Cyber Liability

Policy wording

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In consideration of the premium once paid in full, the **Underwriters** and the Named **Insured**, on behalf of all **Insureds**, agree as follows:

Section 1:
Insuring Agreements

1.1. Crisis Management

The **Underwriters** shall pay on behalf of the **Insured**:

1.1.1 Data Forensic Expenses

The **Data Forensic Expenses** incurred by the **Insured** due to a **Breach**, or an act which the **Insured** reasonably believes is a **Breach**, which occurs during the **Policy Period** or any applicable **Extended Reporting 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 5 of the Schedule

1.1.2 Breach Consultation Costs

Breach Consultation Costs incurred by the **Insured** due to a **Network Security Breach**, **Privacy Breach** or **Confidentiality Breach**, or an act which the **Insured** reasonably believes is a **Network Security Breach**, **Privacy Breach** or **Confidentiality Breach**, which occurs during the **Policy Period** or any applicable **Extended Reporting 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 5 of the Schedule.

1.1.3 Costs to Restore

The **Costs to Restore** incurred by the **Insured** due to a **Network Attack** which occurs during the **Policy Period** or any applicable **Extended Reporting 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 5 of the Schedule.

1.1.4 Breach Response Costs (Notification, Credit and ID Monitoring)

Breach Response Costs incurred by the **Insured** arising from a **Network Security Breach**, **Privacy Breach** or **Confidentiality Breach** which takes place during the **Policy Period** or any applicable **Extended Reporting 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 5 of the Schedule.

1.1.5 Public Relations

Public Relations Expenses incurred by or on behalf of the **Insured** in connection with a **Public Relations Event**, which first takes place, or is reasonably anticipated to take place, during the **Policy Period** or any applicable **Extended Reporting 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 5 of the Schedule.

1.2. Business Interruption

The **Underwriters** shall pay on behalf of the **Insured**:

a. **Business Interruption Costs** incurred by the **Insured** during the **Period of Restoration** due to a **Network Attack**, which first occurs during the **Policy Period** and is reported to the **Underwriters** in accordance with the terms of this Policy, or;

b. **Business Interruption Loss** from **Cloud Failure** caused by:

- A failure of any computer or telecommunication hardware under the control of the **Cloud Service Providers,** or;
- A failure or violation of the security of the **Cloud Service Provider** including without limitation that which is caused by the receipt of a **Malicious Code** or a denial of service attack, or;
- The insolvency or other financial difficulties of the **Cloud Service Provider,** or;
- Law enforcement, regulatory or court order disrupting the business of the **Cloud Service Provider**.

This coverage is subject to a **Waiting Period** of 24 hours

1.3. First Party Coverage

The **Underwriters** shall pay on behalf of the **Insured**:

1.3.1 Hacker Theft Cover

Hacker Theft Loss sustained by the **Insured** as a direct result of **Hacker Theft** which is: (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 5 of the Schedule.

1.3.2 Network Extortion Coverage

Any amount which the **Insured** actually pays to any person or entity, including for services to avoid, defend, preclude or resolve a Network Extortion which first occurs during the **Policy Period** and is reported to the **Underwriters** in accordance with the terms of this Policy.

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This coverage is subject to a Sublimit of Liability as specified in Item 5 of the Schedule.

1.3.3 Loss Adjustor Costs

The reasonable and necessary fees and expenses of a qualified external expert incurred by the **Insured** to determine the amount and the extent of a **Loss** which is covered by the Policy.

This coverage is subject to a Sublimit of Liability as specified in Item 5 of the Schedule.

1.4. Third Party Coverage

1.4.1 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, arising from any **Breach**,.

Underwriters liability for **Loss** from any **Claim** alleging physical injury, sickness, disease or death, only, is limited to $250,000 in the aggregate.

1.4.2 Regulator Liability

The **Underwriters** shall pay on behalf of the **Insured**, the **Loss** from any **Claim** first made by a **Regulator** 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, arising from any **Breach**.

This coverage is subject to a Sublimit of Liability as specified in Item 5 of the Schedule.

1.4.3 Investigation Liability

The **Underwriters** shall pay on behalf of the **Insured**, the **Loss** from any **Claim** against the **Insured** arising from an internal investigation or enquiry conducted by or on behalf of the **Insured** into the operations of the **Insured** which:

a. is conducted: (i) in response to a direct request from a **Regulator**; (ii) to assess whether a **Report** is necessary or desirable; (iii) to prepare a **Report**; or (iv) in response to a **Report**;

b. first commences during the **Policy Period** or any applicable **Extended Reporting Period**;

c. is reported to the **Underwriters** in accordance with the terms of this Policy; and

d. arises from any **Breach**.

This coverage is subject to a Sublimit of Liability as specified in Item 5 of the Schedule.

1.4.4 PCI DSS Cover

The **Underwriters** shall pay on behalf of the **Insured**, the **Loss** from any **Claim** by a Card **Payment Provider** for breach of the **PCI DSS** which is first made against the **Insured** during the **Policy Period** or any applicable **Extended Reporting 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 5 of the Schedule.

1.4.5 Consumer Redress Fund Cover

The **Underwriters** shall pay on behalf of the **Insured**, any monetary amounts the **Insured** is legally required to pay, or has agreed to pay by way of settlement, to establish a fund for the payment of consumer claims, arising out of a **Claim** first made against the **Insured** during the **Policy Period** or any applicable **Extended Reporting Period**.

This coverage is subject to a Sublimit of Liability as specified in Item 5 of the Schedule.

