which is commenced by the filing of a complaint, motion for judgment, or similar proceeding;
- (c) administrative or regulatory investigation or proceeding;
- (d) arbitration proceeding;
- (e) prosecution or governmental action related to **Privacy Wrongful Acts**; or
- (f) written request to toll or waive a statute of limitations.

**2.12** “**Cloud Service**” means any on-demand access to hosted computer infrastructure or computing platforms, including cloud computing services provided on an Infrastructure as a Service (IaaS) or Platform as a Service (PaaS) model, provided by any natural person or entity not owned, operated or controlled by an **Insured**.

“**Cloud Service**” does not include any cloud computing services solely on a Software as a Service (SaaS) model.

**2.13** “**Company**” means:

- (a) the **Named Insured**; and
- (b) any **Subsidiary**.

**2.14** “**Continuity Date**” means the date specified in Item 6. of the Schedule.

**2.15** “**Costs to Restore**” means those reasonable and necessary expenses incurred by the **Named Insured** during the **Period of Restoration** to research, replace, restore or recollect **Digital Assets** from written records or from partial or fully matching electronic data records due to their corruption, deletion or destruction by a **Network Attack**. If the **Insured** determines that **Digital Assets** cannot be replaced, restored or recollect, **Costs to Restore** shall be limited to the reasonable and necessary expenses incurred by the **Insured** to reach that determination.

**2.16** “**Credit Monitoring Services**” means triple bureau credit monitoring provided to each **Affected Person** who enrolls for such services.

**2.17** “**Data Forensic Expenses**” means the reasonable and necessary costs incurred by the **Insured** to retain a qualified forensics firm to investigate, examine and analyse the **Insured’s Network** to determine the cause and source of the unauthorised misappropriation or disclosure of **Personal Information** or the unauthorised release of a third party’s confidential and proprietary business information and the extent to which such **Personal Information** and the third party’s confidential and proprietary business information was accessed.

- 2.18** “**Defence Costs**” means reasonable and necessary legal fees and expenses incurred by or on behalf of the **Insured** by the **Underwriters** in the defence or appeal of a **Claim**; provided that “**Defence Costs**” will not include the **Insured’s** overhead expenses or any salaries, wages, fees, or benefits paid to its **Employees**.
- 2.19** “**Digital Assets**” means software and any electronic data that is stored on or within the **Named Insured’s Network**. “**Digital Assets**” shall include the capacity of the **Named Insured’s Network** to store and process data and information and electronically disseminate data and information over the Internet.
- 2.20** “**Electronic Content**” means any data, e-mails, graphics, images, net or web casting, sounds, text, or similar matter disseminated electronically on the **Insured’s Website, Network** or the Internet, or matter disseminated by other means which is a duplication of matter already disseminated electronically.
- 2.21** “**Employee**” means any individual, except an **Executive Officer**, whose labour or service is engaged by and directed by the **Insured**. This includes part-time, seasonal, leased and temporary employees and volunteers, but only to the extent that they are acting under the direction and control of the **Insured**. A **Third Party Contractor** is not an “**Employee**”.
- 2.22** “**Executive Officer**” means the **Company’s** Chairman, President, Chief Executive Officer, Managing Director, General Manager, Chief Operating Officer, Chief Compliance Officer, Chief Financial Officer, Chief Information Officer, Chief Technology Officer, Chief Privacy Officer, Risk Management Officer, General Counsel or any individual in a functionally equivalent position.
- 2.23** “**External Source**” means:
- (a) a person or organisation that was not authorised to use the **Named Insured’s Network**; or
  - (b) a retail customer of the **Insured**, other than an **Employee** or **Third Party Contractor**, using the **Insured’s Website** for the purposes of browsing, purchasing or selling goods or services.
- 2.24** “**Extra Expense**” means the necessary expense incurred by the **Named Insured** during the **Period of Restoration** which: (a) would not have been incurred in the absence of a **Network Attack**; (b) was incurred to avoid or minimise an interruption of the **Named Insured’s Business Operations** caused by a **Network Attack**; and (c) actually avoided or minimised a reduction in **Business Income** that otherwise would have been payable under this Policy.
- 2.25** “**Funds**” mean any cash, money, currency owned by the **Company** or held by a financial institution in an electronic form on behalf of the **Company**.
- 2.26** “**Hacker Theft**” means any third party’s targeted intrusion into the **Company’s Network** which results in fraudulent and unauthorised deletion or alteration of data contained in the **Company’s Network**.
- 2.27** “**Hacker Theft Loss**” means **Funds** wrongfully or erroneously paid by the **Insured** as a direct result of a **Hacker Theft**.
- 2.28** “**Identity Theft**” means the misappropriation of **Personal Information** or any other confidential information which has resulted in the wrongful or fraudulent use of such

**Personal Information**, including, but not limited to, fraudulently emulating the identity of an individual or corporation.

**2.29 “Identity Theft Resolution Services”** means identity theft monitoring and identity repair services, including any ID Theft Insurance premiums, provided to any **Affected Person** whose identity has been compromised as a result of a **Privacy Wrongful Act**.

