



INSURANCE FOR TECHNOLOGY COMPANIES

Esurance® TECH Policy Document

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PREAMBLE

This Policy is a contract of insurance between **you** and **us**. **Your** Policy contains all the details of the cover that **we** provide. This Policy consists of and must be read together with the Schedule and any Endorsements. This Policy is not complete unless it is signed and a Schedule is attached.

The Sections of this policy are identified by the **BLUE LINES** across the page with **WHITE UPPER CASE PRINT**. Clause headings in **BLUE UPPER CASE PRINT** are for information only and do not form part of the cover given by this Policy. Other terms in **bold lower case print** are defined terms and have a special meaning as set forth in the **DEFINITIONS** section and elsewhere. Words stated in the singular shall include the plural and vice versa.

IMPORTANT: INSURING CLAUSES 1, 2 (SECTIONS A and B only) and 3 provide cover on a claims made and reported basis. Under these **INSURING CLAUSES** a **claim** must be first made against **you** and notified to **us** during the **period of the policy** or the Extended Reported Period to be covered. These **INSURING CLAUSES** do not cover any **claim** arising out of any actual or alleged **wrongful act** occurring before the date specified as the Retroactive Date in the Schedule.

In consideration of the Premium and in reliance upon the information that **you** have provided to **us** prior to commencement of this insurance and which is deemed to form the basis of this insurance, **we** agree to provide the cover as set out below:

INSURING CLAUSES

INSURING CLAUSE I: PROFESSIONAL INDEMNITY

SECTION A: ERRORS & OMISSIONS

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** (regardless of who caused the **claim**) and notified to **us** during the **period of the policy** for any:

- a) negligent act, error, omission, advice, misstatement or misrepresentation; or
- b) breach of any contractual term implied by law concerning necessary quality, safety or fitness, or **your** duty to use reasonable care and skill; or
- c) dishonesty of **your senior executive officers** or **employees** provided that **we** maintain all rights of subrogation against the **senior executive officer** or **employee** if they are found guilty of such a dishonest act; or
- d) breach of the terms of the Fair Trading Act 1986 (New Zealand) or successor legislation thereof, but excluding:
 - i) the penal or criminal provisions of those statutes, and
 - ii) any such breach which is due to conduct of **yours** which is fraudulent or intended to mislead or deceive.
- a) other act, error or omission giving rise to civil liability;

arising out of **your business activities** performed for a **client**.

We will also pay **costs and expenses** on **your** behalf.

SECTION B: BREACH OF CONTRACT

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** by a **client** first made against **you** (regardless of who caused the **claim**) and notified to **us** during the **period of the policy** arising out of any **breach of client contract**.

We will also pay **costs and expenses** on **your** behalf.

SECTION C: FIDELITY OF EMPLOYEES

We agree to reimburse **you** for **loss** first discovered during the **period of the policy** and incurred directly as a result of the dishonesty of **your employees** where there was a clear intention to cause **you loss** and obtain personal gain.

We will also pay **costs and expenses** on **your** behalf.

SECTION D: LOSS OF DOCUMENTS

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** (regardless of who caused the **claim**) and notified to **us** during the **period of the policy** arising out of **damage to your documents** or **documents in your care, custody or control**.

We will also pay **costs and expenses** on **your** behalf.

SECTION E: PAYMENT OF WITHHELD FEES

We agree to pay **your withheld fees** with **our** prior written agreement in the event that **your client** brings or threatens to bring a **claim** against **you** that would be covered under **SECTIONS A or B** of this **INSURING CLAUSE** for an amount greater than **your withheld fees** if **you** attempt to recover the **withheld fees** from them. Prior to payment of **your withheld fees** **you** must obtain written confirmation from **your client** that they will not bring a **claim** against **you** if **you** agree not to pursue them for **your withheld fees** and provide it to **us**.

INSURING CLAUSE 2: CYBER & PRIVACY

SECTION A: CYBER LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** (regardless of who caused the **claim**) and notified to **us** during the **period of the policy** for any:

- a) **third party** financial loss arising directly from a **hacking attack** or **virus** that has emanated from or passed through **your computer systems** or a **cloud computing provider's** systems; or
- b) **third party** financial loss arising directly from their inability to access **your computer systems** in the way in which **you** have authorised them to as a direct result of **your computer systems'** failure or impairment, or a **cloud computing provider's** systems failure or impairment, due to a **hacking attack** or **virus**; or
- c) **third party** financial loss arising directly from the loss or theft of **your** data, or data for which **you** are responsible or held to be responsible, or **your** data held by a **cloud computing provider**, arising directly from a **hacking attack** or **virus**;

arising out of **media content, user generated content** or **your business activities**.

We will also pay **costs and expenses** on **your** behalf.

SECTION B: PRIVACY LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** (regardless of who caused the **claim**) and notified to **us** during the **period of the policy** for:

- a) a breach of any individual privacy rights, unintentional disclosure of personal information, failure to maintain the security of personally identifiable data including credit card information for which **you** are responsible, violation of any legal obligation relating to the security of personal information, or failure to warn of an actual or potential theft of personal information; or
- b) a breach of any rights of confidentiality, including a breach of any provisions of a non-disclosure agreement or breach of a contractual warranty relating to the confidentiality of data; or

- c) any fines, penalties or contractual damages **you** are legally obliged to pay as a direct result of a breach of **privacy obligations** where insurable under the applicable law; or
- d) any **claim** arising out of a)-c) above, which is due to the failure of a **cloud computing provider's** systems;

arising out of **media content, user generated content** or **your business activities**.

We will also pay **costs and expenses** on **your** behalf.

SECTION C: PRIVACY BREACH NOTIFICATION COSTS

We agree to reimburse **you** for **privacy breach costs** subject to **our** prior written agreement (such agreement not to be unreasonably withheld):

- a) that **you** are legally obliged to incur; or
- b) that **you** are not legally obliged to incur, but where the reimbursement of these **privacy breach costs** will effectively mitigate or avoid a **claim** for which **you** would have been entitled to indemnity under **SECTION B** of **INSURING CLAUSE 2** had such **privacy breach costs** not been incurred; or
- c) that **you** are not legally obliged to incur, but where the reimbursement of these **privacy breach costs** will effectively mitigate material damage to **your** brand or reputation.

SECTION D: SYSTEM DAMAGE

We agree to reimburse **you** up to the **amount insured** shown in the Schedule for **rectification costs**, subject to **our** prior written agreement (such agreement not to be unreasonably withheld) which **you** incur:

- a) in retrieving, restoring or replacing any of **your** computer programs or any other data media (or any other computer programs or any other data media for which **you** are responsible) that **you** first discover during the **period of the policy** have been **damaged**; or
- b) in repairing, restoring or replacing any of **your computer systems** that **you** first discover during the **period of the policy** have been **damaged**;

as the direct result of any **cyber peril**, or a **cloud computing provider's** systems failure or impairment due to a **cyber peril**, or accidental **damage** to **your** data first discovered during the **period of the policy**.

We also agree to pay **costs and expenses** on **your** behalf.

However, **we** shall not reimburse **you** for any **rectification costs** under this **SECTION** of **INSURING CLAUSE 2** which are covered under **INSURING CLAUSE 4, SECTION A** regardless of whether **you** have purchased **INSURING CLAUSE 4, SECTION A** and regardless of any exhaustion of the **amount insured** of **INSURING CLAUSE 4, SECTION A**.

SECTION E: SYSTEM BUSINESS INTERRUPTION

We agree to reimburse **you** up to the **amount insured** shown in the Schedule for **your loss of income** incurred as the direct result of any **cyber peril** or a **cloud computing provider's** systems failure or impairment due to a **cyber peril** first discovered during the **period of the policy**.

We also agree to pay **costs and expenses** on **your** behalf.

SECTION F: THREATS OR EXTORTION

We agree to reimburse **you** for **loss** due to threats received by **you**, either directly or indirectly, which **you** first discover during the **period of the policy**:

- a) to introduce any **hacking attack** or **virus** into **your computer systems**; or
- b) to disseminate, divulge or utilise information contained or once contained in **your computer systems**; or
- c) to damage, destroy or alter **your computer systems**;

by any person who then demands ransom as a condition of not carrying out such threats.

INSURING CLAUSE 3: MULTIMEDIA LIABILITY AND ADVERTISING INJURY

SECTION A: DEFAMATION

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** (regardless of who caused the **claim**) and notified to **us** during the **period of the policy** for any:

- a) defamation, including but not limited to libel, slander, trade libel, product disparagement, injurious falsehood; or
- b) emotional distress or outrage based on harm to the character or reputation of any person or entity;

arising out of **media content, user generated content** or **your business activities**.

We will also pay **costs and expenses** on **your** behalf.

