



QBE Insurance (Australia) Limited

QBE CyberProtect

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I. INSURING AGREEMENTS

This Policy affords the following coverages only when indicated as purchased in Item 5 of the Schedule by the inclusion of a monetary limit of liability for such coverage.

A. LIABILITY COVERAGES

1. Network Security and Privacy Liability Coverage

The **Insurer** shall pay on behalf of the **Insured** all **Damages** in excess of the applicable retention as result of a **Claim** first made against the **Insured** during the **Policy Period** for a **Wrongful Act** taking place on or after the **Retroactive Date** and prior to the end of the **Policy Period**.

2. Privacy Regulatory Proceeding Coverage

The **Insurer** shall pay on behalf of the **Insured** all **Regulatory Damages** in excess of the applicable retention as a result of a **Privacy Regulatory Proceeding** first made against the **Insured** during the **Policy Period** for a **Wrongful Act** taking place on or after the **Retroactive Date** and prior to the end of the **Policy Period**.

3. Media Liability Coverage

The **Insurer** shall pay on behalf of an **Insured** all **Damages** in excess of the applicable retention as a result of a **Claim** first made against the **Insured** during the **Policy Period** for a **Wrongful Act** taking place on or after the **Retroactive Date** and prior to the end of the **Policy Period**.

B. REIMBURSEMENT COVERAGES

1. Event Expense Coverage

The **Insurer** shall pay all **Event Expenses** in excess of the applicable retention incurred by the **Insured** with the **Insurer's** prior written consent (such consent not to be unreasonably withheld) resulting from an **Event** first discovered by the **Insured** during the **Policy Period**.

2. Network Extortion Coverage

The **Insurer** shall reimburse the **Insured** for all **Extortion Expenses** in excess of the applicable retention incurred by the **Insured** resulting from an **Extortion Threat** first made against the **Insured** during the **Policy Period**.

3. Business Interruption Coverage

The **Insurer** shall pay all **Business Interruption Loss** incurred by the **Insured** during the **Period of Recovery** after the application of the **Waiting Period** and then in excess of the applicable retention resulting from a **Business Interruption** first occurring during the **Policy Period**.

4. Dependent Business Interruption Coverage

The **Insurer** shall pay all **Dependent Business Interruption Loss** incurred by the **Insured** during the **Period of Recovery** after the application of the **Waiting Period** and then in excess of the applicable retention resulting from a **Dependent Business Interruption** first occurring during the **Policy Period**.

5. Bricking Coverage

The **Insurer** shall pay all **Hardware Expenses** in excess of the applicable retention incurred by the **Insured** with the **Insurer's** prior written consent (such consent not to be unreasonably withheld) resulting from a **Bricking Event** first discovered by the **Insured** during the **Policy Period**.

6. Consequential Reputational Loss Coverage

The **Insurer** shall pay all **Consequential Reputational Loss** incurred by the **Insured** during the **Period of Recovery** after the application of the **Waiting Period** and then in excess of the applicable retention resulting from **Adverse Publicity** caused by an **Event** first discovered during the **Policy Period**.

7. Reward Fund Coverage

The **Insurer** shall pay all **Criminal Reward Funds** in excess of the applicable retention.

8. Cryptojacking Coverage

The **Insurer** shall pay **Cryptojacking Fraud Loss** in excess of the applicable retention incurred by the **Insured** with the **Insurer's** prior written consent (such consent not to be unreasonably withheld) resulting from a **Cryptojacking Event** first discovered by the **Insured** during the **Policy Period**.

9. Social Engineering Coverage

The **Insurer** shall pay all **Social Engineering Loss** in excess of the applicable retention incurred by the **Insured** resulting from a **Social Engineering Event** first discovered by the **Insured** during the **Policy Period**, but only if the **Insured** verifies the instruction to transfer **Money** or **Securities** by following a pre-arranged callback or other established procedural method to authenticate the validity of the request prior to acting upon any transfer instruction.

C. DEFENCE COSTS

The **Insurer** shall pay on behalf of the **Insured** all **Defence Costs** in excess of the applicable retention as result of a **Claim** first made against the **Insured** during the **Policy Period** for a **Wrongful Act** taking place on or after the **Retroactive Date** and prior to the end of the **Policy Period**.

II. CONDITIONS TO COVERAGE

- A. The coverages provided under Section I. INSURING AGREEMENTS, paragraph A. LIABILITY COVERAGES and C. DEFENCE COSTS apply only if:
1. prior to the inception date of this Policy or of the first policy issued to the **Parent Company** and continuously renewed by the **Insurer** of which this Policy is a renewal, whichever is earlier, no **Executive Officer** knew or should have known that any such **Wrongful Act** or **Related Wrongful Act** had resulted or might result in a **Claim**;
 2. notice of any such **Wrongful Act** or **Related Wrongful Act** has not been given under any prior policy of which this Policy is a renewal or replacement; and
 3. the **Claim** is reported to the **Insurer** in accordance with Section IX. NOTICE of this Policy.
- B. The coverages provided under Section I. INSURING AGREEMENTS, paragraph B. REIMBURSEMENT COVERAGES apply only if the **Event**, **Insured System Failure** or **Dependent Business Interruption** is first discovered by the **Insured** or the **Extortion Threat** is first made during the **Policy Period**.

III. GLOSSARY

The following defined words shall have the same meaning throughout this Policy, whether expressed in the singular or the plural.

Additional Expense means reasonable and necessary expenses in excess of the **Insured's** normal operating expenses that the **Insured** incurred during the **Period of Recovery** to reduce or avoid a loss of net income and to resume the **Insured's** income producing activities.

Adverse Publicity means the public dissemination in the media of an actual or alleged **Event** which damages the **Insured's** brand, reputation, or customer trust.

Application means the application and any accompanying documentation submitted to the **Insurer** for this Policy or any documentation submitted to the **Insurer** in connection with the underwriting of this Policy.