**2.30 “Insured”** means the **Company** and includes:

- (a) for a corporation, all past, present, and future directors, officers or **Employees** of such corporation;
- (b) for a sole proprietorship, all past, present and future owners, officers or **Employees** of such sole proprietorship;
- (c) for a partnership, all past, present, and future partners or **Employees** of such partnership; and
- (d) for a limited liability company, all past, present, and future members, managers, officers or **Employees** of such limited liability company.

A **Third Party Contractor** is not an **Insured**.

**2.31 “Loss”** means:

- (a) monetary damages;
- (b) pre-judgment interest and post-judgment interest;
- (c) judgments and settlements;
- (d) fines and penalties assessed pursuant to any law for **Privacy Wrongful Acts**;
- (e) punitive or exemplary damages where insurable under the applicable law most favourable to the insurability of such damages;
- (f) ransom monies, solely under Insuring Agreement 1.8;
- (g) other amounts that an **Insured** becomes legally obligated to pay as a result of a **Claim**;
- (h) **Defence Costs**; or
- (i) any other amounts covered under any Insuring Agreement of this Policy.

**“Loss”** does not include:

- i. fines, penalties, taxes or the multiplied portion of multiple damages, except for those fines and penalties described in (d) above;
- ii. future profits, future royalties, costs of licensing, or other costs of obtaining future use, restitution, or disgorgement by any **Insured**;
- iii. the costs to comply with orders granting injunctive relief or non-monetary relief, including specific performance, or any agreement to provide such relief;
- iv. return or offset of fees, charges, royalties, or commissions for goods or services already provided or contracted to be provided;
- v. remedies due pursuant to a contractual provision; or sums due pursuant to a contractual provision for liquidated damages, agreed penalties, or similar remedy;
- vi. any amount which the **Insured** is not legally obligated to pay; or
- vii. matters which are uninsurable under applicable law.

**2.32 “Malicious Code”** means any unauthorised and either corrupting or harmful software code, including but not limited to computer viruses, Trojan horses, worms, logic bombs, spy ware or spider ware.

**2.33 “Management Control” means:**

- (a) controlling the composition of the board of directors of an entity;
- (b) controlling more than half of the shareholder or equity voting power of an entity; or
- (c) holding more than half of the issued share or equity capital of an entity.

**2.34 “Media and Social Media Wrongful Act” means any actual or alleged act, error, misstatement, misleading statement, omission, neglect or breach of duty committed by any Insured or Third Party Contractor, in connection with the Insured’s Advertising or Electronic Content, which results in:**

- (a) defamation, slander or libel or other tort related to disparagement or harm to the reputation or character of any natural person;
- (b) dilution, deceptive trade practices, wrongful publication, defamation, slander or libel, product or service disparagement, trade libel or other tort related to disparagement or harm to the reputation or character of any organisation;
- (c) misappropriation or misdirection of messages or media of third parties, including metatags, **Website** domains and names, and related cyber content;
- (d) plagiarism, piracy or misappropriation of ideas; or
- (e) infringement of copyright, domain name, trade dress, title or slogan, or the dilution or infringement of trademark, service mark, service name or trade name.

**2.35 “Named Insured” means the organisation set forth in Item 1. of the Schedule.**

**2.36 “Network” means any computer hardware, software, firmware, and components thereof, including software and electronic data stored on or within the Insured’s Network, which are connected through computers, including such networks accessible through the Internet, intranets, extranets or virtual private networks.**

For the purposes of all Insuring Agreements, except Insuring Agreement 1.1, **“Network”** also means any **Cloud Service** used by the **Company**.

**2.37 “Network Attack” means:**

- (a) the intentional and unauthorised gaining of access to or use of the **Named Insured’s Network**, or any portion thereof, which arises from a breach of the **Named Insured’s Network Security**;
- (b) the **Insured’s** receipt of **Targeted Malicious Code** from an **External Source**; or
- (c) a **Targeted Denial of Service Attack** by an **External Source**,

which alters, copies, misappropriates, corrupts, destroys, disrupts or deletes **Digital Assets** or damages, prevents, restricts or hinders access to the **Named Insured’s Network** and which materially interrupts, suspends or impairs the **Named Insured’s** ability to conduct its **Business Operations**.

**2.38 “Network Extortion” means a credible threat or connected series of credible threats, by an individual other than an Employee, to commit or to continue an attack on the Insured’s Network, or to disclose Personal Information or the unauthorised release of a third party’s confidential and proprietary information obtained through a breach of the Insured’s Network Security, for the purpose of obtaining payment from the Insured.**