SECTION B: INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** (regardless of who caused the **claim**) and notified to **us** during the **period of the policy** for any:

- a) infringement of any intellectual property rights, including, but not limited to, copyright, trademark, trade dilution, trade dress, design rights, domain name rights, moral rights, service mark or service name, but not including patent; or
- b) misappropriation of a trade secret; or
- c) act of passing-off, piracy or plagiarism or any misappropriation of content, concepts, format rights or ideas or breach of a contractual warranty relating to intellectual property rights; or
- d) breach of any intellectual property rights license acquired by **you**; or
- e) failure to attribute authorship or provide credit;

arising out of **media content, user generated content** or **your business activities**.

We will also pay **costs and expenses** on **your** behalf.

SECTION C: INVASION OF RIGHTS OF PRIVACY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** (regardless of who caused the **claim**) and notified to **us** during the **period of the policy** for any:

- a) invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion, breach of confidence and commercial appropriation of name or likeness; or
- b) breach of agreement, breach of confidentiality or promissory estoppel, in connection with the failure to maintain the confidentiality of a source or materials furnished by a source or the failure to portray a source or a subject in a certain light;

arising out of **media content, user generated content** or **your business activities**.

We will also pay **costs and expenses** on **your** behalf.

SECTION D: CONTENT LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** (regardless of who caused the **claim**) and notified to **us** during the **period of the policy** for any:

- a) negligent act, error, omission, advice, misstatement or misrepresentation; or
- b) breach of any contractual term implied by law concerning necessary quality, safety or fitness, or **your** duty to use reasonable care and skill; or
- c) dishonesty of **your senior executive officers** or **employees** provided that **we** maintain all rights of subrogation against the **senior executive officer** or **employee** if they are found guilty of such a dishonest act; or

d) other act, error or omission giving rise to civil liability; arising out of **media content** or **user generated content**.

We will also pay **costs and expenses** on **your** behalf.

INSURING CLAUSE 4: PROPERTY

SECTION A: PROPERTY DAMAGE

We agree to reimburse **you** up to the **amount insured** shown in the Schedule for:

- a) the cost of repairing **damage** occurring during the **period of the policy** to **your premises**, including landlord's fixtures and fittings, walls, gates and fences, yards, car parks and pavements, trees, shrubs, plants and lawns, piping, ducting, cables, wires and associated control gear and accessories at **your premises** and extending to the public mains but only to the extent of **your** responsibility; or
- b) **damage** occurring during the **period of the policy** to **contents** contained at **your premises**; or
- c) **damage** occurring during the **period of the policy** to **contents** kept at the home of **your senior executive officers** or **employees** in the course of **your business activities**; or
- d) **damage** occurring during the **period of the policy** to **contents** permanently or temporarily elsewhere, including while in transit; or the necessary and reasonable costs **you** incur following **damage** occurring during the **period of the policy** to glass which belongs to **you** or for which **you** are legally responsible for:
 - i) temporary boarding up; or
 - ii) repair of window frames or removal or replacement of fixtures and fittings in the course of replacing the glass; or
 - iii) replacement lettering or other ornamental work and alarm foil on glass; or
- f) **damage** occurring during the **period of the policy** to **money** held in the course of **your business activities**:
 - i) at **your premises** in transit or in a Bank Night Safe; or
 - ii) at the home of **your senior executive officers** or **employees**; or
- g) **damage** occurring during the **period of the policy** to the personal belongings of **your senior executive officers** or **employees** or visitors to **your premises** provided they are not covered under any other insurance; or
- h) the reasonable cost of reconstituting the data **you** need to continue **your business activities** if **your** business records and electronic data have been lost or distorted as a direct result of **damage** covered under this **INSURING CLAUSE**; or
- i) the costs **you** incur to replace locks and keys necessary to maintain the security of **your premises** or safes following theft of keys involving force and violence occurring during the **period of the policy**; or
- j) the amount of any rent for **your premises** which **you** are legally obliged to pay for any period during which **your premises** or any part of it is unusable as a result of **damage** covered under this **INSURING CLAUSE**; or
- k) loss of metered water or gas, as a result of **damage** resulting in a water or gas charge that **you** are unable to recover from any other party.

SECTION B: PERSONAL ACCIDENT

We agree to pay on **your** behalf compensation as shown in the Schedule if any of **your senior executive officers** or **employees** who are aged between 16 and 70 on the Inception Date shown in the Schedule suffers **bodily injury** in the course of **your business activities** in a robbery or attempted robbery and suffers:

- a) death, permanent total disablement, **loss of a limb** or **loss of sight** as a direct result of the **bodily injury** within one year of the date of its occurrence; or
- b) **temporary total disablement**. The compensation for **temporary total disablement** will be the amount shown in the Schedule per week, for a maximum of 104 weeks.

However, we will not pay compensation under more than one heading in the Schedule for the same **bodily injury**.

SECTION C: BUSINESS INTERRUPTION – FLEXIBLE FIRST LOSS

We agree to reimburse **you** up to the **amount insured** shown in the Schedule for **your loss of income, costs and expenses, loss of research and development expenditure, project delay costs** and **outstanding debts** resulting solely and directly from an interruption to **your business activities** caused by:

- a) **insured damage** to **your premises** or **contents** or to any other property used by **you** at **your premises**;
- b) **insured damage** to property in the vicinity of **your premises** which prevents or hinders **your** access to **your premises**;
- c) **insured damage** at the **premises** of one of **your** suppliers, other than a supplier of water, gas, electricity or telephone services;
- d) failure in the supply of water, gas, electricity, or telephone services to **your premises** for more than 24 consecutive hours caused by **insured damage** to any property;
- e) **your** inability to use **your premises** due to restrictions imposed by a public authority following:
 - i) a murder or suicide; or
 - ii) an occurrence of a notifiable human disease; or
 - iii) **bodily injury** traceable to food or drink consumed at **your premises**; or
 - iv) vermin or pests at **your premises**.

INSURING CLAUSE 5: GENERAL LIABILITY

SECTION A: PUBLIC LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of accidental **bodily injury, personal injury** or **damage** occurring during the **period of the policy** in the course of **your business activities**.

We will also pay **costs and expenses** on **your** behalf.

However, we will not make any payment on **your** behalf under this **SECTION** in respect of any **claim**:

- a) which is covered under any of **INSURING CLAUSES 1** or **3**, regardless of whether **you** have purchased **INSURING CLAUSES 1** or **3** and regardless of any exhaustion of the Limit of Liability of **INSURING CLAUSES 1** or **3**; or
- b) arising directly or indirectly out of any **product**; or
- c) arising directly or indirectly out of any **pollution**.

SECTION B: PRODUCTS LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of accidental **bodily injury** or **damage** occurring during the **period of the policy** in the course of **your business activities** in connection with any **product**.

We will also pay **costs and expenses** on **your** behalf.

However, we will not make any payment on **your** behalf under this **SECTION** in respect of any **claim**:

- a) which is covered under any of **INSURING CLAUSES 1** or **3**, regardless of whether **you** have purchased **INSURING CLAUSES 1** or **3** and regardless of any exhaustion of the Limit of Liability of **INSURING CLAUSES 1** or **3**; or
- b) arising directly or indirectly out of any **pollution**.

SECTION C: POLLUTION LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of accidental **bodily injury** or **damage** occurring during the **period of the policy** and caused by **pollution** in the course of **your business activities** on condition that such **pollution**:

- a) was the direct result of a sudden, identifiable, unintended and unexpected incident occurring in its entirety at a specific time and place during the **period of the policy**; and
- b) was not the direct result of **you** failing to take reasonable precautions to prevent such **pollution**, provided always that all such **pollution** that arises out of one incident shall be considered for the purposes of this Policy to have occurred at the time such incident takes place.

We will also pay **costs and expenses** on **your** behalf.

However, **we** will not make any payment on **your** behalf under this **SECTION** in respect of any **claim** which is covered under **INSURING CLAUSES 1** or **3**, regardless of whether **you** have purchased **INSURING CLAUSES 1** or **3** and regardless of any exhaustion of the Limit of Liability of **INSURING CLAUSES 1** or **3**.

INSURING CLAUSE 6: COURT ATTENDANCE COSTS

We agree to reimburse **you**, subject to **our** prior written agreement (such agreement not to be unreasonably withheld), for **your** reasonable costs incurred to attend court or any tribunal, arbitration, adjudication, mediation or other hearing as a witness in connection with a **claim, loss** or **damage** covered under any **INSURING CLAUSE** of this Policy for which **you** have purchased cover.