Authorised Employee means an employee of the **Insured** who is authorised by the **Insured** to transfer, or to instruct others to transfer, **Money** or **Securities**.

Betterment Expenses means costs and expenses incurred in restoring, replacing, recreating, updating, or installing a more secure and efficient version of the affected **Computer Network**, to a level beyond that which existed prior to an **Event**.

Provided, however, the most the **Insurer** will pay for **Betterment Expenses** for any **Event** is the percentage set forth in Item 8 of the Schedule more than the total amount that would have been paid by the **Insurer** under this Policy for costs and expenses incurred in restoring, replacing or recreating a **Computer Network** to the same level that existed prior to the **Event**.

Bricking Event means any **Event**, as defined in paragraphs 2 through 6 of such definition, that renders a **Computer Device** or **Connected Device** non-functional for its intended purpose only if, after reasonable efforts have been made, such device cannot be restored to the level of functionality that existed immediately preceding the **Event**.

Business Interruption means:

1. the actual and measurable total or partial interruption, impairment, suspension or deterioration of an **Insured's** business directly caused by an **Event** or an **Insured System Failure**; or
2. the voluntary and intentional shutdown of a **Computer Network**:
 - a. ordered by an **Executive Officer** of the **Company** who is authorised to make such an order, due to such **Executive Officer's** reasonable belief that such shutdown would limit the financial impact of an **Event**; or
 - b. ordered by any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity, due to an **Event**, but only when ordered to reduce the extent of loss resulting from an **Event**; or
 - c. where such shutdown directly causes a total or partial interruption or deterioration in the **Insured's** business operations.

Business Interruption Loss means the sum of:

1. the **Company's** net income (net profit or loss before income taxes) that would have been earned or loss that would have been avoided but for the **Business Interruption**; and
2. **Additional Expense**.

Net income will be calculated on an hourly basis based on the average net profit before tax the **Insured** has earned in the twelve (12) month period immediately preceding the **Business Interruption**.

Business Interruption Loss shall also include the costs incurred by the **Insured** to engage a third party forensic accountant or other professional for the preparation, presentation, certification and/or verification of a covered claim for payment under the Business Interruption Coverage afforded by this Policy; provided, however, that the most the **Insurer** will pay for any such costs is the amount set forth in Item 5.B.10. of the Schedule, which amount shall be in addition to and not part of the **Business Interruption Loss** Limit of Liability shown in Item 5.B.3. of the Schedule, but shall be included within and subject to the Policy Maximum Limit of Liability shown in Item 5.C. of the Schedule.

However, **Business Interruption Loss** shall not include any:

- a. contractual penalties;
- b. liability to a third party;
- c. legal costs or legal expenses of any nature;
- d. costs or expenses incurred to update, upgrade, restore, or replace any **Computer Network** to a level beyond that which existed immediately prior to sustaining the **Business Interruption Loss** unless such costs are necessary based on market availability of comparable products;
- e. consequential loss or damage; or
- f. loss resulting from unfavorable business conditions.

Change in Control means:

1. the **Parent Company's** merger with or acquisition by another entity or the acquisition of all or substantially all of its assets by another entity, such that the **Parent Company** is not the surviving entity;
2. when a person or entity or group of persons or entities acting in concert, acquires securities or voting rights which result in ownership or voting control by such person(s) or entity(ies) of more than 50% of the outstanding securities or voting rights representing the present right to vote for or appoint directors of the **Parent Company**; or
3. when there is a change in ownership interests of more than 50% of the securities or voting rights of a **Company**.

Claim means:

1. a written demand (other than an **Extortion Threat**) against an **Insured** for monetary or non-monetary (including injunctive) relief, including a request to toll any statute of limitations, or to engage in arbitration or mediation, which shall be deemed first made upon receipt by the **Insured** of such demand;
2. a civil action or proceeding against an **Insured** for monetary or non-monetary (including injunctive) relief which shall be deemed first made upon the earlier of: (a) formal service of a complaint or similar pleading upon the **Insured**; or (b) other receipt of such complaint or similar pleading by the **Insured**; and
3. solely with respect to INSURING AGREEMENT I.A.2 (Privacy Regulatory Proceeding Coverage), a **Privacy Regulatory Proceeding**, which shall be deemed first made upon receipt by the **Insured** of written notice of such **Privacy Regulatory Proceeding**.

However, a **Claim** does not include any regulatory investigation, action or proceeding unless such regulatory investigation, action or proceeding is a **Privacy Regulatory Proceeding**.

Company means the **Parent Company** and any **Subsidiary**.

Computer Device means desktop and laptop computers, associated input and output devices, mobile devices, data storage devices, networking equipment and back up facilities.

Computer Network means:

1. a connected network of computer hardware, software, and any associated components leased, owned or operated by a **Company**, or operated for the benefit of a **Company** by a third party service provider pursuant to a written contract with the **Company**; and
2. any industrial or manufacturing control system, operational technologies, and SCADA systems leased, owned or operated by a **Company**.

Computer Network does not include the Internet, telephone company networks, electrical grids, or other public infrastructure network not under the operation or control of a **Company**.

Confidential Information means **Personal Information**, information used for authenticating customers for normal business transactions and information of any third party, including but not limited to, financial data, business plans, customer information, employee information, market information, and other information not available to the general public:

1. which is in the **Company's** care, custody and control;
2. for which the **Company** is legally responsible; or
3. which is in the care, custody and control of a third party which is legally responsible pursuant to contract with the **Company** and to whom the **Company** has provided such information.

Connected Device means any non-standard **Computer Device** that connects electronically to a network and has the ability to transmit data.

Consequential Reputational Loss means the **Company's** net income (net profit before income taxes) that would have been earned but for the **Adverse Publicity**. However, **Consequential Reputational Loss** shall not include:

1. ordinary operating expenses incurred by the **Insured** during the **Period of Recovery**;
2. contractual penalties;
3. liability to a third party;
4. consequential loss or damage;
5. loss resulting from unfavorable business conditions;
6. legal costs or legal expenses of any nature; or
7. costs or expenses the **Insured** incurs to prove or document **Consequential Reputational Loss**.