Section 2:
Automatic Extensions

2.1. Emergency Costs

If the **Underwriters'** prior written consent cannot be obtained within a reasonable time prior to any Defence Costs or any Loss Mitigation Costs being incurred by or on behalf of the **Insured**, the **Underwriters** shall retrospectively approve such Defence Costs or any Loss Mitigation Costs, up to any applicable Sublimit of Liability set forth in this Policy; however, such approval shall be provided only for those Defence Costs or Loss Mitigation Costs incurred during the seventy-two (72) hour period commencing from the time such costs are first incurred by the **Insured**.

This coverage is subject to a Sublimit of Liability as specified in Item 5 of the Schedule.

2.2. Loss Mitigation Costs

If the **Company** reasonably determines during the **Policy Period** or any applicable **Extended Reporting Period** that urgent action is needed in order to avoid or minimise the risk of a **Claim** or Business Interruption **Loss** for which coverage under this Policy would apply, the **Insured** shall be entitled to retain a loss mitigation advisor to provide services in connection with avoiding or minimising such risk.

The **Underwriters** shall pay the **Insured** for the reasonable fees, costs and expenses (including Goodwill Coupon) incurred by or on behalf of the **Insured**, with the **Underwriters'** prior written consent (such consent not to be unreasonably withheld or delayed), for such loss mitigation services (the "**Loss Mitigation Costs**"). This Automatic Extension 2.2 does not extend to cover the **Insured's** own time spent in mitigating any such risk or any element of profit or loss of profit to the **Insured** or third party.

This coverage is subject to a Sublimit of Liability as specified in Item 5 of the Schedule.

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2.3. Network Improvement

In the event of a **Network Security Breach** first discovered during the **Policy Period** or any applicable **Extended Reporting Period**, the **Underwriters** will pay on behalf of the **Insured** the reasonable and necessary costs incurred by the **Insured** with the **Underwriters'** prior written consent to redress the underlying cause of such **Network Security Breach**, including but not limited to upgrading or improving the **Company's Network**, to the extent that such redress is reasonable and necessary to prevent any future **Network Security Breach**.

This coverage is subject to a Sublimit of Liability as specified in Item 5 of the Schedule.

2.4. Personal Reputation Cover

The **Underwriters** shall pay on behalf of the **Insured**, Personal **Public Relations Expenses** incurred to avert or mitigate damage to the reputation of any past or present **Executive Officer** caused by a **Breach**, **Claim** or **Loss** covered under this Policy.

This coverage is subject to a Sublimit of Liability as specified in Item 5 of the Schedule.

2.5. Free Security Consultation

During the **Policy Period**, the **Insured** is entitled to free advice (from the **Underwriters'** approved practitioners) on any matters relating to cybersecurity issues arising from the conduct of the **Insured's** Business Operations, subject to the following conditions:

a. an appointment must be made in writing with the nominated practitioner and the **Underwriters**;

b. entitlement to advice is limited to a maximum of one hour in total per **Policy Period** and any unused hours or part thereof cannot be aggregated from one **Policy Period** to another;

c. the **Underwriters** reserve the right to change the appointed firms or nominated practitioners at any time (any such changes will be notified to the **Insured** on request); and

d. the **Insured** may not seek advice on this Policy or other indemnity issues concerning insurance policies issued by the **Underwriters** under this Automatic Extension 2.5.

2.6. Free Pre-Loss Consultation

During the **Policy Period**, the **Insured** is entitled to free advice (from the list of practitioners approved by the **Underwriters**) on matters relating to the **Insured's Business Operations**, subject to the following conditions:

a. an appointment must be agreed in writing beforehand by the **Underwriters**;

b. entitlement to advice is limited to one continuous session capped at a maximum of one hour (or any other duration pre-agreed by the **Underwriters**) during the Policy Period and any unused hours or part thereof cannot be aggregated from one Policy Period to another;

c. the **Underwriters** reserve the right to change the appointed firms or nominated practitioners at any time (any such changes will be notified to the **Insured** on request); and

d. the **Insured** may not seek advice on this Policy or other indemnity issues concerning insurance policies issued by the **Underwriters** under this Automatic Extension 2.6.

2.7. Network Failure

In the event of a **Network Failure** first discovered during the **Policy Period** and reported to the **Underwriters** in accordance with the terms of this Policy, the **Underwriters** will pay on behalf of the **Insured** the Business Interruption Costs incurred by the **Insured** during the **Period of Restoration**.

In the event of a **Network Failure** first discovered during the **Policy Period** or any applicable **Extended Reporting Period** and reported to the **Underwriters** in accordance with the terms of this Policy, the **Underwriters** will pay on behalf of the **Insured**:

a. the **Costs to Restore** incurred by the **Insured**; and

b. any reasonable and necessary costs incurred by the **Insured** with the **Underwriters'** prior written consent to redress the underlying cause of such **Network Failure**, including but not limited to upgrading or improving the **Company's Network**, to the extent that such redress is reasonable and necessary to prevent any future **Network Failure**.

Coverage under this Automatic Extension 2.7 is subject to the condition that the **Insured** must fully cooperate and complete a security health assessment conducted by the appointed firms or nominated practitioners of the **Underwriter**.

This coverage is subject to a Sublimit of Liability as specified in Item 5 of the Schedule.

2.8. Lost of Missed Bids

In the event of a **Network Attack** which results directly in the **Insured** not being awarded a bid or tender, the **Underwriters** agree to indemnify the **Insured** for loss of income during the **Indemnity Period** suffered as a result therefrom.

Coverage under this Automatic Extension 2.8 does not apply where:

a. The bid and/or tender proposal was not prepared prior to the **Network Attack**, and;

b. The **Insured** did not make reasonable efforts to submit the bid and/or tender proposal through alternative methods during the **Indemnity Period**, and/or;

c. The bid and/or tender proposal was able to be submitted during the **Indemnity period**.

d. Such bid and/or tender proposal would not have reasonably been accepted and won the contract for the project had the bid and/or proposal been submitted before the deadline absent of the **Network Attack**.