INSURING CLAUSE 7: LOSS MITIGATION

We agree to pay any reasonable costs necessarily incurred by **you** in respect of measures taken by **you** for the sole purpose of mitigating a **claim, potential claim, loss** or **damage** for which **you** would be entitled to indemnity under this Policy had these measures not been taken, provided that:

- a) **you** have previously notified **us** of the **claim, potential claim, loss** or **damage**; and
- b) the costs in respect of measures taken by **you** to mitigate the **claim, potential claim, loss** or **damage** are less than the expected value

- c) of the **claim, potential claim, loss** or **damage**; and the costs do not include any provision for salaries or other remuneration of **your employees**, any provision for **your** loss of profit or any provision for **your** normal operating expenses; and
- d) the costs are incurred with **our** prior written agreement (such agreement not to be unreasonably withheld).

INSURING CLAUSE 8: REPUTATION AND BRAND PROTECTION

We agree to pay costs reasonably incurred, subject to **our** prior written agreement (such agreement not to be unreasonably withheld), for the services of a public relations consultancy for the purpose of averting or mitigating damage to **your** reputation or brand caused by a **claim, loss** or **damage** that is covered under any **INSURING CLAUSE** of this Policy for which **you** have purchased cover where an event has been publicised through the media, including but not limited to television, print, radio or the internet which might reasonably be considered to create a material threat to **your** brand or reputation.

The public relations consultancy shall be chosen by the Claims Managers who shall take into account the nature of the **claim, loss** or **damage** and the cost and quality of the services that they can deliver, unless **you** have reasonable cause to request a different public relations consultancy and the Claims Managers and **you** mutually agree upon this company.

HOW MUCH WE WILL PAY

Subject always to the **aggregate limit of liability** or **limit of liability**, the maximum amount payable by **us** for all **claims, losses, damage** and **costs and expenses** shall not exceed the amounts shown in the Schedule in respect of each **INSURING CLAUSE** unless limited below.

Where more than one **claim, loss** or **damage** arises from the same original cause or single source or event all those **claims** or **losses** shall be deemed to be one **claim, loss** or **damage** and subject to the **aggregate limit of liability** only one **limit of liability** shall be payable in respect of all of those **claims** or **losses**.

Where cover for any **claim, loss** or **damage** is provided under multiple **SECTIONS** or multiple **INSURING CLAUSES** subject to the **aggregate limit of liability** only one **limit of liability** shall be payable in respect of that **claim, loss** or **damage** and this shall be the highest **limit of liability** of the **SECTIONS** or **INSURING CLAUSES** under which cover is provided.

In respect of **INSURING CLAUSES 1, 2 (SECTIONS A and B only), 3** and **5** we may at any time pay to **you** in connection with any **claim** the amount of the **aggregate limit of liability** or **limit of liability** (after deduction of any amounts already paid). Upon such payment being made **we** shall relinquish the conduct and control of the **claim** and be under no further liability in connection with that **claim** except for the payment of **costs and expenses** incurred prior to the date of the payment (unless the **aggregate limit of liability** or **limit of liability** is stated to be inclusive of **costs and expenses**).

In respect of **INSURING CLAUSE 4, SECTION A** only:

- a) at our option, damaged property or **contents** will be rebuilt, repaired or replaced as new;
- b) if, at the time the **damage** occurs, the **amount insured** is less than 85% of the total value of **your premises** or **contents** insured, the amount **we** will pay will be reduced in the same proportion as the **amount insured** bears to the total value of **your premises** or **contents** insured;
- c) the **amount insured** for **your premises** and **contents** will be adjusted monthly in line with any increase in the consumer price index as published by the Australian Bureau of Statistics. **We** will

- not reduce the **amount insured** without **your** agreement;
- d) where improvements made by **you** to **your premises** are not **damaged**, but the lease on **your premises** is cancelled as a result of **insured damage**, **we** shall pay for the cost of reinstating such improvements to the extent that they are not salvageable.

In respect of **INSURING CLAUSE 2, SECTION E** and **INSURING CLAUSE 4, SECTION C** the amount **we** will pay will be:

- a) the difference between **your** actual **income** during the **indemnity period** and the **income** it is estimated **you** would have earned during that period or, if this is **your** first trading year, the difference between **your income** during the **indemnity period** and during the period immediately prior to the **loss**, less any savings resulting from the reduced **costs and expenses** incurred during the **indemnity period**; and
- b) any **additional costs and expenses**.

In respect of **INSURING CLAUSE 4, SECTION C** only the amount **we** will pay will also include:

- a) any **project delay costs** during the **indemnity period**, including the total value of any milestone payments that were due in the **indemnity period** but will no longer be received by **you** either during the **indemnity period** or at any point in the future due to permanent termination of the project; and
- b) any **research and development expenditure** irrevocably lost during the **indemnity period**; and
- c) any **outstanding debts**, provided you keep a record of all amounts owed to you and keep a copy of the record away from **your premises**.

If due to an emergency, **our** written agreement cannot reasonably be obtained prior to **costs and expenses** being incurred with respect to any claim, **we** can provide retrospective approval for those **costs and expenses** during the period of 14 days immediately following the date on which the claim was first made or initiated.

YOUR DEDUCTIBLE

We shall only be liable for that part of each and every **claim** or **loss** which exceeds the amount of the Deductible stated in the Schedule. If any expenditure is incurred by **us** which falls within the amount of the Deductible stated in the Schedule, then **you** shall reimburse that amount to **us** on **our** request.

Where more than one **claim** or **loss** arises from the same original cause

or single source or event all such **claims** or **losses** shall be deemed to be one **claim** or **loss** and only one Deductible will apply.

Where cover is provided under multiple **SECTIONS** or multiple **INSURING CLAUSES** only one Deductible will apply to that **claim** or **loss** and this shall be the highest Deductible of the **SECTIONS** or **INSURING CLAUSES** under which cover is provided.

DEFINITIONS

1. **“Aggregate limit of liability”**
means the maximum amount payable as stated in the Schedule by **us** in respect of all **claims** and **losses**.
2. **“Amount insured”**
means the maximum amount payable by **us** as shown in the Schedule in respect of **INSURING CLAUSES 2 (SECTIONS D and E only)** and **4**. The amount applies to each incident of **loss** or **damage** occurring during the **period of the policy** provided always that after the first incident of **loss** or **damage you** comply with **our** recommendations to prevent any further incidents of **loss** or **damage**.
3. **“Bodily injury”**
means death, bodily injury, mental injury, illness or disease of or to any person.
4. **“Breach of client contract”**
means **your** unintentional breach of a contract relating to the performance of **your business activities** for a **client**.
5. **“Business activities”**
means:
 - a) in respect of **INSURING CLAUSES 1 to 3**, the Business Activities as stated in the Schedule, but not including the dissemination of **media content** or **user generated content**; or
 - b) in respect of all other **INSURING CLAUSES**, the Business Activities as stated in the Schedule and shall include, for the purpose of those Business Activities:
 - i) the ownership, repair and maintenance of **your** property; and
 - ii) provision and management of canteen, social, sports and welfare organisations for the benefit of **your senior executive officers** or **employees** and medical, fire fighting, and security services; and
 - iii) attendance at conferences and tradeshow as either an exhibitor or visitor.

However, it shall not include the dissemination of **media content** or **user generated content**.
6. **“Claim”**
means:
 - a) a demand for money, services, retraction or correction, including the service of suit or institution of arbitration or mediation proceedings; or
 - b) a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction) or declaratory relief; or
 - c) a disciplinary action, regulatory investigation or proceeding brought by any professional body, occupational health and safety body or regulator.
7. **“Client”**
means any **third party** with whom **you** have a contract in place for the supply of **your business activities** in return for a fee, or where a fee would normally be expected to be paid.
8. **“Cloud computing provider”**
means a **third party** provider of hosted computing services accessed across the internet including infrastructure, platform and application level services.
9. **“Computer systems”**
means all electronic computers including operating systems, software, hardware and all communication and open system networks and any data or websites wheresoever hosted, including **cloud computing providers**, off-line media libraries and data back-ups.
10. **“Contents”**
means the contents at **your premises** which are owned by **you** or for which **you** are legally responsible, including:
 - a) computer and ancillary equipment (including VDUs, keyboards, printers and software), television and video equipment, photographic, photocopying, surveying and telecommunications equipment; or
 - b) documents, briefs, manuscripts, plans, business books, **computer systems**, records and programs; or
 - c) goods held in trust, stock and samples; or
 - d) wines, spirits and tobacco kept for entertainment purposes; or
 - e) works of art or precious metals; or
 - f) fixed glass in windows, doors and fanlights, glass showcases, glass shelves, mirrors and sanitary fixtures and fittings; or
 - g) heating oil for **your premises** contained in fixed tanks in the open at the address shown in the Schedule; or
 - h) tenant’s improvements, decorations, fixtures and fittings including, if attached to the building, external signs, aerials and satellite dishes; or
 - i) pipes, ducting, cables, wires and associated control equipment at the address shown in the Schedule and extending to the public mains.