Criminal Reward Funds means amounts offered and paid by the **Insured** with the **Insurer's** prior written consent for information that leads to the arrest and prosecution of any individual not employed by or affiliated with the **Insured** who committed or attempted to commit any illegal act that caused any loss covered by this Policy; provided, however, that:

1. **Criminal Reward Funds** shall not include any amount based upon information provided by the **Insured**, any employee of the **Insured**, the **Insured's** auditors or any individual hired or retained to investigate the illegal acts; and
2. no **Criminal Reward Funds** shall be covered if the **Insured** pays the reward more than 6 months following the end of the **Policy Period**.

Cryptojacking Event means any unauthorised access to, use or misuse of, or modification to a **Computer Network** by cyber attacks perpetrated by a third party or **Rogue Employee** through any electronic means, including malware, viruses, worms, and Trojan horses, spyware and adware, zero-day attacks, hacker attacks and denial of service attacks, for the purpose of mining cryptocurrency, that directly results in **Cryptojacking Fraud Loss** incurred by the **Insured**.

Cryptojacking Fraud Loss means an increase in service charges or fees incurred by the **Company** resulting from the unauthorised use of any of the following utilities services:

1. electricity; or
2. internet access, including mobile data,

provided, however, that such additional charges or fees for the utilities services are:

- a. incurred pursuant to a written contract between the **Company** and the respective utility provider, which was executed before the **Cryptojacking Event** first occurred;
- b. charged to the **Company** in a periodic billing statement issued by the respective utility provider, which includes usage or consumption information; and
- c. not charged at a flat fee to the **Company** that does not scale with the rate or use of the respective utilities service or resource.

Damages mean the amounts any **Insured** is legally obligated to pay as a result of a **Claim** covered by this Policy, including but not limited to:

1. settlements and judgments, including costs and fees awarded pursuant to a covered judgment and pre-judgment and post-judgment interest on that portion of a covered judgment;
2. compensatory, punitive, exemplary and multiple damages; and
3. solely with respect to INSURING AGREEMENT I.A.1. (Network Security and Privacy Liability Coverage), **PCI-DSS Assessments**.

However, **Damages** does not include:

- a. fines or penalties imposed against the **Insured**, except to the extent that such amounts constitute **Regulatory Damages**;
- b. taxes imposed against the **Insured**;
- c. costs incurred by an **Insured** to comply with any order for non-monetary relief (including injunctive relief) or with any agreement to provide such relief;
- d. costs incurred by the **Insured** for production costs or the costs or expenses of any recall, reproduction, reprint, return, correction or retraction of any **Material**;
- e. the cost of any license fee or royalty or the cost incurred to perform any obligation assumed by, or on behalf of, or with the consent of any **Insured**;
- f. any amount which constitutes disgorgement, restitution, the return of fees, accounting of profits, commissions, charges, gain or other compensation paid to an **Insured**;

- g. except as permissible in accordance with Section VIII. DEFENCE AND SETTLEMENT, plaintiff attorney fees, costs or expenses;
- h. liquidated damages pursuant to a contract or agreement in excess of the actual damages caused by the **Insured's Wrongful Acts**;
- i. any amount for which the **Insured** is absolved from payment by reason of any covenant, agreement or court order;
- j. any loss of investment income;
- k. any amounts assessed as royalty fees or payments; or
- l. any amount not insurable under the law pursuant to which this Policy shall be construed.

The insurability of **Damages** shall be determined under the law of the applicable jurisdiction most favorable to such insurability, including, without limitation, the jurisdiction in which the **Parent Company**, the **Insurer** or such **Claim** is located.

Defence Costs means reasonable and necessary fees, costs and expenses incurred by the **Insured** in the defence or appeal of any **Claim**, including the costs of an appeal bond, attachment bond or similar bond.

Defence Costs shall not include:

- 1. any salaries, wages, overhead, benefits, benefit expenses or internal charges associated with any **Insured**;
- 2. the obligation to apply for or furnish such bond; or
- 3. any fees, costs or expenses incurred by an **Insured** prior to the time that the **Claim** is first made against the **Insured**.

Dependent Business means any entity the **Insured** relies upon to conduct operations pursuant to a written contract between the **Insured** and the entity.

Dependent Business Computer Network means:

- 1. a connected network of computer hardware, software, and any associated components leased, owned or operated by a **Dependent Business**; and
- 2. any industrial or manufacturing control system, operational technologies, and SCADA systems leased, owned or operated by a **Dependent Business**.

Dependent Business Computer Network does not include the Internet, telephone company networks, electrical grids, or other public infrastructure network.

Dependent Business Event means:

- 1. unauthorised access to a **Dependent Business Computer Network**;
- 2. unauthorised use of a **Dependent Business Computer Network**; or
- 3. denial of access to an authorised user of a **Dependent Business Computer Network** as a result of any attack of such **Dependent Business Computer Network** perpetuated through computer viruses, Trojan Horses, keystroke loggers, cookies, spyware, adware, worms, or logic bombs; provided, however, that no denial of access to an authorised user caused by a mechanical or electrical failure outside the control of the **Dependent Business** shall constitute a **Dependent Business Event**.

Dependent Business Interruption means the actual and measurable total or partial interruption, impairment, suspension or deterioration of an **Insured's** business directly caused by a **Dependent Business Event** or a **Dependent Business System Failure**.

Dependent Business Interruption Loss means the sum of:

- 1. the **Company's** net income (net profit or loss before income taxes) that would have been earned or loss that would have been avoided but for the **Dependent Business Interruption**; and
- 2. **Additional Expense**.

Net income will be calculated on an hourly basis based on the average net profit before tax the **Insured** has earned in the twelve (12) month period immediately preceding the **Dependent Business Interruption**.