Exclusion 4.15 does not apply to this Automatic Extension which is subject to the Sublimit of Liability as specified in Item 5 of the Schedule.

2.9. Voluntary Shutdown

In the event of a **Network Attack** which results in **Business Interruption Costs**, **Underwriters** agree to indemnify the **Insured**, where:

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a. the Chief Executive Officer of the **Company** orders a voluntary and/or intentional shutdown, of the **Network**, which is within the **Companys** sole operation and control, when they have reasonable belief that such shutdown would limit the financial impact of the attack, or,

b. a regulatory body orders a voluntary and/or intentional shutdown of the **Network**, which is within the **Companys** sole operation and control, to limit the impact of the attack.

2.10. Reputational Harm

The **Underwriters** agree to indemnify the **Insured** for reputational harm consequential loss suffered as a result of a **Public Relations Event.**

Reputational harm consequential loss is the irrecoverable reduction in the **Insureds** income (less any sales tax) during the reputational harm consequential loss indemnity period less any standing costs and expenses saved during the same period

Reputational harm consequential loss indemnity period is the period starting on the date of the publication of the **Public Relations Event** and ends on the earlier of the date and time when the **Insured** resumes its **Business Operations** to substantially the level that existed before the **Network Attack** but not exceeding 180 consecutive days after the starting date

This coverage is subject to a Sublimit of Liability as specified in Item 5 of the Schedule

Section 3:
Definitions

3.1. "**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.

3.2. "**Affected Person**" means any natural person (including without limitation an Employee) whose Personal Data was accessed by or disclosed to, or reasonably may have **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.been accessed by or disclosed to, an unauthorised person as a result of a **Breach**.

3.3. "

3.4. "**Breach**" means a **Privacy Breach**, **Confidentiality Breach**, **Network Security Breach**, or a **Media and Social Media Breach**.

3.5. "**Breach Consultation Costs**" 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 approved by the **Underwriters**;

b. determine the indemnification obligations contained in any written contract between the **Insured** and **Third Party Contractor**; and

c. comply with any other legal requirement owed by the **Insured** to **Affected Persons**, third parties, or a **Regulator**.

3.6. "**Breach Notification Law**" means any law which requires an entity to provide notice to any **Affected Person**, third party or **Regulator** when Personal Data or confidential and proprietary business information is (or is likely to have been) accessed by or disclosed to an unauthorised person, including, for the avoidance of doubt, the EU General Data Protection Regulation (Regulations (EU) 2016/679), the Australian Privacy Amendment (Notifiable Data Breaches) Act 2017, the New Zealand Privacy Act 2020 and similar laws in other jurisdictions.

3.7. "**Breach** Response Costs" means any reasonable and necessary costs incurred by or on behalf of the **Insured** for the below services:

a. **Notice Services**;

b. **Call Centre Services**;

c. **Credit Monitoring Services**; and

d. **Identity Theft Resolution Services**.

3.8. "**Business Income**" means the net profit or loss, before income taxes, that the **Insured**'s **Business Operations** would likely have earned or incurred during the **Period of Restoration** had the **Network Attack** (under Insuring Agreement 1.2) or **Network Failure** (under Automatic Extension 2.7, if applicable) not occurred.

3.9. "**Business Interruption Costs**" means the total sum of the following:

a. **Extra Expense**; and

b. the loss of **Business Income** caused by the **Network Attack** (under Insuring Agreement 1.2) or **Network Failure** (under Automatic Extension 2.7, if applicable), calculated in accordance with Condition 5.6.1.

"**Business Interruption Costs**" do not include:

a. loss or damage arising out of the **Insured's** liability to any third party, for whatever reason;

b. fines, penalties, or taxes imposed on or levied against the **Insured**;

c. sums owed by the **Insured** pursuant to a contractual provision for liquidated damages, penalties, or a similar remedy;

d. legal costs or legal expenses of any nature incurred by the **Insured**;

e. costs or expenses incurred by the **Insured** to update, upgrade, or otherwise improve the **Insured's Network**, **Hardware Assets** or **Digital Assets** to a level of functionality better than that which existed prior to a **Network Attack** or **Network Failure**; provided however, this clause shall not apply to Automatic Extension 2.3 and Automatic Extension 2.7 (if applicable); or

f. any decrease in revenue caused by unfavourable business or economic conditions.

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3.10. "**Business Operations**" means the **Insured's** normal business activities that produce revenue for the **Insured** from the sale of goods or services.

3.11. "**Call Centre Services**" means the establishment and operation of a call centre. Call centre employees shall provide information to **Affected Persons** and other persons regarding **Privacy Breaches**, **Confidentiality Breaches**, **Public Relations Events**, **Credit Monitoring Services** and **Identity Theft Resolution Services**.

3.12. "**Card Payment Provider**" means any payment card association including but not limited to MasterCard, Visa and American Express.

3.13. "**Change of Control**" means any of the events described in Condition 5.10(a)-(c).

3.14. "**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 Breaches** or **Confidentiality Breaches**; or
- **f.** written request to toll or waive a statute of limitations.

3.15. "**Cloud Failure**" means any unannounced and unplanned failure of a **Cloud Service Provider** to provide an **Insured** access to the computing resources described in a **Vendor Agreement** within the parameters described in such **Vendor Agreement**.

3.16. "**Cloud Service**" means any on-demand access to hosted computer infrastructure or computing platforms, including, without limitation, cloud computing services provided on an Infrastructure as a Service (IaaS), Software as a Service (SaaS) model or Platform as a Service (PaaS) model, provided by any natural person or entity not owned, operated or controlled by the **Insured**.