“Contents” does not include **money** or the personal belongings of **your senior executive officers** or **employees** or visitors to **your premises**.
11. **“Corporate blogging”**
means creating or editing a web log, discussion forum post, online comment, or other associated social media activity where the primary purpose of that activity is to promote **you** or the individual’s position within **your** industry even if the nature of the content is not directly associated with **your business activities**.
12. **“Costs and expenses”**
means:
 - a) in respect of **INSURING CLAUSES 1, 2 (SECTIONS A and B only)** and **3**:
 - i) **your** legal costs and expenses in the defence or settlement of any **claim** made against **you**; and
 - ii) **your** legal costs and expenses in the defence of any criminal claim made against **you**, provided that **we** maintain all rights of subrogation against any **senior executive officer** or **employee** if they are found guilty of such a criminal act; and
 - iii) **your** legal costs and expenses incurred in quashing or challenging the scope of any subpoena or witness summons ordering **you** to disclose or produce any information or material which was created, produced or disseminated by **you**; and
 - iv) interest on that part of any judgment **we** pay that accrues after entry of the judgment and before **we** have paid,

offered to pay, or deposited in court the part of the judgment that is within the **limit of liability**; and

- b) in respect of **INSURING CLAUSES 2 (SECTIONS D and E only)** and **4**, the costs and expenses incurred by **you** or on **your** behalf in establishing that **you** have sustained a **loss or damage** and the quantum of such **loss or damage** or the costs and expenses incurred by **you** or on **your** behalf in mitigating any such **loss or damage**; and
- c) in respect of **INSURING CLAUSE 4, SECTION A** only, the necessary and reasonable costs and expenses **you** incur to remove debris from **your premises** or the area immediately adjacent, following **damage** covered under **INSURING CLAUSE 4, SECTION A**; and
- d) in respect of **INSURING CLAUSE 2, SECTION E** and **INSURING CLAUSE 4, SECTION C**, the necessary and reasonable additional costs and expenses **you** incur in order to continue **your business activities** as stated in the Schedule during the **indemnity period**; and
- e) in respect of **INSURING CLAUSE 5**, **your legal costs and expenses** in the defence or settlement of any **claim** made against **you**.

Subject to all **costs and expenses** being incurred with the Claims Managers' written agreement (such agreement not to be unreasonably withheld).

If **costs and expenses** are shown in the Schedule to be in addition to the **aggregate limit of liability** or **limit of liability** in respect of **INSURING CLAUSES 1, 2 (SECTIONS A and B only)**, **3** and **6**, and if a payment in excess of the amount of indemnity available hereunder has to be made to dispose of any **claim**, **our** liability for such **costs and expenses** shall be such proportion thereof as the amount of indemnity available hereunder bears to the amount required to dispose of such **claim**, subject always to the maximum amount of **costs and expenses** shown in the Schedule.

Costs and expenses are always included in the **amount insured** in respect of **INSURING CLAUSES 2 (SECTIONS D and E only)** and **4**.

- 13. **“Cyber peril”**
means any:
 - a) **hacking attack** or **virus**; or
 - b) malicious damage to **your computer systems** by an **employee**; or
 - c) failure of a **cloud computing provider** or other **third party** hosting **your computer systems** as a direct result of (a) or (b) above.
- 14. **“Damage/damaged”**
means damage to, or destruction of, or loss of possession of, property. In respect of **INSURING CLAUSES 1, 2 (SECTIONS A and B only)**, **3** and **5** **damage** does not include damage to or destruction of, or loss of possession of, or loss of use of, or corruption of, data.
- 15. **“Documents”**
means deeds, wills, agreements, maps, plans, records, books, letters, certificates, forms, computer programs or any other data media and documents of any nature whatsoever, whether written, printed or reproduced by any other method (other than bearer bonds, coupons, bank notes, currency notes and negotiable instruments).
- 16. **“Employee”**
means any:
 - a) person employed by the company named as the Insured in the Schedule, or any **subsidiary**; or
 - b) person undertaking study or work experience or youth training scheme with the company named as the Insured in the Schedule, or any **subsidiary**.

Employee does not include any **senior executive officer** of the company named as the Insured in the Schedule, or any **subsidiary**.
- 17. **“Hacking attack”**
means any malicious or unauthorised electronic attack including but not limited to any fraudulent electronic signature, brute force attack,

phishing, denial of service attack, that has been initiated by any **third parties** or by any **employees** and that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of **computer systems**.

- 18. **“Income”**
means **your total income** from **your business activities** less direct costs.
- 19. **“Indemnity period”**
means the period beginning at the date of the **damage**, or the date the restriction is imposed, and lasting for the period during which **your income** or expenditure is affected as a result of such **damage** or restriction, but for no longer than the number of months shown in the Schedule.
- 20. **“Insured damage”**
means **damage** to property provided that:
 - a) the **damage** is covered under **INSURING CLAUSE 4, SECTION A**; or
 - b) an insurer has paid the claim, or has agreed to pay the claim, under any other insurance covering such **damage**.
- 21. **“Limit of liability”**
means the maximum amount payable by **us** as stated in the Schedule in respect of each **claim** or **loss**.
- 22. **“Loss of a limb”**
means loss by physical separation of a hand at or above the wrist, of a foot at or above the ankle, and includes total and irrecoverable loss of use of a hand, arm or leg.
- 23. **“Loss of sight”**
means total and irrecoverable loss of sight.
- 24. **“Loss”**
means direct financial loss sustained by **you**.
- 25. **“Media content”**
means any content regardless of the nature or form of such content, including, but not limited to, content disseminated through books, newspapers, magazines, television, radio, advertising, websites, chat rooms, bulletin boards, databases, blogs or mobile phones or any other means which is created or disseminated by **you** or on **your** behalf.
Media content does not include advertisements created by **you** for a **third party** in return for a fee, or where a fee would normally be expected to be paid.
- 26. **“Money”**
means cash, bank and currency notes, cheques, bankers drafts, or share or bond certificates.
- 27. **“Outstanding debts”**
means any of **your** outstanding debts, exclusive of Goods and Services Tax (GST), which **you** are unable to recover as a direct result of **insured damage** to **your** accounting records.
- 28. **“Period of the policy”**
means:
 - a) the period between the Inception Date shown in the Schedule and the Expiry Date shown in the Schedule; or
 - b) the period between the Inception Date shown in the Schedule and the date on which the Policy is cancelled in accordance with the “Cancellation” **CONDITION**.
- 29. **“Permanent total disablement”**
means disablement which entirely prevents the injured person from attending to any business or occupation for which they are reasonably suited by training, education or experience and which lasts for 24 calendar months and at the expiry of that period being beyond hope of improvement.
- 30. **“Personal injury”**
means:
 - a) false arrest, detention or imprisonment; or
 - b) malicious prosecution; or
 - c) wrongful entry into, or eviction of a person from, a room,

dwelling or premises that the person occupies.