Dependent Business Interruption Loss shall also include the costs incurred by the **Insured** to engage a third party forensic accountant or other professional for the preparation, presentation, certification and/or verification of a covered claim for payment under the Dependent Business Interruption Coverage afforded by this Policy; provided, however, that the most the **Insurer** will pay for any such costs is the amount set forth in Item 5.B.10. of the Schedule, which amount shall be in addition to and not part of the **Dependent Business Interruption Loss** Limit of Liability shown in Item 5.B.4. of the Schedule, but shall be included within and subject to the policy Maximum Limit of Liability shown in Item 5.C. of the Schedule.

However, **Dependent Business Interruption Loss** shall not include any:

- a. contractual penalties;
- b. liability to a third party;
- c. legal costs or legal expenses of any nature;
- d. consequential loss or damage; or
- e. loss resulting from unfavorable business conditions.

Dependent Business System Failure means any unintentional and unplanned outage or failure of a **Dependent Business Computer Network**.

Electronic Data means any data stored electronically on a **Computer Network**, including **Confidential Information**.

Employment Practices Wrongful Act means any:

1. breach of any employment contract or agreement or contractual obligation, including any contract or agreement or contractual obligation arising out of any employee handbook, personnel manual, policy statement or other representation;
2. violation of any employment discrimination law;
3. harassment including:
 - a. sexual harassment that is made a condition of employment with, used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment within, a **Company**; or
 - b. workplace harassment, including bullying that interferes with performance or creates an intimidating, hostile or offensive working environment within a **Company**;
4. retaliatory treatment against an employee of a **Company** on account of such individual:
 - a. exercising his or her rights under law, refusing to violate any law or opposing any unlawful practice;
 - b. having assisted or testified in or cooperated with a proceeding or investigation (including any internal investigation conducted by the **Company's** human resources or legal department) regarding alleged violations of law by the **Insured**;
 - c. disclosing or threatening to disclose to a superior or any governmental agency any alleged violations of law; or
 - d. filing any claim against the **Company** under the Federal False Claims Act, Section 806 of the Sarbanes Oxley Act or any other whistleblower law;
5. employment-related:
 - a. misrepresentation, defamation (including libel and slander), invasion of privacy, wrongful infliction of emotional distress, mental anguish or humiliation; or
 - b. negligent retention, supervision, hiring or training, failure to provide or enforce consistent employment-related corporate policies and procedures, false imprisonment, negligent evaluation, wrongful discipline or wrongful deprivation of career opportunity,

but only when alleged as part of a **Claim** for any act described in paragraphs 1, 2, 3, 4 or 6. in this definition; or

6. wrongful termination, discharge of employment, demotion, denial of tenure, failure or refusal to employ or promote, or wrongful or negligent employee reference;

committed, attempted, or allegedly committed or attempted by an **Insured** while acting in his or its capacity as such.

Event means the failure of the **Insured** or others on behalf of the **Insured** to prevent or protect against the following:

1. the disclosure or theft of **Confidential Information** by an **Insured** or a third party for whom the **Insured** is legally responsible;
2. unauthorised access to a **Computer Network**;
3. unauthorised use of a **Computer Network**;
4. participation of a **Computer Network** in a denial of service (DoS) attack directed against a third party;
5. transmission of malicious code from a **Computer Network** causing harm to a third party;
6. denial of authorised access to a **Computer Network**;
7. physical theft of hardware on which data is stored; or
8. the failure to disclose any of the aforementioned in violation of a **Privacy Breach Notice Law**.

Event also means the **Insured's** failure to:

- a. implement, maintain, or comply with the **Insured's** policies and procedures, including but not limited to the **Insured's** privacy policy, stating the **Insured's** obligations with regard to **Confidential Information**; or
- b. comply with any federal, state, local, or foreign statute, rule, regulation, or other law pertaining to the **Insured's** responsibilities with respect to **Confidential Information**, but solely in connection with any action listed in paragraphs 1 through 8 above.

Notwithstanding the foregoing:

- i. solely with respect to INSURING AGREEMENT I.B.8. (Cryptojacking Coverage), **Event** means a **Cryptojacking Event**; and
- ii. solely with respect to INSURING AGREEMENT I.B.9. (Social Engineering Coverage), **Event** means a **Social Engineering Event**.

Event Expenses means reasonable and necessary fees, costs and expenses incurred by an **Insured** in response to an **Event**, solely within the twenty-four (24) months immediately following the discovery of the **Event** by an **Executive Officer** and consented to in writing by the **Insurer**, including but not limited to the following:

1. third party forensics services engaged solely to determine the scope and cause of an **Event** and make recommendations regarding security improvements;
2. expenses incurred to provide notification to individuals or entities whose **Confidential Information** was or may have been subject to an **Event** whether or not required by the applicable **Privacy Breach Notice Laws**;
3. legal expenses incurred to ensure compliance with **Privacy Breach Notice Laws**;
4. other mitigating measures, whether voluntary or mandatory, including credit and identification monitoring services, identification restoration services, identity theft education, identification theft insurance (provided the **Insurer** shall have no obligation to apply for or furnish such insurance), and call center services;
5. engagement of a public relations firm or crisis management firm, solely related to communications designed for the purpose of restoring or protecting the **Insured's** reputation due to injury caused by the **Event**;
6. costs incurred to restore, recollect or recreate **Electronic Data**, including the costs incurred in determining whether it is possible to do so;
7. costs to temporarily store the **Insured's** electronic data at a third-party host location when the **Insured's** computer systems remain vulnerable to damage, destruction, alteration, corruption, copying, stealing or misuse; and
8. **Betterment Expenses**.

Event Expenses shall not include:

- a. any salaries, wages, overhead, benefits, benefit expenses or internal charges associated with any **Insured**; or
- b. any fees, costs and expenses related to the remediation of any deficiencies that gave rise to the **Event**, including such fees, costs and expenses related to updating, upgrading, restoring or replacing any security software or controls; provided, however, this paragraph b. shall not apply to **Betterment Expenses**.