- 2.39** “**Network Security**” means the use of hardware, software and firmware, including, without limitation, firewalls, filters, routers, intrusion detection software, antivirus software, automated password management applications and other authentication mechanisms, which are designed to control or restrict the access to a **Network**, or any portion thereof. “**Network Security**” shall also include the use of third party service providers which provide, or assist in the provisioning, of such hardware, software and firmware.
- 2.40** “**Network Security Wrongful Act**” means any actual or alleged act, error, misstatement, misleading statement, omission, neglect or breach of duty committed by an **Insured** or **Third Party Contractor**, which results in a breach of the **Insured’s Network Security**, the consequences of which are:
- (a) unauthorised access to, use of or tampering with a third party’s **Network**;
  - (b) the inability of an authorised third party to gain access to the **Insured’s** services;
  - (c) denial or disruption of Internet service to a third party;
  - (d) **Identity Theft**;
  - (e) the transmission of **Malicious Code**;
  - (f) the unauthorised release of a third party’s confidential and proprietary business information; or
  - (g) the physical theft of the **Insured’s** hardware by a third party.
- 2.41** “**Notice Services**” means services to provide notification to **Affected Persons** pursuant to any applicable **Breach Notification Law** or voluntary notification at the **Insured’s** discretion provided that **Personal Information** was compromised. “**Notice Services**” includes printing services, mailing services and postage services associated with mail notice.
- 2.42** “**Period of Restoration**” means the period of time that:
- (a) begins when the **Waiting Period** expires; and
  - (b) ends on the earlier of: (i) the date and time when the **Insured** resumes, or in the exercise of due diligence and dispatch could have resumed, its **Business Operations** substantially to the level that existed before the **Network Attack**; or (ii) one hundred and twenty (120) consecutive days after expiration of the **Waiting Period**.
- The Expiration Date of this Policy will not cut short the **Period of Restoration**.
- 2.43** “**Personal Information**” means:
- (a) information from which a natural person may be uniquely and reliably identified, including, but not limited to a person’s name, address, telephone number, email address, in combination with their account relationships, account numbers, passwords, PIN numbers, credit card numbers or biometric information; or
  - (b) personal information as defined in any privacy protection law or regulation governing the control and use of a natural person’s personal and confidential information.
- 2.44** “**Policy Period**” means the period from the Inception Date shown in Item 2. of the Schedule to the Expiration Date shown in Item 2. of the Schedule, or to any earlier cancellation date.

**2.45 “Privacy Wrongful Act”** means any actual or alleged act, error, misstatement, misleading statement, omission, neglect or breach of duty committed by any **Insured** or **Third Party Contractor**, which results in:

- (a) the misappropriation, mishandling, loss or disclosure of **Personal Information**;
- (b) a breach or violation of any law or regulations associated with the control and use of **Personal Information**;
- (c) **Identity Theft**; or
- (d) the unauthorised release of a third party’s confidential and proprietary business information.

**2.46 “Property Damage”** means physical injury to, loss or destruction of, or loss of use of tangible property.

**2.47 “Public Relations Event”** means the publication of unfavourable information relating to the **Wrongful Acts** of an **Insured**, which can be reasonably considered to lessen public confidence in the competence, integrity or viability of the **Insured** to conduct business.

**2.48 “Public Relations Expenses”** means the following amounts, when incurred during the pendency of, and in anticipation of, a **Public Relations Event**:

- (a) amounts for which the **Insured** incurs for those services performed by a public relations firm, crisis management firm or law firm selected by the **Insured** and approved in advance in writing by the **Underwriters**, to minimise potential harm to the **Insured** arising from a **Public Relations Event**, including, without limitation, maintaining and restoring public confidence in the **Insured**, and providing advice to the **Insured** or any of its directors, officers, partners or **Employees**; and
- (b) amounts for which the **Insured** becomes legally liable for the reasonable and necessary printing, advertising, mailing of materials, or travel by directors, officers, partners, **Employees** or the firm rendering services as referenced above.

**“Public Relations Expenses”** shall not include compensation, fees, benefits or overhead of any **Insured** or any **Third Party Contractor**.

**2.49 “Related Claims”** means all **Claims** for **Wrongful Acts** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally, or in any other way.

All such **Claims** shall be considered first made at the earliest time that any such **Claim** is first made against the **Insured**.

**2.50 “Subsidiary”** means any entity of which, prior to the Inception Date set forth in Item 2. of the Schedule, the **Company** has **Management Control**.

**2.51 “Targeted Denial of Service Attack”** means an intentional attack that targets only the **Named Insured’s Network**, or any portion thereof, and which operates by sending an excessive volume of data to that **Network** and thereby prevents authorised users of that **Network** from gaining access to or using it.

- 2.52** “**Targeted Malicious Code**” means unauthorised and either corrupting or harmful software code, including but not limited to computer viruses, Trojan horses, worms, logic bombs, spy ware or spider ware, which is intentionally introduced only into the **Named Insured’s Network** or any portion thereof. “**Targeted Malicious Code**” does not include any software code that is identified or assigned a name by a recognised computer security organisation, including, without limitation, McAfee, Inc., Symantec Corporation, or Secunia, or any variant of such identified or named software code.
- 2.53** “**Third Party Contractor**” means a person or organisation that provides services to or on behalf of an **Insured** pursuant to a written agreement in circumstances where the person or organisation acts within the scope of the agreement and the agreement has been reviewed by the **Insured’s** in-house or outside counsel prior to execution of the agreement.
- 2.54** “**Underwriters**” means the underwriter(s) named in Item 10. of the Schedule.
- 2.55** “**Waiting Period**” means the number of consecutive hours specified in Item 5. of the Schedule (as respects Insuring Agreement 1.1) that immediately follows the **Named Insured’s** communication of notice of a **Network Attack** to the **Underwriters** in accordance with Section 4.7, and shall apply to each **Period of Restoration**.
- 2.56** “**Website**” means the software, content and other materials accessible via the Internet at a designated Uniform Resource Locator address.
- 2.57** “**Wrongful Act**” means a **Privacy Wrongful Act, Network Security Wrongful Act, or a Media and Social Media Wrongful Act.**