31. **“Premises”**
means a building (including any outbuildings) occupied in connection with **your business activities**.
32. **“Project delay costs”**
means any additional **costs and expenses** incurred by **you** as a direct result of a delay to a project, including the interest charges incurred from any reasonable loan required as a result of a delayed milestone payment.
33. **“Pollution”**
means pollution or contamination of the atmosphere, or of any water, land, buildings or other tangible property.
34. **“Privacy breach costs”**
means any sums reasonably required to:
 - a) fulfil any obligation **you** have to notify **third parties** of an actual or suspected breach of privacy in relation to any personal information; or
 - b) establish a credit monitoring service or identity theft helpline; or
 - c) conduct an independent security audit of **your computer systems** to identify the source and scope of the privacy breach.
35. **“Privacy obligations”**
means **your** legal obligations arising directly from:
 - a) any privacy statement governing the handling of information on **your computer systems**; or
 - b) any written contract between **you** and a **third party** governing the processing and storage of credit card information on **your computer systems**; or
 - c) any implied contractual duty to use reasonable care and skill in the handling of personal data or credit card information (including breaches of the Payment Card Industry Data Security Standard); or
 - d) any legal obligation to notify individuals of an actual or potential breach of their private or confidential data; or
 - e) statutory data protection regulations in the country or countries where **you** operate, including industry specific data protection and security regulations (e.g. the Health Insurance Portability and Accountability Act 1996) as they currently exist and as amended.
36. **“Product”**
means any tangible property (including containers, packaging, labelling or instructions, but explicitly excluding any software, data, or source code) after it has left **you** custody or control which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered, processed, cleaned, renovated or repaired by **you** or on **your** behalf in the course of **your business activities**.
37. **“Rectification costs”**
means those costs that **you** incur as a result of the use of external consultants, contractors or advisers or any additional costs that **you** incur to pay **your employees**. For the avoidance of doubt, rectification costs does not include the basic salaries of **your employees** or **senior executive officers** or **your** office expenses or any payments that **you** have paid or agreed to pay as part of any service or maintenance contract.
38. **“Research and development expenditure”**
means **your** expenditure on research and development less the cost of reusable materials consumed for the purposes of the research and development.
39. **“Senior executive officer”**
means board members, executive officers, in-house lawyers, risk managers, chief operating officers, chief technology officers, chief information officers, and chief privacy officers of the company named as the Insured in the Schedule, or any **subsidiary**.
40. **“Subsidiary”**
means any company which the company named as the Insured in the Schedule controls through:
 - a) holding 50% or more of the voting rights; or
 - b) having the right to appoint or remove 50% or more of its board of directors; or
 - c) controlling alone, pursuant to a written agreement with other shareholders or members, 50% or more of the voting rights therein.
41. **“Temporary total disablement”**
means disablement which entirely prevents the injured person from attending to their business or occupation.
42. **“Third party”**
means:
 - a) any person who is not a **senior executive officer** or **employee** of the company named as the Insured in the Schedule, or any **subsidiary**; or
 - b) a company other than the company named as the Insured in the Schedule, or any **subsidiary**.
43. **“User generated content”**
means any digital content including, but not limited to, content disseminated through websites, social networks, chat rooms, bulletin boards, databases, blogs or mobile phones which is not created by **you** or on **your** behalf but for which **you** are deemed to be responsible.
44. **“Virus”**
means any malicious software code including but not limited to any logic bomb, Trojan horse or worm that has been introduced by any **third parties** or by any **employees** and that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of **computer systems**.
45. **“We/our/us”**
means the Underwriters named in the Schedule.
46. **“Withheld fees”**
means any contractually due fee that **your client** refuses to pay **you**, but excludes any part of the fee that represents **your** profit or mark-up or liability for taxes.
47. **“Workmanship”**
means any physical workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection therewith) by **you**.
48. **“Wrongful act”**
means any act or event the subject of **INSURING CLAUSES 1 to 3** of this Policy for which **you** have purchased coverage.
49. **“You/your”**
means:
 - a) the company named as the Insured in the Schedule, or any **subsidiary**; and
 - b) any past, present or future **senior executive officer** or **employee** of the company named as the Insured in the Schedule or any **subsidiary**; and
 - c) any past, present or future officers, committees and members of **your** canteen, social, sports, medical, fire fighting, security services and welfare organisations for legal liabilities incurred in their respective capacity as such.

EXCLUSIONS

We will not:

- a) make any payment on **your** behalf for any **claim**; or
- b) incur any **costs and expenses**; or
- c) reimburse **you** for any **loss, damage**, legal expenses, fees or costs sustained by **you**:

EXCLUSIONS RELATING TO OTHER INSURANCES:

1. **Design liability**
in respect of **INSURING CLAUSE 3** only, arising directly or indirectly from any actual or alleged **product** design, industrial design, architectural design or architectural services.
2. **Directors and officers liability**
arising out of any personal liability incurred by **your senior executive officers** when they are acting in that capacity or managing **you**, or arising from any statement, representation or information regarding **your** business contained within any accounts, reports or financial statements.
3. **Employment practices**
arising out of or resulting from:
 - a) any employer-employee relations, policies, practices, acts, omissions, any actual or alleged refusal to employ any person, or misconduct with respect to **employees**; or
 - b) any acts or omissions committed by **you** or any of **your senior executive officers** or **employees** to which are in breach of, or are alleged to be in breach of, any terms and conditions of contract relating to the previous employment of any of **your senior executive officers** or **employees**;
unless specifically covered under **INSURING CLAUSE 2, SECTION B**.
4. **Employers' liability**
arising directly or indirectly out of **bodily injury** to or **damage** suffered by **your senior executive officers** or **employees**.
5. **Errors and omissions**
arising directly or indirectly out of an actual or alleged breach of **your** professional duty, unless specifically covered under **INSURING CLAUSES 1** or **3** for which **you** have purchased coverage.
6. **Marine and aviation**
arising directly or indirectly from the ownership, possession or use by **you** or on **your** behalf of any aircraft, hovercraft, offshore installation, rig, platform or watercraft.
7. **Motor**
arising directly or indirectly from the ownership, possession or use by **you** or on **your** behalf of any motor vehicle or trailer other than **bodily injury** or **damage**:
 - a) caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer; or
 - b) occurring beyond the limits of any carriageway or thoroughfare and caused by the loading or unloading of any motor vehicle or trailer; or
 - c) arising out of the use of any motor vehicle or trailer temporarily in **your** custody or control for the purpose of parking;

provided always that we will not make any payment on **your** behalf or incur any **costs and expenses** in respect of any legal liability for which compulsory insurance or security is required by legislation or for which a government or other authority has accepted responsibility.
8. **Personal injury**
in respect of **INSURING CLAUSES 1, 2 (SECTIONS A to C only)** and **3**, arising directly or indirectly out of **personal injury**.
9. **Product guarantee**
for costs incurred in the repair, alteration, reinstatement, inspection, reconditioning or replacement of any **product** or part thereof and any financial loss consequent upon the necessity for such repair,

alteration, reinstatement, inspection, reconditioning or replacement, other than in respect of **INSURING CLAUSE 1** when **you** are legally obliged to pay these sums to a **client**.

10. **Product recall**
arising directly or indirectly from the recall of any **product** or part thereof except for **claims** made under **INSURING CLAUSE 1** where **you** are legally liable for these costs to a **third party** as the direct result of a **wrongful act** committed or alleged to have been committed by **you**.
11. **Products liability**
in respect of **INSURING CLAUSES 1, 2 (SECTIONS A to C only)** and **3**, arising directly or indirectly out of **bodily injury, damage** or **pollution** caused by a **product**.
12. **Public liability**
in respect of **INSURING CLAUSES 1, 2 (SECTIONS A to C only)** and **3**, arising directly or indirectly out of **bodily injury, damage** or **pollution** that did not occur directly as a result of **media content, user generated content** or **your business activities**.
13. **Workmanship**
in respect of **INSURING CLAUSES 1, 2 (SECTIONS A to C only)** and **3**, arising directly or indirectly out of **bodily injury, damage** or **pollution** caused by **workmanship**.

EXCLUSIONS RELATING TO THE CONDUCT OF YOUR BUSINESS:

14. **Cease and desist notice compliance**
arising directly or indirectly from:
 - a) **your** actual or alleged wilful, dishonest, deliberate, or reckless failure to comply with any cease and desist notice received by **you** in relation to any content; or
 - b) **your** actual or alleged wilful, dishonest, deliberate, or reckless failure to comply with any blocking order imposed upon **you**.
15. **Chargebacks**
arising directly or indirectly from any chargeback, liability or fee incurred by **you** as a result of a merchant service provider, including any credit card company or bank, wholly or partially reversing or preventing a payment transaction, unless specifically covered under **INSURING CLAUSE 2, SECTIONS B and C** for which **you** have purchased coverage.
16. **Circumstances known at inception**
arising out of any circumstances or occurrences which could give rise to a **claim, loss** or **damage** under this Policy of which a **senior executive officer** was aware, or ought reasonably to have been aware, prior to the Inception Date of this Policy, whether notified under any other insurance or not.
17. **Collection of private data without consent**
arising directly or indirectly from **your** actual or alleged failure to obtain explicit consent from any private individual before collecting, storing or sharing any of their personal information, including but not limited to internet search history and internet browsing habits.
18. **COPPA**
arising directly or indirectly from **your** actual or alleged failure to comply with the requirements of the Children's Online Privacy Protection Act of 1998 (COPPA) or any other similar legislation in a different jurisdiction relating to the security and privacy of minors and their personal information online.
19. **Core internet infrastructure failure**
in respect of **INSURING CLAUSE 2, SECTIONS D and E** only, arising directly from a failure of any core element of the internet infrastructure that results in a countrywide or global outage of the internet, including a failure of the core DNS root servers or the IP addressing system.

20. **Faulty workmanship**
arising from **damage** to **your** property or **premises** caused directly or indirectly by misuse, inadequate or inappropriate maintenance, faulty workmanship, defective design, the use of faulty materials or whilst being cleaned, worked on or maintained.
21. **Hazardous devices**
arising directly or indirectly from any **product** which with **your** knowledge is intended for incorporation into the structure, machinery or controls of any aircraft, other aerial device, military vehicle, hovercraft, waterborne craft or any medical equipment.
22. **Inadequate server capacity**
in respect of **INSURING CLAUSE 2, SECTION E** only for any business interruption **loss** incurred as a result of **your** servers not having the sufficient capacity to process all of the requests placed upon them solely because the demand for **your** websites is larger than the servers are designed to process, unless the reason for such levels of demand is due to an attack on **your** service levels by any malicious denial of service attack.
23. **Legal action**
where action for damages is brought in a court of law outside the territories specified in the Schedule, or where action is brought in a court of law within those territories to enforce a judgement outside of those territories whether by way of reciprocal agreement or otherwise.
24. **Liquidated damages, service credits and penalty clauses**
in respect of **INSURING CLAUSE 1** only, for liquidated damages or service credits, or arising out of penalty clauses.
25. **Machinery or computer breakdown**
in respect of **INSURING CLAUSE 4** only, arising directly or indirectly from:
 - a) **damage** to **your** electrical or mechanical plant; or
 - b) loss or distortion of **your** data or **your** computer systems, television or video equipment, photographic, photocopying, surveying or telecommunications equipment; resulting from its own breakdown, explosion or collapse.