Executive Officer means:

1. the Chief Executive Officer, Chief Financial Officer, Chief Information Officer, Chief Security Officer, General Counsel, or Risk Manager of the **Company**, and any functional equivalent; or
2. an official of an **Insured** organized and operated in a jurisdiction other than the United States and its territories who is holding a position that is equivalent to an executive position listed in 1. above.

Executive Officer shall also include the direct reports of the aforementioned individuals, but shall not include clerical or administrative staff.

Extortion Expenses means reasonable and necessary expenses incurred by the **Insured** that result directly from an **Extortion Threat**, including but not limited to monies or other valuable consideration to be paid in response to the threat for the purpose of terminating the threat and the costs to conduct an investigation to determine the cause of the **Extortion Threat**.

Extortion Threat means any threat or series of related threats directed at the **Insured** to harm or disrupt the **Computer Network**, use or disclose **Confidential Information** in conjunction with a demand for money or other valuable consideration to avert, eliminate or mitigate the threat. An **Extortion Threat** shall be deemed made when an **Executive Officer** is made aware of any such threat.

First-Party Loss means **Event Expenses**, **Business Interruption Loss**, **Dependent Business Interruption Loss**, **Extortion Expense**, **Hardware Expenses**, **Consequential Reputational Loss**, **Criminal Reward Funds**, **Social Engineering Loss** and **Cryptojacking Fraud Loss**.

Hardware Expenses means reasonable and necessary costs to replace a **Computer Device** or **Connected Device** with identical or commercially equivalent items that perform the same function.

Incident means any **Claim**, **Event**, **Insured System Failure**, **Dependent Business Interruption** or **Extortion Threat**.

Insured means:

1. a **Company**;
2. any past, present or future officer, director, trustee, employee (including leased and temporary employees) of a **Company**, or any foreign equivalent of the foregoing, but solely with respect to a **Wrongful Act** committed within the scope of and while acting in their capacity as such;
3. any past, present or future general or managing partner or principal of a **Company** which is a partnership, limited liability partnership or limited liability company, acting in their capacity as such;
4. any entity that the **Company** is required by contract to add as an **Insured** but only for such entity's liability for a **Wrongful Act** of the **Company**; and
5. at the **Insured's** election at the time of any **Claim**, any independent contractor of the **Company**, but solely with respect to a **Wrongful Act** committed by such independent contractor within the scope of their duties performed on behalf of the **Company**.

Insured System Failure means any unintentional and unplanned outage or failure of a **Computer Network**.

Insurer means the insurance company that issued this Policy as identified in Item 2 of the Schedule.

Material means the content of the **Insured's** website, intranet or social media pages. **Material** does not include any product packaging or labeling, design or ideas in relation to tangible products or property, or software code.

Media Activities means creating, preparing, producing, gathering, collecting, researching, serialising, broadcasting, disseminating, releasing, publishing, distributing, exhibiting, performing, printing or licensing of **Material**.

Money means the **Insured's**:

1. currency, coins and bank notes in current use and having a face value; and
2. traveler's checks and money orders held for sale to the public.

Panel Adviser means a claims service provider as set forth in Item 9 of the Schedule.

Parent Company means the entity named in Item 1 of the Schedule.

PCI-DSS Assessments means any monetary assessment against an **Insured** pursuant to a contract with a financial institution or a credit or debit card company/processor allowing an **Insured** to accept payment for goods or services by a payment card (including, but not limited to, credit card, debit card or prepaid card) where such monetary assessment arises from such **Insured's** non-compliance with the generally accepted and published Payment Card Industry standards for data security.

Period of Recovery means:

1. solely with respect to INSURING AGREEMENT I.B.3. (Business Interruption Coverage), the period of time that begins from the date and time that the **Business Interruption** first occurred to the date and time the **Insured's** operations are restored to the condition that existed immediately prior to the **Business Interruption**; or should have been restored if the **Insured** had acted with due diligence and dispatch; provided, however, that in no event shall such period exceed the number of days set forth in Item 7.A. of the Schedule;
2. solely with respect to INSURING AGREEMENT I.B.4. (Dependent Business Interruption Coverage), the period of time that begins from the date and time that the **Dependent Business Interruption** first occurred to the date and time the **Insured's** operations are restored to the condition that existed immediately prior to the **Dependent Business Interruption**; or should have been restored if the **Insured** had acted with due diligence and dispatch; provided, however, that in no event shall such period exceed the number of days set forth in Item 7.B. of the Schedule;
3. solely with respect to INSURING AGREEMENT I.B.6. (Consequential Reputational Loss Coverage), the period of time that begins on the date that the **Adverse Publicity** first occurred and ends after the number of days set forth in Item 7.C. of the Schedule.

Personal Information means any of the following information owned, licensed or maintained by the **Insured** or by any third party to whom the **Insured** has entrusted such information:

1. any individual's name, social security number, medical or healthcare data, driver license number, state identification number, credit card number, debit card number, address, telephone number, account number, account history or historical information, password, access codes or personal identification numbers (PIN's) or other non-public information;
2. any information about an individual that is considered "non-public personal information" within the meaning of Title V of the Gramm-Leach Bliley Act of 1999 ("G-L-B"), also known as the Financial Services Modernization Act of 1999 and its implementing regulations, or protected personal information under any similar federal, state, local or foreign law;
3. any information about an individual that is considered "protected health information" or "electronic protected health information" within the Health Insurance Portability and Accountability Act of 1996("HIPAA") or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and their implementing regulations, or protected health-related information under any similar federal, state, local or foreign law;
4. any information about an individual that is considered "personally identifiable information" within the Family Educational Rights and Privacy Act ("FERPA"); and
5. as defined and amended in any **Privacy Regulation**.

Personal Information shall not include information that is lawfully available to the general public.

Policy Period means the period of time stated in Item 3 of the Schedule (subject to its earlier cancellation or termination in accordance with Section XVI. CANCELLATION OR NON-RENEWAL) and the Extended Reporting Period, if applicable.