3.17. "**Cloud Service Provider"** means an entity not owned, operated or controlled by the Insured that provides its customers with on demand access to hosted computer infrastructure or computing platforms, including cloud computing services provided on an, Infrastructure as a Service (Iaas), Platform as a Service (PaaS) model, or Software as a Service (Saas) model.

3.18. "**Company**" means:

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

3.19. "**Confidentiality Breach**" means any:

- **a.** unauthorised or accidental disclosure of, or unauthorised access to;
- **b.** unauthorised or accidental use of; or
- **c.** unauthorised or accidental loss or erasure of,
- **d.** any confidential and proprietary business information in the possession or control of the **Insured**.

3.20. "**Continuity Date**" means the date specified in Item 7 of the Schedule.

3.21. "**Controlled Entity**" has the meaning given to it in Condition 5.9.1.

3.22. "**Costs to Restore**" means the reasonable and necessary costs incurred by or on behalf of the **Insured** following a **Network Attack** (under Insuring Agreement 1.1.3) or **Network Failure** (under Automatic Extension 2.7, if applicable) to:

- **a.** research, replace, restore or re-collect **Digital Assets** from written records or from partial or fully matching electronic data records due to their corruption, deletion or destruction by the **Network Attack** or **Network Failure** (as applicable); or
- **b.** repair, restore or replace Hardware Assets that have been destroyed, damaged, altered, distorted, erased or lost due to the **Network Attack** or **Network Failure** (as applicable).

If the **Insured** determines that **Digital Assets** cannot be replaced, restored or re-collected, or that **Hardware Assets** cannot be repaired, restored or replaced, **Costs to Restore** shall be limited to the reasonable and necessary costs incurred by the **Insured** to reach that determination.

3.23. "**Credit Monitoring Services**" means triple- bureau credit monitoring provided to each **Affected Person** who enrols for such services.

3.24. "**Data Forensic Expenses**" means the reasonable and necessary costs incurred by or on behalf of the **Insured** to retain a qualified forensics firm, approved by the **Underwriter**, to investigate, examine and analyse the **Company's Network** to determine the cause and source of the unauthorised misappropriation, mishandling, loss or disclosure of **Personal Data** or the unauthorised release of confidential and proprietary business information and the extent to which such **Personal Data** and the confidential and proprietary business information was accessed.

3.25. "**Data Privacy Law**" means the Privacy Act 2020 and any other law or regulation governing the collection, use, disclosure, processing, storage or handling of personal data or personal information.

3.26. "**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**.

3.27. "**Digital Assets**" means software and any electronic data that is stored on or within the **Company's Network**. "**Digital Assets**" shall include the capacity of the **Company's Network** to store and process data and information and electronically disseminate data and information over the Internet.

3.28. "**Electronic Content**" means any data, e-mails, graphics, images, net or web casting, sounds, text, or similar matter disseminated electronically on the **Company's Website**, **Network** or the Internet, or matter disseminated by other means which is a duplication of matter already disseminated electronically.

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3.29. "**Employee**" means any individual, except an **Executive Officer**, whose labour or service is engaged by and directed by the **Insured** under a contract of service. This includes part-time, seasonal, leased and temporary employees, but only to the extent that they are acting under the direction and control of the **Insured**. "**Employee**" also includes volunteers where, but for the fact that they are unpaid, they would fall within the definition above. "**Employee**" does not include a **Third Party Contractor** or any person engaged under a contract of services, as opposed to a contract of service.

3.30. "**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.

3.31. "**Extended Reporting Period**" means an additional 12-month period as provided in Condition 5.8 which the **Insured** may purchase, during which the **Insured** may provide notice the **Underwriters** as set out in Condition 5.8

3.32. "**Extra Expense**" means the necessary expense incurred by or on behalf of the **Insured** during the **Period of Restoration** following a **Network Attack** (under Insuring Agreement 1.2) or **Network Failure** (under Automatic Extension 2.7, if applicable) which:

- **a.** would not have been incurred had the **Network Attack** or **Network Failure** (as applicable) not occurred;
- **b.** was incurred to avoid or minimise an interruption of the **Insured's Business Operations** caused by the **Network Attack** or **Network Failure** (as applicable); and
- **c.** actually avoided or minimised a reduction in **Business Income** that otherwise would have been payable under this Policy,
- **d.** calculated in accordance with Condition 5.6.2, provided however, **Extra Expense** will also include any such expense incurred during the **Waiting Period** if the **Network Attack** or **Network Failure** (as applicable) exceeds the **Waiting Period**.

3.33. "**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**.

3.34. "**Goodwill Coupon**" means a coupon offering a discount or rebate to an **Affected Person** for a future purchase of a **Company**'s products or services that is provided to such **Affected Person** by a **Company** in connection with a **Privacy Breach**. The **Goodwill Coupon** shall require each **Affected Person** to redeem or activate the discount or rebate offered within a set amount of time not to exceed ninety (90) days of receipt of the Goodwill Coupon. Under no circumstances shall the discount or rebate offered be automatic or self-activating.

3.35. "**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**.

3.36. "**Hacker Theft Loss**" means **Funds** wrongfully or erroneously paid by the **Insured**, as a direct result of a **Hacker Theft**, or usage charge loss,- the costs incurred as a direct result of the unauthorised access and use of the network system, (networked computer hardware or software, telephone system or internet system under the operation or ownership, or that is leased by the **Policyholder** or a **Subsidiary)**, by any party other than the **Insured,** as a result of a **Network Attack.**

3.37. "**Hardware Assets**" means any computer hardware, equipment or components that forms part of the **Company's Network**.