However, we will reimburse **you** under **INSURING CLAUSE 4** up to the **amount insured** for **loss** occurring during the **period of the policy** following breakdown of **your** computer systems, but only if **your** computer systems are subject to a manufacturer's guarantee or a maintenance contract providing free parts and labour in the event of a breakdown, and only where the **loss** is not covered under **INSURING CLAUSE 2, SECTION D**, regardless of whether **you** have purchased **INSURING CLAUSE 2, SECTION D** and regardless of any exhaustion of the **amount insured** of **INSURING CLAUSE 2, SECTION D**.
26. **Misleading advertising**
arising directly or indirectly from any actual or alleged advertisement promoting **your** business activities which is false or misleading.
27. **Patents**
arising out of the actual or alleged infringement of any patent or inducing the infringement of any patent.
28. **PCI implementation**
in respect of **INSURING CLAUSE 2** only, as a result of fines or penalties from **your** acquiring bank arising directly from **your** actual or alleged failure to implement security measures in accordance with the PCI Data Security Standard implementation timetable, where a data breach has not occurred.
29. **Programming errors**
in respect of **INSURING CLAUSE 2, SECTIONS D and E** only, arising directly or indirectly from any computer programming error, software bug, software implementation or upgrade error.
30. **Retroactive Date**
in respect of **INSURING CLAUSES 1, 2 (SECTIONS A and B only) and 3**, arising out of any event or actual or alleged **wrongful act** occurring, in whole or in part, before the date specified as the Retroactive Date in the Schedule.

31. **Telephone system hacking**
in respect of **loss** arising directly out of a **hacking attack** to **your** telephone system that has been initiated by any **third party**.
32. **Unjust enrichment**
in respect of **INSURING CLAUSE 1 and 3** only, for that part of any **claim** that results in **you** being in a better financial position as a direct result of **your** **wrongful act** than **you** would have been if **you** had not committed the **wrongful act**.

However, in respect of **INSURING CLAUSE 3 SECTION C**, and notwithstanding the agreement to pay claims **CONDITION**, we shall pay **costs and expenses** on **your** behalf unless and until this **EXCLUSION** is determined to apply to all or any part of a **claim** (including by judgment, arbitral award, settlement or agreement between **you** and **us**).
33. **Unlawful surveillance**
in respect of any actual or alleged eavesdropping, wiretapping, audio or video recording.
34. **Unsolicited communications**
notwithstanding part a) of the antitrust **EXCLUSION**, arising directly or indirectly from any actual or alleged violation of:
 - a) the CAN-SPAM Act of 2003 or any subsequent amendments to that Act; or
 - b) the Telephone Consumer Protection Act (TCPA) of 1991 or any subsequent amendments to that Act; or
 - c) any other law, regulation or statute relating to unsolicited communication, distribution, sending or transmitting of any communication via telephone or any other electronic or telecommunications device.
35. **Web scraping and data harvesting**
arising directly from **your** unauthorised use of any web scraping or data harvesting techniques including, but not limited to, the use of any unauthorised Application Programming Interface to automatically collect web based information, or the use of automated tools which directly contravene the target website's terms of use.
36. **Wilful or dishonest acts of senior executive officers**
in respect of **INSURING CLAUSES 1, 2 and 3** only, arising out of any wilful, malicious, reckless or dishonest act or omission by any **senior executive officer**, unless such person had already ceased to be a **senior executive officer** of the company named as the Insured in the Schedule and all subsidiaries at the time of their first wilful, malicious, reckless or dishonest act or omission, or unless specifically covered under **INSURING CLAUSE 1, SECTION A, part (c)** or **INSURING CLAUSE 3, SECTION D, part (c)** for which **you** have purchased coverage. **We** will not provide any cover for any **senior executive officer** who condones or ignores any dishonesty.

GENERAL INSURANCE EXCLUSIONS:

37. **Antitrust**
for or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive advertising other than:
 - a) where specifically covered under **INSURING CLAUSE 2** or **INSURING CLAUSE 3** for which **you** have purchased coverage; or
 - b) any covered portion of any **claim** based on **your** alleged unauthorised use of a **third party's** trademark.
38. **Asbestos**
arising directly or indirectly or resulting from or contributed to by the manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos, or asbestos fibres or dust.
39. **Associated companies**
 - a) in respect of any **claim** made by any company firm or partnership in which the company named as the Insured in the Schedule has greater than a 10% executive or financial interest,

unless such **claim** emanates from an independent **third party**; or

- b) in respect of any **claim** made by any company firm partnership or individual which has greater than a 10% executive or financial interest in the company named as the Insured in the Schedule or any **subsidiary**, unless such **claim** emanates from an independent **third party**; or
- c) arising out of or resulting from any of **your** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organisation, corporation, company or business other than that of the company named as the Insured in the Schedule or any **subsidiary**; or
- d) in respect of any **claim** made by or on behalf of the company named as the Insured in the Schedule or any **subsidiary**;

40. Electromagnetic fields

directly or indirectly arising out of, resulting from or contributed to by electromagnetic fields, electromagnetic radiation, electromagnetism, radio waves or noise.

41. ERISA

based upon the Employment Retirement Income Security Act of 1974 and any amendment thereto, or any rules or regulations promulgated thereunder.

42. Fines

for fines, penalties, civil or criminal sanctions or punitive damages, unless insurable under the applicable law.

43. Flood

in respect of **INSURING CLAUSE 4** only, caused by flood, including waves, tides, tidal waves, or the rising of, the breaking out, or the overflow, of any body of water whether natural or manmade, but this **EXCLUSION** does not apply to:

- a) ensuing **loss** or **damage** which results directly from fire, explosion, smoke or leakage from fire protective equipment; or
- b) ensuing **damage** to **contents** while in transit.

44. Insolvency

arising out of or relating directly or indirectly from **your** insolvency or bankruptcy, or the insolvency or bankruptcy of any **third party**. Furthermore, no coverage is provided under **INSURING CLAUSE 2, SECTION E** or **INSURING CLAUSE 4, SECTION C** if **you**, become insolvent or bankrupt.

45. Land or water

arising directly or indirectly from **damage** to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by **you** or otherwise in **your** care, custody or control.

46. Miscellaneous property exclusions

in respect of **INSURING CLAUSE 4** only, arising directly or indirectly from:

- a) wear and tear, inherent defect, rot, vermin or infestation, or any gradually operating cause; or
- b) dryness or humidity, being exposed to light or extreme temperatures, unless the **damage** is caused by storm or fire; or
- c) coastal or river erosion; or
- d) a rise in the water table; or
- e) theft from an unattended vehicle unless the stolen item is out of sight; or
- f) frost, other than **damage** due to water leaking from burst pipes forming part of the permanent internal plumbing provided the **premises** are occupied and in use; or
- g) unexplained loss or disappearance or inventory shortage of **your** property; or
- h) a **hacking attack** or **virus**.

47. Nuclear

arising directly or indirectly from or contributed to by:

- 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.

48. Personal liability

made against:

- a) any past, present or future **senior executive officer** or **employee** of the company named as the Insured in the Schedule or any **subsidiary**; or
- b) any past, present or future officers, committees and members of **your** canteen, social, sports, medical, fire fighting, security services and welfare organisations; unless:
 - i) that **claim** would have been covered under this Policy if it had been made solely against the company named as the Insured in the Schedule or any **subsidiary**; and
 - ii) the act or event which gave rise to the **claim** was committed by a **senior executive officer** or **employee** acting within the scope of their duties as a **senior executive officer** or **employee** including **corporate blogging**, when the act or event was committed.

49. Pollution

arising from **damage** to **your** property or **premises** caused by **pollution** except **damage** (which is not otherwise excluded) which is caused by:

- a) **pollution** which itself results from **damage** covered under **INSURING CLAUSE 4, SECTION A** of this Policy for which **you** have purchased coverage; or
- b) **damage** which would otherwise be covered under **INSURING CLAUSE 4, SECTION A** of this Policy for which **you** have purchased coverage, which itself was caused by **pollution**.