Pollutants means any substance exhibiting hazardous characteristics as is or may be defined or identified on any list of hazardous substances issued by the United States Environmental Protection Agency or any similar federal, state, local or foreign statute, rule, regulation or law; or contemplated by California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") or any similar federal state, local or foreign statute, rule, regulation or law. **Pollutants** also means, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed), any bacteria, mildew, mold, fungi, spore or other micro-organisms or mycotoxins and any of their associated toxins, or any virus or other pathogen (whether or not a micro-organism), as well as any air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, or any noise.

Privacy Breach Notice Law means any federal, state, local or foreign statute or regulation requiring notice to persons whose **Personal Information** was accessed or is reasonably believed to have been accessed in an unauthorised manner.

Privacy Regulation means any federal, state, local or foreign statute or regulation requiring the protection of **Personal Information**, including but not limited to the following:

1. the Privacy Act 2020 of New Zealand, the Privacy Regulations 2020 and any Code of Practice made under section 32 of the Privacy Act 2020 of New Zealand;
2. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) ("HIPAA") and Health Information Technology for Economic and Clinical Health Act ("HITECH");
3. Gramm-Leach-Bliley Act of 1999 ("G-L-B"), also known as the Financial Services Modernization Act of 1999;
4. The California Security Breach Notification Act (CA SB 1386) and Massachusetts 201 CMR 17;
5. Identity Theft Red Flags under the Fair and Accurate Credit Transactions Act of 2003;
6. Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. Section 45(a), but solely for alleged violations of unfair or deceptive acts or practices in or affecting commerce;
7. Regulation (EU) 2016/679, General Data Protection Regulation ("GDPR");
8. The California Consumer Privacy Act of 2018 (CA SB 1121) ("CCPA"); and
9. other similar federal, state, local or foreign privacy protection legislation.

Privacy Regulatory Proceeding means a request for information, demand, suit, civil investigation or civil or administrative action or proceeding made or brought by or on behalf of a governmental or regulatory authority that alleges violation of a **Privacy Regulation** as a result of an **Event**.

Property Damage means damage to, loss of use of or destruction of any tangible property. Tangible property shall not include **Electronic Data**.

Regulatory Damages means:

1. any civil monetary fine or penalty imposed on an **Insured** by federal, state, local or foreign government;
2. any amounts the **Insured** is required by law or has agreed by settlement to deposit into a consumer redress fund; and
3. any amounts the **Insured** is required by law or has agreed by settlement to pay to a regulator, ombudsmen, governmental, statutory or professional body or similarly legally empowered body or entity for the purpose of distribution to or otherwise for the benefit of affected consumers,

pursuant to or as a result of a **Privacy Regulatory Proceeding**.

However, **Regulatory Damages** shall not mean any amounts not insurable under the law pursuant to which this Policy shall be construed. The insurability of **Regulatory Damages** shall be determined under the law of the applicable jurisdiction most favorable to such insurability, including, without limitation, the jurisdiction in which the **Parent Company**, the **Insurer** or the **Privacy Regulatory Proceeding** is located.

Related Wrongful Acts means all **Wrongful Acts**, **Events** or **Extortion Threats** that are causally connected by or have as a common nexus any:

1. fact, circumstance, situation, event, transaction, or cause; or
2. series of related facts, circumstances, situations, events, transactions or causes.

Retroactive Date means the date identified at Item 4 of the Schedule.

Rogue Employee means an employee (including leased or temporary employees) of a **Company** who deliberately acts outside the course and scope of employment or whose intentional conduct results in an **Event**. **Rogue Employee** shall not include any **Executive Officer**.

Securities means the **Insured's** negotiable and nonnegotiable instruments or contracts representing either **Money** or property, and includes tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use, and evidences of debt issued in connection with credit or charge cards, which cards are not issued by the **Insured**.

Social Engineering Event means the transfer of **Money** or **Securities** by the **Insured** to an account outside the **Insured's** control pursuant to instructions made by a person purporting to be an **Authorised Employee**, outsourced provider, vendor or customer of the **Insured**, when such instructions prove to have been fraudulent and issued by a person who is not an **Authorised Employee**, outsourced provider, or customer of the **Insured**.

Social Engineering Loss means loss of **Money** or **Securities** directly resulting from a **Social Engineering Event**. **Social Engineering Loss** does not include any amounts incurred to prove or establish the existence of such loss.

Subsidiary means:

1. any entity while more than 50% of the outstanding securities or other equity ownership, representing the present right to vote for election of, or to appoint, directors, managers, or the foreign equivalent of any such directors or equivalent executives of such entity, are owned or controlled by the **Parent Company** directly or indirectly through one or more **Subsidiaries**; or
2. any entity while the **Parent Company** has the right, pursuant to either written contract or the bylaws, charter, operating agreement or similar documents of a **Company**, to elect or appoint a majority of the Board of Directors of a corporation or equivalent executives of such entity.

Terrorism means an activity that involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure or a threat thereof and appears to be intended to:

1. intimidate or coerce a civilian population;
2. disrupt any segment of the economy of a government de jure or de facto, state or country;
3. overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion; or
4. affect the conduct or policy of any government de jure or de facto by mass destruction assassination, kidnapping or hostage-taking.

Waiting Period means:

1. solely with respect to INSURING AGREEMENTS I.B.3. and I.B.4. (Business Interruption Coverage and Dependent Business Interruption Coverage), the number of hours stated in Item 6.A. and 6.B., respectively, of the Schedule, measured from the commencement of the **Business Interruption** or **Dependent Business Interruption**;
2. solely with respect to INSURING AGREEMENT I.B.6. (Consequential Reputational Loss Coverage), the number of days stated in Item 6.C. of the Schedule, measured from the commencement of **Adverse Publicity**.