3.38. **"Indemnity Period"** means the period starting on the date of the **Network Attack** and the date and time when the **Insured** resumes its **Business Operations** substantially to the level that existed before the **Network Attack**, but not exceeding 90 consecutive days following the **Network Attack**

3.39. "**Identity Theft**" means the misappropriation of **Personal Data** in the possession or control of the **Insured** which has resulted in the wrongful or fraudulent use of such **Personal Data**, including, but not limited to, fraudulently emulating the identity of an individual or corporation

3.40. "**Identity Theft Resolution Services**" means identity theft monitoring and identity repair services, including any identity theft insurance premiums, provided to any **Affected Person** whose identity has been compromised as a result of **Identity Theft**.

3.41. "**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;
- **d.** for a limited liability company, all past, present, and future members, managers, officers or **Employees** of such limited liability company; and
- **e.** entities that the **Company** is required by contract to add as an **Insured** under the policy, but only for the **Breaches** of the **Company**,
- **f.** and for the avoidance of doubt, references to "the **Insured**" include any of the above persons.

3.42. "**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 Breaches**, **Confidentiality Breaches** or the **PCI DSS**;
- **e.** punitive, or exemplary or multiple damages where insurable under the applicable law most favourable to the insurability of such damages;
- **f.** payments made under Insuring Agreement 1.3.2;
- **g.** other amounts that an **Insured** becomes legally obligated to pay as a result of a **Claim**;
- **h.** payments made under Automatic Extension 1.4.5;
- **i.** **Defence Costs**; or
- **j.** any other amounts covered under any Insuring Agreement of this Policy.

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"**Loss**" does not include:

a. fines, penalties, taxes or the multiplied portion of multiple damages, except for those fines and penalties described in (d) above;

b. future profits, future royalties, costs of licensing, or other costs of obtaining future use, restitution, or disgorgement by the **Insured**;

c. the costs to comply with orders granting injunctive relief or non-monetary relief, including specific performance, or any agreement to provide such relief;

d. return or offset of fees, charges, royalties, or commissions for goods or services already provided or contracted to be provided; except for the **Goodwill Coupon**;

e. remedies due pursuant to a contractual provision; or sums due pursuant to a contractual provision for liquidated damages, agreed penalties, or similar remedy;

f. any amount which the **Insured** is not legally obligated to pay; or

g. matters which are uninsurable under applicable law.

3.43. "**Loss Mitigation Costs**" has the meaning given to that term in Automatic Extension 2.2.

3.44. "**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.

3.45. "**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.

3.46. "**Media and Social Media Breach**" means any actual or alleged act, error, misstatement, misleading statement, omission, neglect or breach of duty committed by the **Insured** or a **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, domain 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 trade mark, service mark, service name or trade name.

3.47. "**Named Insured**" means the organisation set forth in Item 1A of the Schedule.

3.48. "**Network**" means any computer hardware, software, firmware, and components thereof, including software and electronic data stored on or within the **Company'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, "**Network**" also includes any **Cloud Service**, any industrial control systems or SCADA (supervisory control and data acquisition) system used by the **Company**.

3.49. "**Network Attack**" means any malicious or unauthorised electronic attack on the **Company's Network**, including but not limited to any brute force attack, phishing, **Targeted Denial of Service Attack**, or **Targeted Malicious Code**, which:

a. alters, copies, misappropriates, corrupts, destroys, disrupts or deletes **Digital Assets** or **Hardware Assets**;

b. damages, prevents, restricts or hinders access to the **Company's Network**; and/or

c. materially or partially interrupts, suspends or impairs the **Insured**'s ability to conduct its **Business Operations**.

3.50. "**Network Extortion**" means a credible threat or connected series of credible threats, by an individual, to commit or to continue an attack on the **Company's Network**, or to disclose **Personal Data** or the unauthorised release of confidential and proprietary information obtained through a breach of the **Insured's Network Security**, for the purpose of obtaining payment from the **Insured**.

3.51. "**Network Failure**" means any unintentional and/ or unplanned outage of a **Network** (but excludes such an outage that is a result of a **Network Security Breach**)

3.52. "**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.

3.53. "**Network Security Breach**" means

a. any **Network Attack**; or

b. any breach of the **Insured's Network Security**, the consequences of which are:

i. the transmission of **Malicious Code** to or through the **Company's Network**;

ii. an authorised third party being restricted or prevented from accessing the **Company's Network** or the **Insured's** services;

iii. any person gaining unauthorised access to, use of or tampering with the **Company's** or a third party's **Network**;

iv. the denial or disruption of Internet service to the **Company** or a third party;

v. a **Privacy Breach**;

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vi. a **Confidentiality Breach**; or

vii. the physical theft of or damage to **Hardware Assets**.

3.54. **3.36** "**Notice Services**" means services to provide notification to **Affected Persons**, third parties or **Regulators** pursuant to any applicable **Breach Notification Law** or voluntary notification at the **Insured's** discretion provided that **Personal Data** or confidential and proprietary business information was compromised. "**Notice Services**" includes printing services, mailing services and postage services associated with mail notice.

3.55. "**PCI DSS**" means any data security standard published by the Payment Card Industry Security Standards Council.

3.56. "**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** (under Insuring Agreement 1.2) **or Network Failure** (under Automatic Extension 2.7, if applicable); or (ii) one hundred and twenty (120) consecutive days after expiration of the **Waiting Period**.

The **Period of Restoration** may continue after the end of the **Policy Period** or any applicable **Extended Reporting Period**.

3.57. "**Personal Data**" means data, whether true or not, about a natural person who can be identified: (a) from that data; or (b) from that data and other data to which the person who holds that data has or is likely to have access. "**Personal Data**" also includes any data or information defined as "personal data" or "personal information" under any **Data Privacy Law**.