50. RICO

for any actual or alleged violations of the Racketeer Influenced and Corrupt Organisation Act 18 USC Sections 1961 et seq and any amendments thereto, or any rules and regulations promulgated thereunder.

51. SEC

for any actual or alleged violation of any of the provisions of the Securities Act of 1933, the Securities Exchange Act 1934 or any similar regional, provincial, territorial, federal or state law or any common law relating thereto.

52. Toxic Mould / Fungus

other than in respect of **INSURING CLAUSE 4**, arising directly or indirectly from any loss, **bodily injury**, **damage** or **costs and expenses** including, but not limited to, losses, **damage** or **costs and expenses** related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by:

- a) any **fungus**, **mould**, mildew or yeast; or
- b) any **spore** or toxins created or produced by or emanating from such **fungus**, **mould**, mildew or yeast; or
- c) any substance, vapour, gas, or other emission or organic or inorganic body or substance produced by or arising out of any **fungus**, **mould**, mildew or yeast; or
- d) any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbours, nurtures, or acts as a medium for any **fungus**, **mould**, mildew yeast, or **spore** or toxins emanating therefrom;

regardless of any other cause, event, material, product or building component that contributed concurrently or in any sequence to that loss, **bodily injury**, **damage** or **costs and expenses**.

For the purposes of this **EXCLUSION** the following definitions are added to the Policy:

Fungus includes, but is not limited to, any plants or organisms belonging to the major group Fungi, lacking chlorophyll, and including **moulds**, rusts, mildews, smuts and mushrooms.

Mould includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and **fungi** that produced moulds.

Spore means any dormant or reproductive body produced by or arising from or emanating out of any **fungus, mould, mildew, plants, organisms or microorganisms.**

53. **Trade debt**
arising out of or in connection with any trading losses or trading liabilities incurred by any business managed or carried on by **you**, or any loss of **your** profit arising from the loss of any **client**, account or business.
54. **War and terrorism**
directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the **claim, loss, damage or costs and expenses**:
 - a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
 - b) any **act of terrorism**.

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

This **EXCLUSION** also excludes **claims, losses, damage or costs and expenses** of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to a) or b) above.

This **EXCLUSION** does not apply to any **claim, loss or costs and expenses** arising directly from a **hacking attack or virus**.

CONDITIONS

1. **What you must do in the event of a claim or loss**
Should a **senior executive officer** become aware of any **claim, loss or damage** the following obligations must be complied with by **you**:
 - a) **You** must not admit liability for or settle or make or promise any payment in respect of any **claim, loss or damage** which may be covered under this Policy. Neither must **you** incur any **costs and expenses** in connection with such a **claim, loss or damage** without **our** written agreement.

However, **you** should arrange for any urgent repairs following **damage** covered under **INSURING CLAUSE 4, SECTION A** to be done immediately. Before any other repair work begins **we** have the right to inspect **your damaged** property. **We** will notify **you** if **we** intend to do this.
 - b) The Claims Managers, as specified in the Schedule, must be notified as soon as is reasonably possible if during the **period of the policy**:
 - i) **you** suffer any **loss or damage** that could be covered by this Policy or a **senior executive officer** becomes aware that a **claim** has been made against **you**, whether verbal or made in writing; or
 - ii) a **senior executive officer** discovers reasonable cause for suspicion of fraud or dishonesty whether this could give rise to a **claim** under this Policy or not and **we** shall not be liable under this Policy for any **claim or loss** sustained in consequence of any fraudulent or dishonest act or omission committed after the date of such discovery.

We have nominated Claims Managers to accept notice on **our** behalf. Due to the nature of the coverage offered by this Policy, any unreasonable delay by **you** in notifying the Claims Managers of (i), or (ii) above could lead to the size of the **claim, loss or damage** increasing or to **our** rights being restricted. **We** shall not be liable for that portion of any **claim, loss or damage** that is due to any unreasonable delay in **you** notifying the Claims Managers of any **claim, loss or damage** in accordance with this clause.
 - c) **We** will expect **you** to provide **us** with full and accurate information about any matter that **you** notify to **us** under **your** obligations set out above. Once notice has been made **you** must give the Claims Managers all the assistance and information that is reasonably required. **You** must follow their advice and do anything that they reasonably require **you** to do to avoid,

minimise, settle or defend any **claim, loss or damage**.

If **you** think a crime has been committed **you** must report it to the appropriate law enforcement authorities. **You** must also permit the Claims Managers and any **third party** that is appointed by the Claims Managers to notify the appropriate law enforcement authorities of any **claim, loss or damage** where this action is deemed necessary, and **you** must comply with the advice given by those authorities.

If any of **your computer systems** are lost or stolen while they are temporarily removed from **your premises**, **we** will not make any payment unless **you** report the loss to the police within 48 hours after **you** become aware of it.

2. **What you must do in the event of a circumstance which may give rise to a claim**
Should a **senior executive officer** become aware of:
 - a) a situation that could give rise to a **claim**; or
 - b) an allegation or complaint made or intimated against **you**;

then **you** have the option of whether to report this circumstance to **us** or not. However, if **you** choose not to report this circumstance **we** shall not be liable for that portion of any **claim** that is greater than it would have been had **you** reported this circumstance.

If **you** choose to report this circumstance, **you** must do so within the **period of the policy**, or the period of any applicable Extended Reporting Period, for it to be considered under this Policy and **we** will require **you** to provide full details of the circumstance, including but not limited to:

 - a) the time, place and nature of the circumstance; and
 - b) the manner in which **you** first became aware of this circumstance; and
 - c) the reasons why **you** believe that this circumstance is likely to result in a **claim**; and
 - d) the identity of the potential claimant; and
 - e) an indication as to the size of the **claim** that could result from this circumstance.

Based on these details **we** will decide whether to accept this circumstance as one which could reasonably be expected to give rise to a **claim**. If **we** accept this circumstance, **we** will regard any subsequent **claim** that may arise as notified under this Policy.
3. **Cease and desist notices**
The receipt by **you** of any cease and desist notice does not

constitute a **claim** or **loss** under this Policy or, for the purpose of **CONDITION 2**, a circumstance that may give rise to a **claim** or **loss**. However, **you** must provide **us** with a full list of such notices upon **our** request and provide this list within 30 days of any such request.

4. Continuous cover

If **you** have neglected, through error or oversight only, to report a **claim** made against **you** during the period of a previous renewal of this Policy issued to **you** by **us**, then provided that **you** have maintained uninterrupted insurance of the same type with **us** since the expiry of that earlier Policy, then, notwithstanding the circumstances known at inception **EXCLUSION**, **we** will permit the matter to be reported under this Policy and will indemnify **you**, provided that:

- a) the indemnity will be subject to the applicable **aggregate limit of liability** or **limit of liability** of the earlier Policy under which the matter should have been reported or the **aggregate limit of liability** or **limit of liability** of the current Policy, whichever is the lower;
- b) **we** may reduce the indemnity entitlement by the monetary equivalent of any prejudice which has been suffered as a result of the delayed notification;
- c) the indemnity will be subject to all of the terms, **CONDITIONS**, **DEFINITIONS** and **EXCLUSIONS**, other than the **aggregate limit of liability** or **limit of liability**, contained in this current Policy.

5. Fraudulent claims

If **you** notify **us** of any claim knowing that claim to be false or fraudulent in any way, **we** shall have no responsibility to pay that claim to the extent that it was fraudulent.

6. Agreement to pay claims (duty to defend)

We have the right and duty to take control of and conduct in **your** name the investigation settlement or defence of any **claim**. **We** shall also pay on **your** behalf **costs and expenses** incurred with **our** prior written agreement (subject to the Limits of Liability shown in the Schedule) provided that **we** shall not pay for the **costs and expenses** of any part of a **claim** that is not covered by this Policy. **Our** payment of **costs and expenses** shall not be prejudiced by **your** refusal to reveal the identity of a confidential, newsgathering source.

We shall always endeavour to settle any **claim** through negotiation, mediation or some other form of alternative dispute resolution and shall pay on **your** behalf the amount so agreed by **us** and the claimant. If **we** cannot settle by such means, **we** shall pay the amount which **you** are found liable to pay either in court or through arbitration proceedings, subject always to the Limit of Liability shown in the Schedule.

If **you** refuse to agree to a settlement **we** recommend and the claimant will accept, **you** may continue the defence and investigation of that **claim**. However, the further **costs and expenses** incurred will be paid by **you** and **us** on a proportional basis, with 80% payable by **us** and 20% payable by **you**.

7. Innocent non-disclosure

We will not seek to avoid the Policy or reject any **claim** on the grounds of:

- a) a failure to comply with the duty of disclosure in the terms of the Insurance Contracts Act 1984; or
- b) misrepresentation, or
- c) a failure to comply with any terms or **CONDITIONS** of this Policy,

except where the non-disclosure, misrepresentation or non-compliance was reckless or fraudulent or **you** failed to conduct a full enquiry prior to providing the information that forms the basis of this insurance. In the event that **we** seek to avoid the Policy or reject any **claim** on this basis the burden of proving otherwise rests solely with **you**.