Wrongful Act means:

1. solely with respect to INSURING AGREEMENT I.A.1. (Network Security and Privacy Liability Coverage) and INSURING AGREEMENT I.A.2. (Privacy Regulatory Proceeding Coverage), an alleged **Event**; and
2. solely with respect to INSURING AGREEMENT I.A.3. (Media Liability Coverage), any defamation, infringement of copyright, invasion of privacy or misappropriation of ideas arising from the **Insured's Media Activities**.

IV. EXCLUSIONS

The **Insurer** shall not be liable for and shall not have any duty to defend any **Claim, Event, Insured System Failure, Dependent Business Interruption, or Extortion Threat** against any **Insured**:

A. Advertising

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged false advertising or misrepresentation in any **Material**, including without limitation, inaccurate, misleading or inadequate description of the price of products or services or any failure of products or services to conform with quality, quantity or performance as represented in **Material**.

B. Antitrust/Unfair Competition/RICO

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged:

1. antitrust, price fixing, monopolisation, restraint of trade, price discrimination, predatory pricing or violation of the Sherman Act, the Clayton Act, or any federal statutory provision regarding antitrust, price fixing, monopolisation, restraint of trade, price discrimination or predatory pricing;
2. violation of:
 - a. the Commerce Act 1986 of New Zealand;
 - b. the Federal Trade Commission Act; or
 - c. The Racketeer Influenced and Corrupt Organizations Act; or
 - d. violation of any rules or regulations promulgated under or in connection with the above statutes, or any similar provision of any federal, state, local, foreign or other law (including common law) or statute,

except that paragraph 2.a. does not apply to INSURING AGREEMENT I.A.2. (Privacy Regulatory Proceeding Coverage).

C. Assumed Liability

based upon, arising out of, relating to or directly or indirectly involving any assumption of the liability of others under any contract or agreement; provided, however, that this exclusion does not apply to INSURING AGREEMENT I.A.3. (Media Liability Coverage) with respect to liability of others for **Material** furnished by the **Insured** that the **Insured** agrees to assume under a hold harmless or indemnity agreement but only to the extent such liability arises out of any **Wrongful Act**.

D. Bodily Injury/Property Damage

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged:

1. bodily injury (including death), sickness, or disease; or
2. **Property Damage**;

provided, however, that this exclusion shall not apply to:

- a. any **Claim** for mental anguish or emotional distress; or
- b. under INSURING AGREEMENT I.B.5. (Bricking Coverage), any **Property Damage** resulting from a **Bricking Event**.

E. Claims by Insureds

by or on behalf of any **Insured** provided, however, that this exclusion does not apply to any:

1. **Claim** arising from a **Wrongful Act** alleged by an **Insured** when acting in the capacity as a customer; or
2. any **Claim** under INSURING AGREEMENT I.A.1. (Network Security and Privacy Liability Coverage) or INSURING AGREEMENT I.A.2. (Privacy Regulatory Proceeding Coverage) made by a current or former employee of the **Insured**.

F. Conduct

based upon, arising out of, relating to or directly or indirectly involving any criminal, intentional, fraudulent or knowing wrongful act, error or omission or any wilful violation of any statute, rule or law by an **Insured**, provided, however:

- a. this exclusion shall apply only if a final and non-appealable adjudication adverse to an **Insured** in an underlying proceeding establishes that such conduct occurred; and
- b. this exclusion shall not apply to any **Event** or **Extortion Threat** by a **Rogue Employee**.

G. Contests/Sweepstakes/Over Redemption

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged:

1. price discounts, awards, coupons, prizes or other valuable consideration given in excess of the contracted or expected amount; or
2. gambling, contest, lottery, promotional game, sweepstakes, coupons, prizes or other games of chance, provided, however, that this subparagraph shall not apply to any **Claim** under INSURING AGREEMENT I.A.3. (Media Liability Coverage).

H. Employment Practices

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged **Employment Practices Wrongful Act**, provided, however, this exclusion shall not apply to any **Claim** under INSURING AGREEMENT I.A. 1. (Network Security and Privacy Liability Coverage) or INSURING AGREEMENT I.A.2. (Privacy Regulatory Proceeding Coverage) made by a current or former employee of the **Insured**.

I. ERISA

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, as amended, or any similar federal, state, local or foreign statutory law; provided, however, that this exclusion shall not apply to any **Event**.

J. Fee Disputes

based upon, arising out of, relating to or directly or indirectly involving any:

1. accounting or recovery of any fee, profit, royalty or other money made by or claimed due from an **Insured**; or
2. any excessive or unwarranted fee, compensation, charge or expense actually or allegedly charged by an **Insured**.

K. Fund Transfer

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged:

1. electronic fund transfer or transaction by an **Insured**;
2. theft of money, securities or other valuable consideration from an **Insured** or the transfer or loss of money, securities or other valuable consideration from or to an **Insured's** account or any account under the **Insured's** control, including without limitation, any customer account; or
3. financial trading loss or change in account value.

Provided, however, that this exclusion shall not apply to INSURING AGREEMENT I.B.9. (Social Engineering Coverage).

L. Governmental

1. brought by or on behalf of any federal, state, local or foreign government or governmental agency or as a direct result of any action or order by any domestic or foreign law enforcement, administrative, regulatory or judicial body or other governmental authority; provided, however, that this exclusion shall not apply to any:
 - a. **Event** expressly covered under INSURING AGREEMENT I.A. 1. (Network Security and Privacy Liability Coverage) or INSURING AGREEMENT I.A.2. (Privacy Regulatory Proceeding Coverage); or
 - b. **Claim** brought by such entity when acting in the capacity as a customer; or
2. based upon, arising out of, relating to or directly or indirectly involving any actual or alleged violation of the False Claims Act 31 U.S.C. §§ 3729-3733), or any similar provision of any federal, state, local or foreign law.