3.58. "**Personal Public Relations Expenses**" means the following amounts, when incurred in response to a **Breach**, **Claim or Loss** covered by this Policy:

a. amounts which the **Insured** or a past or present **Executive Officer** incurs for services performed by a public relations firm, crisis management firm or law firm selected by the **Insured** or the relevant **Executive Officer**, which has been approved in advance in writing by the **Underwriters**, to minimise potential harm to the reputation of the relevant **Executive Officer**; and

b. amounts for which the **Insured** or a past or present **Executive Officer** 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.

"**Personal Public Relations Expenses**" shall not include compensation, fees, benefits or overhead of the **Insured**, a past or present **Executive Officer** or any **Third Party Contractor**.

3.59. "**Policy Period**" means the period from the Inception Date shown in Item 2A of the Schedule to the Expiration Date shown in Item 2B of the Schedule, or to any earlier cancellation date.

3.60. "**Privacy Breach**" means any:

a. unauthorised or accidental disclosure of, or unauthorised access to, **Personal Data** in the possession or control of the **Insured**;

b. unauthorised or accidental processing or use of **Personal Data** in the possession or control of the **Insured**;

c. unauthorised or accidental loss or erasure of **Personal Data** in the possession or control of the **Insured**;

d. a breach or contravention of any **Data Privacy Law** by the **Insured**; or

e. **Identity Theft**.

3.61. "**Property Damage**" means physical injury to, loss or destruction of, or loss of use of tangible property.

3.62. "**Public Relations Event**" means the publication of unfavourable information relating to **Breaches** affecting an **Insured**, which can be reasonably considered to lessen public confidence in the competence, integrity or viability of the **Insured** to conduct its **Business Operations**.

3.63. "**Public Relations Expenses**" means the following amounts, when incurred during the pendency of, and in anticipation of, a **Public Relations Event**:

a. amounts which the **Insured** incurs for services performed by a public relations firm, crisis management firm or law firm selected by the **Insured**, which has been approved in advance in writing by the **Underwriters**, to minimise potential harm to the **Insured's** reputation 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 the **Insured** or any **Third Party Contractor**.

3.64. "**Regulator**" means any official or public body with the responsibility to enforce data protection legislation.

3.65. "**Related Claims**" means all **Claims** for **Breaches** 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**.

3.66. "**Report**" means a report made to any **Regulator** by an **Insured** pursuant to a legal obligation on the **Insured** to inform or notify the **Regulator** of certain matters.

3.67. "**Subsidiary**" means any entity of which, prior to the Inception Date set forth in Item 2A of the Schedule, the **Company** has **Management Control**, together with any **New Subsidiary** as described in Condition 5.9, to the extent set out in that Condition 5.9.1.

3.68. "**Targeted Denial of Service Attack**" means an intentional attack that targets only the **Company'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.

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3.69. "**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 **Company's Network** or any portion thereof.

3.70. "**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.

3.71. "**Underwriters**" means the underwriter(s) named in Item 13 of the Schedule.

3.72. **"Vendor Agreement"** means a contract between the **Insured** and a **Cloud Service Provider** pursuant to which the **Cloud Service Provider** provides on-demand access to hosted computing resources to the **Insured** for a fee.

3.73. "**Waiting Period**" means the number of consecutive hours specified in Item 5 of the Schedule that immediately follows the **Insured's** communication of:

a. notice of a **Network Attack** (under Insuring Agreement 1.2a) or;

b. notice of a **Cloud Failure** (under Insuring Agreement 1.2b) or

c. **Network Failure** (under Automatic Extension 2.7, if applicable)

to the **Underwriters** in accordance with Section 5.7, and shall apply to each **Period of Restoration**.

3.74. "**Website**" means the software, content and other materials accessible via the Internet at a designated Uniform Resource Locator address.

Section 4:
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:

4.1. 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 **Breach** that was solely caused by a failure or malfunction of telecommunications infrastructure or services under the **Insured's** direct operational control;

4.2. 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. if 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;

4.3. 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;

4.4. **Bodily Injury** or **Property Damage**; provided, however, that this Exclusion shall not apply to **Loss** from any **Claim** under Insuring Agreement 1.4:

a. alleging emotional distress, mental injury, mental tension or mental anguish allegedly caused to a natural person by a **Breach**; or

b. loss of **Personal Data** or **Digital Assets** or loss of use thereof allegedly caused by a **Breach**;

4.5. transfer of, or the failure to transfer, funds, money or securities; provided, however, that this Exclusion shall not apply to Insuring Agreement 1.3.1;

4.6. 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 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 1.4 for a **Breach**;

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;

4.7. any infringement of patent or the misappropriation, misuse or disclosure of confidential and proprietary business information or trade secrets, other than a **Network Security Breach**, **Confidentiality Breach** or **Privacy Breach**;

4.8. 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 1.3.1;

4.9. 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;

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4.10. any dishonest, fraudulent, criminal, malicious or intentional act or omission, or any wilful 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**;

4.11. 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**;

provided that in determining the applicability of Exclusions 4.11 and 4.12, the facts pertaining to, the knowledge possessed by, or any **Breach** committed by, any natural person **Insured** shall not be imputed to any other natural person **Insured**;

4.12. any fact, circumstance, situation, transaction, event or **Breach**:

- **a.** underlying or alleged in any prior and/ or pending litigation or administrative or regulatory proceeding of which the **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 the **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**;

4.13. 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 1.2 and 1.4;

4.14. any cover; or liability of the **Underwriters** to pay any claim or provide any benefit, to the extent that doing so would expose the Underwriter to any legally enforceable sanction, prohibition, restriction, measure, ban or imposition under the laws or regulations of New Zealand, Australia, the United Kingdom, the European Union, the United States of America and/or the United Nations.

4.15. 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

4.16. any legal liability of whatsoever nature, directly or indirectly caused by or contributed to by or arising from:

- **a.** ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- **b.** the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

4.17. 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.