However, where more than one company is named as the Insured in the Schedule **we** agree that in the event that **we** seek to reject any **claim** on the basis of this **CONDITION** because of the actions or

inactions of one of the companies named as the Insured in the Schedule it shall not prejudice the right of any other company named as the Insured in the Schedule to indemnity under this Policy; provided always that such other Insured shall:

- a) be entirely innocent of and have had no prior knowledge of such non-disclosure, misrepresentation or non-compliance; and
- b) advise **us** in writing as soon as reasonably practicable upon becoming aware of such non-disclosure, misrepresentation or non-compliance.

8. Your duty to advise us of changes

If a **senior executive officer** becomes aware that any of the information that **you** have given **us** in the Application Form or elsewhere in connection with **your** application for this insurance has materially changed then **you** must advise **us** as soon as is practicable. In this event, **we** reserve the right to amend the terms, conditions or premium of the Policy.

9. Risk management conditions

If **we** attach any additional conditions to **your** Policy regarding any risk survey or risk management timetable or any other similar conditions then it is **your** responsibility to ensure that these conditions are complied with by the deadlines shown in the conditions.

10. Our rights of recovery

If any payment is made under this Policy in respect of a **claim**, **loss** or **damage** and there is available to **us** any of **your** rights of recovery against any **third party** then **we** maintain all such rights of recovery. **We** shall not exercise these rights against any **senior executive officer** or **employee** unless such payment is in respect of any wilful, malicious or dishonest acts or omissions.

You must do nothing to impair any rights of recovery. At **our** request **you** will bring proceedings or transfer those rights to **us** and help **us** to enforce them. Any recoveries shall be applied as follows:

- a) first, to **us** up to the amount of **our** payment on **your** behalf including **costs and expenses**; and
- b) then to **you** as recovery of **your** Deductible or other amounts paid as compensation or **costs and expenses**.

11. Cancellation

This Policy may be cancelled:

- a) by **you**, if **you** give **us** 30 days written notice; or
- b) by **us**, in accordance with the relevant provisions of the Insurance Contracts Act 1984.

If **you** give **us** notice of cancellation in accordance with a) above, the earned Premium shall be pro rata to the number of days that the Policy is in effect, provided that the Premium shall be deemed fully earned if any **claim**, **loss** or **damage** has been notified under this Policy.

If **we** give **you** notice of cancellation in accordance with b) above, the Premium shall be pro rata to the number of days that the Policy is in effect.

The Policy Administration Fee shall be deemed fully earned at the Inception Date of this Policy.

12. Additional insureds

We shall indemnify any **third party** as an additional Insured under this Policy, but only in respect of sums which they become legally obliged to pay (including liability for claimants' costs and expenses) as a result of a **claim** arising solely out of a **wrongful act** committed by **you** or arising solely out of accidental **bodily injury** or **damage** caused by **you**, provided that:

- a) **you** contracted in writing to indemnify the **third party** for such a **claim** prior to it first being made against them; and
- b) had the **claim** been made against **you**, then **you** would be entitled to indemnity under this Policy.

As a condition to **our** indemnification of any additional Insured:

- i) they shall prove to **our** satisfaction that the **claim** arose solely out of a **wrongful act** committed by **you** or arose solely out of accidental **bodily injury** or **damage** caused by **you**; and
- ii) they shall fully comply with **CONDITION 1(a)** above as if they were **you**.

Where a **third party** is indemnified as an additional Insured as a result of this **CONDITION**, it is understood and agreed that any **claim** made by that **third party** against **you** shall be treated by **us** as if they were a **third party**, not an additional Insured.

13. Prior subsidiaries

In respect of **INSURING CLAUSES 1, 2 (SECTIONS A and B only)** and **3**, should an entity cease to be a **subsidiary** after the Inception Date of this Policy, cover in respect of such entity shall continue as if it was still a **subsidiary**, until the termination of this Policy, but only in respect of any **claim** or **loss** that arises out of any **wrongful act** committed by that entity prior to the date that it ceased to be a **subsidiary**.

14. Mergers and acquisitions

During the **period of the policy**, if the company named as the Insured in the Schedule or any **subsidiary**:

- a) purchases assets or acquires liabilities from another entity in an amount greater than 10% of the assets of the company named as the Insured in the Schedule as listed in its most recent financial statement; or
- b) acquires another entity whose annual revenues are more than 10% of the annual revenues of the company named as the Insured in the Schedule for their last completed financial year;

then **you** shall have no coverage under this Policy for any **claim**, **loss** or **damage** that arises directly or indirectly out of the purchased or acquired entity unless the company named as the Insured in the Schedule gives **us** written notice prior to the purchase or acquisition, obtains **our** written agreement to extend coverage to those additional entities, assets or exposures, and agrees to pay any additional premium required by **us**.

If during the **period of the policy** the company named as the Insured in the Schedule consolidates or merges with or is acquired by another entity, then all coverage under this Policy shall terminate at the date of the consolidation, merger or acquisition unless **we** have issued an endorsement extending coverage under this Policy, and the company named as the Insured in the Schedule has agreed to any additional premium and terms of coverage required by **us**.

15. Automatic extended reporting period

In respect of **INSURING CLAUSES 1, 2 (SECTIONS A and B only)** and **3** only, an Extended Reporting Period of 60 days following the Expiry Date as shown in the Schedule shall be automatically granted at no additional premium. This Extended Reporting Period shall cover **claims** first made against **you** during the **period of the policy** and reported to **us** during this 60 day Extended Reporting Period but only in respect of any **wrongful act** committed prior to the Expiry Date shown in the Schedule, and subject to all other terms, conditions and exclusions of the policy. No **claim** shall be accepted by **us** in this 60 day Extended Reporting Period if **you** are entitled to indemnity under any other insurance, or would have been entitled to indemnity under such insurance but for the exhaustion thereof.

16. Optional extended reporting period

In respect of **INSURING CLAUSES 1, 2 (SECTIONS A and B only)** and **3** only, if **we** or **you** decline to renew or cancel this Policy then **you** shall have the right, upon payment of the Optional Extended Reporting Period Premium shown in the Schedule in full and not proportionally or otherwise in part, to have issued an endorsement providing a 365 day Optional Extended Reporting Period which shall be effective from the cancellation or non-renewal date. This Optional Extended Reporting Period shall cover **claims** first made against **you** and notified to **us** during this Optional Extended Reporting Period but only in respect of any **claim** arising out of any **wrongful act** committed prior to the date of cancellation

or non-renewal, and subject to all other terms, conditions and exclusions of the policy.

In order for **you** to invoke the Optional Extended Reporting Period option, the payment of the Optional Extended Reporting Period Premium shown in the Schedule for this Optional Extended Reporting Period must be paid to **us** within 45 days of the date of the non-renewal or cancellation.

At the commencement of this Optional Extended Reporting Period the entire premium shall be deemed earned and in the event that **you** terminate the Optional Extended Reporting Period for any reason prior to its natural expiration, **we** will not be liable to return any premium paid.

The right to the Extended Reporting Period or the Optional Extended Reporting Period shall not be available to **you** where:

- a) Cancellation or non-renewal by **us** is due to non-payment of premium, or
- b) Cancellation or non-renewal by **us** is due to **your** failure to pay any amounts in excess of the applicable Limit of Liability or within the amount of the applicable Deductible as is required by this Policy in the payment of **claims**.

At the renewal of this Policy, **our** quotation of different premium, Deductible or Limit of Liability or changes in policy language shall not constitute non-renewal by **us** for the purposes of granting this Optional Extended Reporting Period.

In no event shall the granting of the Extended Reporting Period or the Optional Extended Reporting Period increase the **limit of liability** or **aggregate limit of liability**.

17. Choice of law

In the event of a dispute arising under this Policy, at **your** request **we** will submit to the jurisdiction of any competent Court in New Zealand. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

Any summons, notice or process to be served upon **us** may be served upon:

Mr Scott Galloway
Lloyd's General Representative in New Zealand
c/o Hazelton Law
Level 3
101 Molesworth Street
PO Box 5639
Wellington
New Zealand
Tel: +64 4 472 7582
Fax: +64 4 472 7571
Email: scott.galloway@hazelton.co.nz

who has authority to accept service and to enter an appearance on **our** behalf, and who is directed at **your** request to give a written undertaking to **you** that he will enter an appearance on **our** behalf.

If a suit is instituted against any one of the Underwriters, all Underwriters and any commission allowed by them is to be regarded as remuneration of the Coverholder placing this Insurance.

TECH



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