### **SECTION 3: EXCLUSIONS**

This Policy does not cover **Loss** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any of the following:

- 3.1** any failure or malfunction of electrical or telecommunications infrastructure or services; provided, however, that this Exclusion shall not apply to any otherwise covered **Claim** or **Loss** arising out of failure of **Network Security** to prevent a **Wrongful Act** that was solely caused by a failure or malfunction of telecommunications infrastructure or services under the **Insured’s** direct operational control;
- 3.2** any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss or any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism; provided, however, that:
- (a) this Exclusion shall not apply to cyber terrorism;
  - (b) if the **Underwriters** allege that by reason of this Exclusion, any loss, damage, cost or expense is not covered by this Policy, the burden of proving the contrary shall be upon the **Insured**; and
  - (c) in the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect;

for the purpose of this Exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear;

- 3.3 war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- 3.4 any impact to the air, soil or water resulting from the discharge, dispersal, seepage, release or escape of any solid, liquid, gaseous, biological, radioactive or thermal irritant or contaminant whether occurring naturally or otherwise, including smoke, vapour, soot, fibres, germs, viruses, fumes, acids, alkalis, chemicals, waste, and other toxic or hazardous substances, sound, noise, smell, vibration, waves or changes in temperature;
- 3.5 **Bodily Injury or Property Damage**; provided, however, that this Exclusion shall not apply to **Loss** from any **Claim** under Insuring Agreement 1.2 alleging emotional distress, mental injury, mental tension or mental anguish allegedly caused by a **Media and Social Media Wrongful Act** as described in Definition 2.34 (a), or a **Privacy Wrongful Act**;
- 3.6 transfer of, or the failure to transfer funds, money or securities; provided, however, that this Exclusion shall not apply to Insuring Agreement 1.3;
- 3.7 unsolicited electronic dissemination of faxes, e-mails, text messages or similar communications to actual or prospective customers of the **Company**, or to any other third party, including but not limited to any violation of any anti-spam statute, or any statute, law or regulation relating to a person's or entity's right of seclusion; provided, however, that this Exclusion shall not apply to:
  - (a) any portion of an otherwise covered **Claim** under Insuring Agreement 1.2 for a **Network Security Wrongful Act** or a **Privacy Wrongful Act**; or
  - (b) any unintentional dissemination of faxes, e-mails, text messages or similar communications; or
  - (c) any price fixing, restraint of trade, monopolization or unfair trade practices.
- 3.8 any infringement of patent or the misappropriation, misuse or disclosure of confidential and proprietary business information or trade secrets, other than a **Network Security Wrongful Act** or **Privacy Wrongful Act** as described in Definitions 2.40 (f) and 2.45 (d), respectively;
- 3.9 any actual or alleged violation of any law, regulation or rule (whether statutory or common law) relating to the ownership, purchase, sale or offer of, or solicitation of an offer to purchase or sell, securities; provided, however, that this Exclusion shall not apply to Insuring Agreement 1.3;
- 3.10 expiration or withdrawal of technical support by a software vendor; provided, however, that such expiration or withdrawal has been publicly announced by the software vendor for over sixty (60) days;

- 3.11 any failure to put right defective systems, procedures or software where the existence of defects, deficiencies, or vulnerability to attack, or intrusion has been brought to the attention of an **Executive Officer** in sufficient time in advance of a resultant **Loss** to advert or reduce the impact of the same;
- 3.12 any dishonest, fraudulent, criminal, malicious or intentional act or omission, or any willful violation of any statute, rule, or law, by an **Insured**, if an admission, final adjudication or finding establishes that such act, omission or violation occurred; provided, however, that this Exclusion shall not apply to any **Employee**;
- 3.13 any gaining by an **Insured** of any profit, remuneration or advantage to which such **Insured** is not legally entitled, if any admission, final adjudication or finding establishes that such **Insured** was not legally entitled to such profit or advantage or that such remuneration was improper or illegal; provided, however, that this Exclusion shall not apply to any **Employee**;

In determining the applicability of Exclusions 3.12 and 3.13, the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any natural person **Insured** shall not be imputed to any other natural person **Insured**; provided, however, that the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, an **Executive Officer** shall be imputed to **Company**.

- 3.14 a **Claim** or other matter covered by this Policy seeking relief or redress against an **Insured** in any form other than money damages, including without limitation the cost of complying with any order or settlement for injunctive, declaratory, or administrative relief;
- 3.15 any fact, circumstance, situation, transaction, event or **Wrongful Act**:
  - (a) underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding of which any **Insured** had received notice prior to the **Continuity Date**;
  - (b) which, prior to the **Continuity Date**, was the subject of any notice given by or on behalf of any **Insured** under any other policy of insurance; or
  - (c) which was known to the **Insured** prior to the **Continuity Date** and could reasonably be expected to give rise to a **Claim**;
- 3.16 arising out of or resulting from any contractual liability or obligation, or arising out of or resulting from breach of any contract or agreement, either oral or written; provided, however, that this Exclusion shall not apply to: (a) the extent the **Insured** would have been liable in the absence of such contract or agreement; or (b) Insuring Agreements 1.1 and 1.2;
- 3.17 arising out of or resulting from any seizure, nationalisation, confiscation, or destruction of the **Insured's Network** or **Digital Assets** by order of any governmental or public authority; provided, however, that this Exclusion shall not apply to Insuring Agreement 1.1;
- 3.18 alleging, arising out of, based upon or attributable to any fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event, however caused;