Supplementary Exclusion

Notwithstanding any provision to the contrary in this Policy, this insurance does not cover any loss, damage, liability, cost or expense of any kind (together "loss") directly or indirectly occasioned by, happening through or in consequence of **War** or a **Cyber Operation.**

For the purpose of this endorsement only, the following definitions apply;

War means:

1. the use of physical force by a **state** against another **state** or as part of a civil war,

rebellion, revolution, insurrection, and/or

2. 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,

whether war be declared or not

Cyber Operation means the use of a **Computer System** by or on behalf of a **State** to, disrupt, deny access to , degrade, manipulate or destroy, information in a **Computer System** of, or in, another **State**, which either:

- significantly impairs the ability of the **State** to function and/or

- significantly impairs the security capabilities of the **State**.

State means sovereign state.

Computer System means any computer, hardware, software, communications system, electronic device (including but not limited to, smart phone, laptop, tablet, wearable device) server, cloud infrastructure or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.

Attribution of a **Cyber Operation** to a **State**

1. The primary but not exclusive factor in determining attribution of a **Cyber Operation** shall be whether the government of the **State** (including its intelligence and security services) in which the **Computer System** affected by the **Cyber Operation** is physically located attributes the **Cyber Operation** to another **State** or those acting on its behalf.

2. Pending attribution by the government of the **State** (including its intelligence and security services) in which the **Computer System** affected by the C**yber Operation** is physically located, the **Underwriter** may rely upon an inference which is objectively reasonable as to attribution of the **Cyber Operation** to another **State** or those acting on its behalf. It is agreed that during this period no "loss" shall be paid.

3. In the event that the government of the S**tate** (including its intelligence and security services) in which the **Computer System** affected by the **Cyber Operation** is physically located either:

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3.1. takes an unreasonable length of time to, or

3.2. does not, or

3.3. declares it is unable to

attribute the **Cyber Operation** to another **State** or those acting on its behalf, it shall be for the **Underwriter** to prove attribution by reference to such other evidence as is available.

Section 5:
Conditions

5.1. Limits of Liability

5.1.1 The Limit of Liability for this Policy, as set forth in Item 3A of the Schedule, is the **Underwriters'** maximum liability under all Insuring Agreements combined.

5.1.2 The Sublimit of Liability for each Insuring Agreement, as set forth in Item 5 of the Schedule, is the **Underwriters'** maximum liability for each corresponding Insuring Agreement.

5.1.3 Any Sublimit of Liability of this Policy: (a) shall be part of, and not in addition to, the 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.

5.1.4 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.

5.1.5 Any payment of **Loss** under this Policy shall reduce and may exhaust the Limit of Liability of this Policy as set forth in Item 3A of the Schedule. If the 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 14 of the Schedule will be fully earned.

5.1.6 **Defence Costs** are not part of, and are in addition to, the Limit of Liability and any Sublimit of Liability of this Policy. Payment by the **Underwriters** of **Defence Costs** shall not reduce any such Limit of Liability or Sublimit of Liability.

5.2. Excess

5.2.1 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 4 of the Schedule. The Excess shall be borne by the **Insured** 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**.

5.2.2 No Excess shall apply to Insuring Agreements 1.1.2, 1.1.4 and 1.1.5, unless otherwise be specifically set forth in Item 4 of the Schedule.

5.2.3 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 the **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.

5.2.4 If 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 4 of the Schedule.

5.3. Defence and Settlement of Claims

5.3.1 The **Underwriters** will have the right and duty to defend any **Claim** under Insuring Agreement 1.4 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.

5.3.2 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 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 paragraph (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.

5.3.3 If 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**.

5.4. Other Insurance

5.4.1 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. If such other valid and collectible insurance provided by any Professional

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Indemnity, Privacy Policy, Technology Errors & Omissions Policy, Network Security Liability Policy, Cyber-liability Policy, Media Liability Policy or any other equivalent policy is provided by the **Underwriter**, the maximum amount payable shall not exceed the Limit of Liability of this Policy.

5.4.2 Notwithstanding Condition 5.4.1 above, with respect to any **Claim** under Insuring Agreement 1.4 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 the **Insured** in connection with such **Claim**, or to contribute to any defence provided to the **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**.

5.4.3 For the purpose of Condition 5.4.2 above, **Bodily Injury** shall not mean emotional distress, mental injury, mental tension or mental anguish allegedly caused by a **Breach**.

5.5. Cooperation and Subrogation

5.5.1 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.

5.5.2 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.

5.5.3 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.

5.5.4 The obligations of the **Insured** under this Condition 5.5 will survive the expiration or cancellation of the Policy.

5.6. Determination of Business Interruption Costs

5.6.1 Reduction in Business Income

In determining **Business Income**, the **Underwriters** will take account of the net profit or loss, before income taxes, of the **Insured's** business before the **Network Attack** (under Insuring Agreement 1.2) or **Network Failure** (under Automatic Extension 2.7, if applicable) occurred, and any other relevant factors.

In determining the amount of the loss of **Business Income** caused by the **Network Attack** or **Network Failure** (as applicable), such amount:

a. will not include any loss of **Business Income** which is attributable to **Extra Expense** (as **Extra Expense** is included separately in the calculation of **Business Interruption Costs**);

b. 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** or **Network Failure** (as applicable);

c. will not include compensation, fees, benefits, overhead, or the charges or expenses of the **Insured**; and

d. will be reduced to the extent that the **Insured** is able to resume its **Business Operations**, in whole or in part, by making partial use of the **Company's Network** and **Digital Assets** and by using available work-arounds.

5.6.2 Extra Expense

The amount of **Extra Expense** will be determined based upon all expenses that exceed the normal operating expenses that the **Insured** would have incurred in its **Business Operations** during the **Period of Restoration** had a **Network Attack** (under Insuring Agreement 1.2) or **Network Failure** (under Automatic Extension 2.7, if applicable) 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 1.2 or Automatic Extension 2.7.

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

5.7. Notice Requirements and Consent

5.7.1 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.

5.7.2 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.

5.7.3 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 the Schedule or by electronic mail to the e-mail address listed in the Schedule. Such notices shall be deemed effective when received by the **Underwriters**.

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5.7.4 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).

5.8. Extended Reporting Period

5.8.1 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 from the expiry of the **Policy Period**.

5.8.2 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 Condition 5.10.

5.8.3 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 14 of the Schedule. Such premium shall be fully earned at the inception of the **Extended Reporting Period**.

5.8.4 During the **Extended Reporting Period**, the **Insured** may provide the **Underwriters** with notice, pursuant to Condition 5.7, of any **Claim** or other covered costs first made against an **Insured** during the **Extended Reporting Period**, for any **Breach** occurring prior to the effective date of the non-renewal of this Policy.

5.8.5 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.

5.9. New Subsidiaries

5.9.1 The term **Subsidiary** shall automatically include any entity of which the 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 turnover is less than thirty-five percent (35%) of the consolidated gross turnover of the **Company** at the Inception Date set forth in Item 2A 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**.

5.9.2 Any entity acquired during the **Policy Period** by the **Company**, other than any entity described in Condition 5.9.1 above, shall automatically be covered for a period of ninety (90) days from the effective date of the acquisition, but only in respect of **Breaches** 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.

5.9.3 Coverage afforded under this Policy for a **Claim** made against the **Insured** relating to a **Breach** of a **Subsidiary** shall only apply to **Breaches** committed or allegedly committed during the time such entity is a **Subsidiary**.

5.10. 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 1.4 for **Breaches** or any other covered expenses committed before any such event. After any such event, this Policy may not be cancelled, regardless of Condition 5.11.2, and the entire premium for the Policy will be deemed fully earned.

5.11. Cancellation

5.11.1 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.

5.11.2 In the absence of a **Change in Control**, 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**.

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5.12. Representations; Severability

5.12.1 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.

5.12.2 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.

5.13. Legal Action Against the Underwriters

5.13.1 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.

5.13.2 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.

5.13.3 In addition to Condition 5.13.2 above, no action may be taken against the **Underwriters** with respect to Insuring Agreement 1.4 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**.

5.13.4 No person or entity will have any right under this Policy to join the **Underwriters** as a party to any **Claim** under Insuring Agreement 1.4 to determine the liability of the **Insured**; nor may the **Underwriters** be impleaded by the **Insured** or his, her, or its legal representative in any such **Claim**.

5.14. Death, Incapacity, or Insolvency of the Insured

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

5.15. 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 the **Insured**, but only if: (a) the **Claim** against such spouse or domestic partner results from a **Breach** 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**.

5.16. GST

Where the **Insured** is liable to pay tax under the Goods and Services Tax Act 1985 or any statutory amendment or re-enactment of that 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 Condition 5.16 is payable by the **Underwriters** in addition to the Limit of Liability and any Sublimits of Liability of this Policy.

5.17. Territory

This Policy applies to:

a. **Breaches** 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.

However, where a different Territory and Jurisdiction is noted in item 9 and item 10 of the Cyber Insurance Policy Schedule, the Policy Schedule shall prevail

5.18. 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**.

5.19. 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**.

5.20. Several Liability

5.20.1 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.

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5.20.2 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.

5.20.3 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.

5.20.4 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.

5.21. 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.

5.22. Assignment

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

5.23. 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 the Schedule.

5.24. Complaints and Disputes

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Delta Insurance New Zealand Limited in the first instance:

Complaints officer
Delta Insurance New Zealand Limited
complaints@deltainsurance.co.nz
Auckland +64 9 300 3079

Level 22
48 Shortland Street
Auckland Central
Auckland 1010
PO Box 106 276
Auckland 1143

We will acknowledge receipt of your complaint within 5 business days and do our utmost to resolve the complaint to your satisfaction within 10 business days, unless we require further information in which case, we will agree an alternate time frame with you.

If we cannot resolve your complaint to your satisfaction, you can escalate the matter Lloyd's

General Representative in New Zealand:
Lloyd's General Representative in New Zealand
Email: IDRNewZealand@lloyds.com
Telephone: +64 4 472 7582

Post: PO Box 5639
Wellington
New Zealand

Following receipt of your complaint, you will be advised whether your dispute will be handled by the Complaints team at Lloyd's Australia or the Lloyd's Complaints team in the UK, or what other avenues are available to you.

A final decision will be provided to you within two months of the date on which you first made the complaint unless certain exceptions apply.

If your complaint is not resolved in a manner satisfactory to you or we do not resolve your complaint within two months of originally receiving it, you may refer the matter to the Insurance and Financial Services Ombudsman (IFSO Scheme). IFSO Scheme can be contacted as follows:

Telephone: 0800 888 202 or +64 4 499 7612
Email: info@ifso.nz or via their website www.ifso.nz .
Post: PO Box 10-845 Wellington New Zealand

Your complaint must be referred to IFSO Scheme within 3 months of the final decision, unless IFSO Scheme considers special circumstances apply. If your complaint is not eligible for consideration by IFSO Scheme, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice.

You can also access any other external dispute resolution or other options that may be available to you.

5.25. Entire Agreement

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

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5.26. Third Parties

This Policy is not intended to create an obligation enforceable at the suit of any person who is not a party to this Policy, and any such person shall have no right to enforce any obligation under this Policy under the Contract and Commercial Law Act 2017.

5.27. 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.

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Embrace Change.

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Auckland Central
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