- 3.19** arising out of, based upon or attributable to, any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America;
- 3.20** (a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss; or
- (b) any legal liability of whatsoever nature,
- directly or indirectly caused by or contributed to by or arising from:
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

## **SECTION 4: CONDITIONS**

### **4.1 Limits of Liability**

- 4.1.1 The Aggregate Limit of Liability for this Policy, as set forth in Item 3. of the Schedule, is the **Underwriters'** maximum liability under all Insuring Agreements combined.
- 4.1.2 The Sublimit of Liability for each Insuring Agreement, as set forth in Item 4. of the Schedule, is the **Underwriters'** maximum liability for each corresponding Insuring Agreement.
- 4.1.3 Any Sublimit of Liability of this Policy: (a) shall be part of, and not in addition to, the Aggregate Limit of Liability of this Policy; and (b) is the maximum liability of the **Underwriters** for all **Loss** to which the Sublimit of Liability applies.
- 4.1.4 If any Sublimit of Liability for an individual Insuring Agreement is exhausted by the payment of **Loss**, all obligations of the **Underwriters** under this Policy with respect to the individual Insuring Agreement, including any obligation to pay any further **Defence Costs**, will be completely fulfilled, and the **Underwriters** will have no further obligations under this Policy of any kind with respect to the individual Insuring Agreement.
- 4.1.5 Any payment of **Loss** under this Policy shall reduce and may exhaust the Aggregate Limit of Liability of this Policy as set forth in Item 3. of the Schedule. If the Aggregate Limit of Liability of this Policy is exhausted by the payment of **Loss**, the **Underwriters** will have no further obligations of any kind with respect to this Policy, including any obligation to pay any further **Defence Costs**, and the Premium set forth in Item 7. of the Schedule will be fully earned.
- 4.1.6 **Defence Costs** are not part of, and are in addition to, the Aggregate Limit of Liability and any Sublimit of Liability of this Policy. Payment by the **Underwriters** of **Defence Costs** shall not reduce any such Aggregate Limit of Liability or Sublimit of Liability.

## 4.2 Excess

- 4.2.1 The **Underwriters** shall only be liable to pay or reimburse the **Insured** for any **Loss** that exceeds the Excess applicable to each Insuring Agreement as set forth in Item 5. of the Schedule. The Excess shall be borne by the **Insureds** and remain uninsured. The applicable Excess shall apply to each and every **Claim** or other matter giving rise to coverage under each Insuring Agreement. A single Excess amount shall apply to all **Loss** from all **Related Claims**.
- 4.2.2 No Excess shall apply to Insuring Agreement 1.5, 1.6 and 1.7, or as may otherwise be specifically set forth in Item 5. of the Schedule.
- 4.2.3 The **Underwriters** will have no obligation whatsoever, either to the **Insureds** or to any person or entity, to pay all or any portion of any Excess amount on behalf of any **Insured**; however, the **Underwriters** will, at their sole discretion, have the right and option to do so, in which event, the **Insureds** agree to repay the **Underwriters** any amounts so paid.
- 4.2.4 In the event that the same or related act(s), error(s), event(s), omission(s) or circumstances results in coverage under more than one Insuring Agreement, then only one Excess shall apply, which shall be the highest applicable Excess set forth in Item 5. of the Schedule.

## 4.3 Defence and Settlement of Claims

- 4.3.1 The **Underwriters** will have the right and duty to defend any **Claim** under Insuring Agreement 1.2 which is covered, in whole or in part, by this Policy even if such **Claim** is groundless, false or fraudulent. The **Underwriters** will have the right to conduct investigations and conduct negotiations and, with the consent of the **Insured**, enter into the settlement of any **Claim** as the **Underwriters** deem appropriate.
- 4.3.2 If the **Insured** refuses to consent to the settlement of a **Claim** acceptable to the claimant in accordance with the **Underwriters'** recommendations, then, subject to the Aggregate Limit of Liability and any applicable Sublimit of Liability, the **Underwriters'** liability for any such **Claim** will not exceed:
- (a) the amount for which such **Claim** could have been settled by the **Underwriters**, plus **Defence Costs** incurred up to the date the **Insured** refused to settle such **Claim**; plus
  - (b) fifty percent (50%) of any **Loss** in excess of the amount described in (a) above, incurred in connection with such **Claim**. The remaining **Loss** will be borne by the **Insured** at its own risk and will be uninsured.
- 4.3.3 In the event there is a determination that the **Insureds** shall not be entitled to payment of **Defence Costs** under the terms and conditions of this Policy, such payments by the **Underwriters** shall be repaid to the **Underwriters** by the **Insureds**.

## 4.4 Other Insurance

- 4.4.1 All **Loss** and other amounts payable under this Policy will be excess of, and will not contribute with, any other valid and collectible insurance provided by any Professional Indemnity, Privacy Policy, Technology Errors & Omissions Policy, Network Security Liability Policy, Cyber-liability Policy, Media Liability Policy or any other equivalent policy, unless such other insurance is

specifically stated to be in excess of this Policy. This Policy will not be subject to the terms of any other insurance.

- 4.4.2 Notwithstanding Section 4.4.1 above, with respect to any **Claim** under Insuring Agreement 1.2 for which any coverage is available under any insurance policy(ies) which applies to claims for **Bodily Injury** and/or **Property Damage**, the **Underwriters** will have no duty to defend such **Claim**, or to pay **Defence Costs** incurred by or on behalf of any **Insured** in connection with such **Claim**, or to contribute to any defence provided to any **Insured** under such other insurance policy(ies), or to reimburse any other insurer or underwriter, in whole or in part, for **Defence Costs** incurred in connection with such **Claim**.
- 4.4.3 For the purpose of Section 4.4.2 above, **Bodily Injury** shall not mean emotional distress, mental injury, mental tension or mental anguish allegedly caused by a **Media and Social Media Wrongful Act** or a **Privacy Wrongful Act**.

#### 4.5 Cooperation and Subrogation

- 4.5.1 In the event of a **Claim** or any other matter for which coverage is sought under this Policy, the **Insured** will provide the **Underwriters** with all information, assistance, and cooperation that the **Underwriters** reasonably request, and will do nothing that may prejudice the **Underwriters'** position or potential or actual rights of recovery. At the **Underwriters'** request, the **Insured** will assist in any actions, suits, or proceedings, including but not limited to attending hearings, trials and depositions, securing and giving evidence, and obtaining the attendance of witnesses, and will also assist in making settlements.
- 4.5.2 In the event of any payment under this Policy, the **Underwriters** will be subrogated to the extent of any payment to all of the rights of recovery of the **Insured**. The **Insured** will execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the **Underwriters** to effectively bring suit in their name.
- 4.5.3 Any sums recovered after expenses shall be paid first to reimburse the **Insured** for any sums paid to a claimant and any funds remaining shall be paid to the **Underwriters** although the **Underwriters** shall control any recovery action, including settlement in return for advancing funds for the subrogation action.
- 4.5.4 The obligations of the **Insured** under this Section 4.5 will survive the expiration or cancellation of the Policy.

#### 4.6 Determination of Business Interruption Costs

##### 4.6.1 Reduction in Business Income

The reduction in **Business Income** will be computed based upon: (a) the net profit or loss, before income taxes, of the **Named Insured's** business before the **Network Attack** occurred; and (b) the likely net profit or loss (before income taxes) the **Named Insured** would have earned, or incurred, during the **Period of Restoration** had a **Network Attack** not occurred.

Provided, however, that in computing a reduction in **Business Income**, such amount:

- (a) will be reduced by any increase in net profit earned during the thirty (30) days immediately following the expiration of the **Period of Restoration** from the sales of goods or services that would have been

recorded during the **Period of Restoration**, but for the **Network Attack**;

- (b) will not include compensation, fees, benefits, overhead, or the charges or expenses of any **Insured**; and
- (c) will be reduced to the extent that the **Named Insured** can resume its **Business Operations**, in whole or in part, by making partial use of the **Insured's Network** and **Digital Assets** and by using available work-arounds.

#### 4.6.2 Extra Expense

The amount of **Extra Expense** will be determined based upon all expenses that exceed the normal operating expenses that the **Named Insured** would have incurred in its **Business Operations** during the **Period of Restoration** had a **Network Attack** not occurred. **Extra Expenses** will be paid under this Policy only to the extent that such expenses avoid or minimise a reduction of **Business Income** that otherwise would have been payable under Insuring Agreement 1.1.

The amount of **Extra Expense** loss will be reduced to the extent the **Named Insured** can return its **Business Operations** to normal and discontinue incurring such **Extra Expense**.

### 4.7 Notice Requirements and Consent

- 4.7.1 The **Insured** shall, as a condition precedent to the obligations of the **Underwriters** under this Policy: (a) give written notice to the **Underwriters** of any **Claim** made against the **Insured** as soon as practicable after an **Executive Officer** first becomes aware of such **Claim**; or (b) give written notice to the **Underwriters** of any other matter for which coverage is provided under this Policy as soon as practicable after such matter first arises. In all events, notice must be given no later than thirty (30) days after the Expiration Date of this Policy.
- 4.7.2 An **Executive Officer** may, during the **Policy Period**, notify the **Underwriters** of any circumstance reasonably expected to give rise to a **Claim** or any other matter for which coverage is provided under this Policy. The notice must include the reasons for anticipating such a **Claim** or matter, and full relevant particulars with respect to dates, the alleged, suspected, potential or supposed breach, the potential **Insured** and claimant(s) involved, an estimate of possible loss and the potential media or regulatory consequences.
- 4.7.3 All notices to the **Underwriters** as required under this Policy shall be transmitted by certified mail or prepaid courier to the address set forth in Item 9. of the Schedule or by electronic mail to the e-mail address listed in Item 9. of the Schedule. Such notices shall be deemed effective when received by the **Underwriters**.
- 4.7.4 As a condition precedent to any coverage under this Policy, the **Insured** shall not admit or assume any liability, enter into any settlement agreement, or consent to any judgment or incur any **Defence Costs** or any other amounts covered under this Policy, without the prior written consent of the **Underwriters** (which shall not be unreasonably delayed or withheld).

#### 4.8 Extended Reporting Period

- 4.8.1 If this Policy is non-renewed by the **Underwriters**, the **Insured** shall have the right to purchase an Extended Reporting Period of twelve (12) months.
- 4.8.2 The **Insured's** right to purchase an Extended Reporting Period shall lapse unless written notice of election to purchase such Extended Reporting Period and the applicable additional premium is received by the **Underwriters** within sixty (60) days after non-renewal of this Policy. The **Insured** shall not have any right to an Extended Reporting Period in the event of a Change in Control as described in Section 4.10.
- 4.8.3 The additional premium for an Extended Reporting Period shall be determined by multiplying the percentage set forth in Item 8. of the Schedule by the Premium set forth in Item 7. of the Schedule. Such premium shall be fully earned at the inception of the Extended Reporting Period.
- 4.8.4 During the Extended Reporting Period, the **Insured** may provide the **Underwriters** with notice, pursuant to Section 4.7, of any **Claim** first made against an **Insured** during the Extended Reporting Period, for any **Wrongful Act** occurring prior to the effective date of the non-renewal of this Policy.
- 4.8.5 The Extended Reporting Period provided under this Policy: (a) shall not increase or reinstate any Limit of Liability or Sublimit of Liability of this Policy; and (b) is non-cancellable.

#### 4.9 New Subsidiaries

4.9.1 The term **Subsidiary** shall automatically include any entity of which the **Named Insured** first has **Management Control** ("Controlled Entity") during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, as long as:

- (a) such acquired entity is not formed as a partnership; and
- (b) such acquired entity's total consolidated assets are less than thirty-five percent (35%) of the consolidated gross assets of the **Named Insured** at the Inception Date set forth in Item 2. of the Schedule;

provided, however, that the **Insured** gives written notice to the **Underwriters** of such acquired entity prior to the end of the **Policy Period**.

- 4.9.2 Any entity acquired during the **Policy Period** by the **Named Insured**, other than any entity described in Section 4.9.1 above, shall automatically be covered for a period of ninety (90) days from the effective date of the acquisition, but only in respect of **Wrongful Acts** which occur after such date. The **Underwriters** may extend such coverage beyond ninety (90) days if the **Named Insured** submits a written request to the **Underwriters** within ninety (90) days from the effective date of the acquisition with full details regarding such entity. This extension of coverage is conditioned upon the **Insured** paying when due any additional premium required by the **Underwriters** and accepting any amended terms and conditions of this Policy.
- 4.9.3 Coverage afforded under this Policy for a **Claim** made against any **Insured** relating to a **Wrongful Act** of a **Subsidiary** shall only apply to **Wrongful Acts** committed or allegedly committed during the time such entity is a **Subsidiary**.

#### 4.10 Change in Control

If, during the **Policy Period**, any of the following events occurs:

- (a) the acquisition of the **Named Insured**, or of more than fifty percent (50%) of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity;
- (b) the appointment of a receiver, conservator, trustee, liquidator, or rehabilitator, or any similar official, for or with respect to the **Named Insured**; or
- (c) the obtaining by any person, entity, or affiliated group of persons or entities of the right to elect, appoint, or designate at least fifty percent (50%) of the directors or trustees of the **Named Insured**,

then coverage under this Policy will continue in full force and effect but only with respect to **Claims** under Insuring Agreement 1.2 for **Wrongful Acts** committed before any such event. After any such event, this Policy may not be cancelled, regardless of Section 4.11.2, and the entire premium for the Policy will be deemed fully earned.

#### 4.11 Cancellation

- 4.11.1 The **Underwriters** may not cancel this Policy except for failure to pay a premium when due. The **Underwriters** will deliver or mail by first class, registered, or certified mail to the **Named Insured** at its last known address, written notice of cancellation at least ten (10) days before the effective date of cancellation. A copy of such notice shall be sent to the **Named Insured's** agent of record.
- 4.11.2 The **Insured** may cancel this Policy at any time by giving the **Underwriters** written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. In such event, the **Underwriters** shall retain the short rate proportion of the premium herein. The **Underwriters** will release any such premium to the **Insured** after receipt of a No Claims Declaration from the **Insured**.

#### 4.12 Representations; Severability

- 4.12.1 The **Insured** represents that the particulars and statements contained in the proposal form are true, accurate, and complete, and agrees that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy.
- 4.12.2 In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the proposal form, the knowledge of one natural person **Insured** will not be imputed to any other natural person **Insured**; provided, however, that this Policy will be void:
  - (a) with respect to any natural person **Insured** who knew of such untruth, misrepresentation or omission; and
  - (b) with respect to the **Named Insured**, but only if an **Executive Officer**,

or any person in a functionally equivalent position within the **Named Insured**, knew of such untruth, misrepresentation or omission.

#### **4.13 Legal Action Against the Underwriters**

- 4.13.1 Any and all disputes arising out of or relating to this Policy, including its formation and validity, and whether between the **Underwriters** and the **Insured** or any person or entity deriving rights through or asserting rights on behalf of the **Insured**, shall be finally and fully determined in New Zealand.
- 4.13.2 No person or entity may bring a legal action against the **Underwriters** under this Policy unless there has been full compliance by the **Insured** with all of the terms and conditions of this Policy.
- 4.13.3 In addition to Section 4.13.2 above, no action may be taken against the **Underwriters** as respects Insuring Agreement 1.2 unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant and the **Underwriters**.
- 4.13.4 No person or entity will have any right under this Policy to join the **Underwriters** as a party to any **Claim** under Insuring Agreement 1.2 to determine the liability of any **Insured**; nor may the **Underwriters** be impleaded by an **Insured** or his, her, or its legal representative in any such **Claim**.

#### **4.14 Death, Incapacity, or Insolvency of an Insured**

The **Underwriters** will not be relieved of any its obligations under this Policy by the death, incapacity, or insolvency of any **Insured**. In the event of the death, incapacity, or insolvency of an **Insured**, any **Claim** against the estate, heirs, legal representatives, or assigns of such **Insured** for a **Wrongful Act** of such **Insured**, will be deemed to be a **Claim** against such **Insured**.

#### **4.15 Spousal and Domestic Partners Extension**

The coverage afforded under this Policy will, subject to all of its terms, conditions, limitations, and exclusions, be extended to apply to **Loss** resulting from a **Claim** against a person who, at the time the **Claim** is made, is a lawful spouse or domestic partner (whether such status is derived by reason of statutory law or common law of any applicable jurisdiction in the world, or by any formal program established by the **Named Insured**) of an **Insured**, but only if: (a) the **Claim** against such spouse or domestic partner results from a **Wrongful Act** actually or allegedly committed by the **Insured**, to whom the spouse is married or who is a partner to the domestic partner; and (b) such **Insured** and his or her spouse or domestic partner are represented by the same counsel in connection with such **Claim**.

#### **4.16 GST**

Where the **Insured** is liable to pay tax under section 5 (13) of the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the section or Act) upon receiving any indemnity payment under this Policy, the **Underwriters** will indemnify the **Insured** for the costs of that tax. The indemnity under this Section 4.16 is payable

by the **Underwriters** in addition to the Aggregate Limit of Liability and any Sublimits of Liability of this Policy.

#### 4.17 Territory

This Policy applies to:

- (a) **Wrongful Acts** or any other matters which give rise to coverage under this Policy which take place anywhere in the world; and
- (b) **Claims** brought against the **Insured** anywhere in the world except any such **Claim** brought in the United States of America, Canada or any possession or territory of either such country or any legal proceeding brought to enforce a judgment obtained in any such country, possession or territory.

#### 4.18 Authorisation

Except as otherwise specifically provided under any other provision of this Policy, the **Named Insured** will act on behalf of all other **Insureds** with respect to all matters under this Policy including the receiving any notices and return premiums from the **Underwriters**.

#### 4.19 Changes

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Underwriters** will not effect a waiver or change in any part of this Policy or stop the **Underwriters** from asserting any right under the terms, conditions, and limitations of this Policy. The terms, conditions, and limitations of this Policy can be waived or changed only by written endorsement issued by the **Underwriters**.

#### 4.20 Several Liability

- 4.20.1 The liability of an **Underwriter** under this Policy is several and not joint with other **Underwriters** party to this Policy. An **Underwriter** is liable only for the proportion of liability it has underwritten. An **Underwriter** is not jointly liable for the proportion of liability underwritten by any other **Underwriter**; nor is an **Underwriter** otherwise responsible for any liability of any other **Underwriter** that may underwrite this Policy.
- 4.20.2 The proportion of liability under this Policy underwritten by an **Underwriter** (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.
- 4.20.3 In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an **Underwriter**. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion; nor is any member otherwise responsible for any liability of any other **Underwriters** that may underwrite this Policy. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

4.20.4 Although reference is made at various points in this clause to “this Policy” in the singular, where the circumstances so require this should be read as a reference to Policies in the plural.

#### **4.21 Governing Law and Disputes**

This Policy and any issue, including all and any disputes, relating to its formation, construction, validity or operation shall be determined by the laws of New Zealand whose Courts shall have exclusive jurisdiction to hear any dispute.

#### **4.22 Assignment**

This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Underwriters**.

#### **4.23 Address for Service**

Delta Insurance New Zealand Limited, as agent for and on behalf of certain **Underwriters** at Lloyd’s, will accept notification of any **Claims** or circumstances upon presentation to the address set forth in Item 9. A. of the Schedule.

#### **4.24 Complaints Procedure**

Any enquiry or complaint relating to this Policy should be referred to Delta Insurance New Zealand Limited in the first instance.

If this does not resolve the matter or the **Insured** is not satisfied with the way the enquiry or complaint has been dealt with, the **Insured** should write to:

Lloyd’s General Representative in New Zealand  
C/O Hazelton Law  
Level 3  
101 Molesworth Street  
P O Box 5639  
Wellington New Zealand

#### **4.25 Entire Agreement**

The **Insured** agrees that this Policy, the Schedule and the attached Appendix A., including the proposal form and any endorsements, constitutes the entire agreement between them and the **Underwriters** or any of their agents relating to this insurance.

#### **4.26 Third Parties**

No person or entity other than the **Insured** shall have any rights under this Policy whether pursuant to statute or otherwise.

#### **4.27 Headings**

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.