M. Intellectual Property

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged invalidity/validity, infringement, violation or misappropriation of any trade secret, copyright, service mark, trade name, trademark or trade dress; provided, however, this exclusion shall not apply to INSURING AGREEMENT I.A.3. (Media Liability Coverage) or to such intellectual property related matters occurring as the direct result of an **Event**.

N. Licensing/Rights Dispute

based upon, arising out of, relating to or directly or indirectly involving:

1. any action brought by or on behalf of intellectual property licensing or rights organisations, including but not limited to the Australasian Performing Right Association Limited and Australasian Mechanical Copyright Owners Society ("APRA AMCOS"), Recorded Music New Zealand Limited, the American Society of Composers, Authors and Publishers ("ASCAP"), the Society of European Stage Authors and Composers ("SESAC"), SoundExchange or Broadcast Music, Inc. ("BMI"); or
2. any disputes brought by a third party relating to the ownership or exercise of rights in material or content, or the obligation to pay royalties or licensing fees arising from the use of material or content; provided, however, this paragraph 2. shall not apply to INSURING AGREEMENT I.A.3. (Media Liability Coverage).

O. Management Liability

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged personal liability incurred by an **Insured** in the role of a director or officer when:

1. acting in that capacity; or
2. in breach of their fiduciary duty; or
3. making or issuing any statement, representation or information concerning the **Insured** and the business services contained in any accounts, reports or financial statements.

P. Mechanical or Electrical Failure/Act of God

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged:

1. electrical or mechanical failure of infrastructure not under the control of the **Insured**, including without limitation, any electrical power interruption, surge, brownout or blackout;
2. failure of any satellite, telephone or data transmission or other telecommunication infrastructure not under the control of the **Insured**;
3. fire, smoke, explosion, lightening, wind, water, earthquake, volcanic eruption, tidal wave, landslide, act of God or any other physical event, however caused.

Q. Non-Licensed Products

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged use and installation by the **Insured** of non-licensed software, firmware, or updates to such software or firmware; provided, however, this exclusion shall only apply to INSURING AGREEMENT I.B.5. (Bricking Coverage).

R. Patent

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged invalidity/validity, infringement, violation or misappropriation of any patent or any false marking in violation of the United States Patent Act or any similar provision of any federal, state, local or foreign law.

S. Pollution including nuclear, chemical, biological and radioactive contamination

based upon, arising out of, relating to or directly or indirectly involving any:

1. actual or alleged biological, chemical, radioactive or nuclear pollution, reaction, explosion, radiation or contamination; and/or
2. any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**; and/or
3. any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralise or in any way respond to or assess the effect of **Pollutants** or biological, chemical, radioactive, nuclear pollution, reaction, explosion, radiation or contamination, or any voluntary decision to do so; and/or
4. any actual or alleged **Property Damage**, or bodily injury (including death), sickness, disease, emotional distress or mental anguish of any person, or financial loss to the **Insured**, their security holders, or their creditors resulting from any of the aforementioned matters.

T. Securities

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged:

1. purchase, sale, offer or solicitation of an offer to purchase or sell securities; or
2. violation of any securities law, including the Financial Markets Conduct Act 2013 of New Zealand, the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or any state "Blue Sky Laws" or any similar federal, state, local or foreign law,

provided, however, that this exclusion shall not apply to any **Event**.

U. Terrorism

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged **Terrorism**. Any unlawful act of a third party resulting in an **Event**, but solely in connection with any action listed in paragraphs 2 through 6, shall not be regarded as an act of **Terrorism**.

V. Unauthorised Collection

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged unlawful or unauthorised collection, acquisition, retention, processing or use of data by or on behalf of the **Insured**; provided, however, that this exclusion shall not apply to a **Claim** directly resulting from the acts of a **Rogue Employee**.

W. Unsolicited Communications

based upon, arising out of, relating to or directly or indirectly involving any actual or alleged unsolicited electronic dissemination of faxes, emails or other communications by or on behalf of the **Insured** to multiple actual or prospective customers of the **Insured** or any other third party, including but not limited to actions brought under the Unsolicited Electronic Messages Act 2007 of New Zealand, the Financial Markets Conduct Act 2013 of New Zealand, the Fair Trading Act 1986 of New Zealand, the Telephone Consumer Protection Act ("TCPA"), any federal or state anti-spam statutes, and/or any other federal or state statute, law or regulation relating to a person's or entity's right of seclusion. Provided, however, this exclusion shall not apply to such unsolicited communications occurring as the direct result of an **Event**.

X. War & Cyber Operation

based upon, arising out, relating to or directly or indirectly involving any actual or alleged:

1. **War**;
2. **Cyber Operation** that is carried out as part of a **War** by sovereign states that are parties to the **War**; or
3. **Cyber Operation** causing an **Impacted State**.

Provided, however, paragraph 1.3 shall not apply to a **Cyber Operation** on a **Computer System** used by the **Insured** or its third-party service providers that is not physically located in an **Impacted State**.

Definitions

The following definitions apply for the purposes of this exclusion only:

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.

Cyber Operation means the use of a **Computer System** by, at the direction, or under the control of a sovereign state to disrupt, deny access to, degrade, manipulate or destroy information in a **Computer System** of or in another sovereign state.

Essential Services means services that are essential for the maintenance of vital functions of a sovereign state including but not limited to financial institutions and associated financial market infrastructure, health services or utility services.

Impacted State means a sovereign state where a **Cyber Operation** has had a major detrimental impact on:

1. the functioning of that sovereign state due to critical disruption to the availability, integrity or delivery of **Essential Services** in that sovereign state; and/or
2. the security or defence of that sovereign state.

Provided, however, an **Impacted State** shall not result from an attack, or related series of attacks, solely impacting the **Insured**.

War means armed conflict involving physical force either:

1. by a sovereign state against another sovereign state; or
2. as part of a civil war, rebellion, revolution, insurrection, military action or usurpation of power; regardless of whether war is declared.

V. LIMIT OF LIABILITY

- A. The Aggregate Limit of Liability for each LIABILITY COVERAGE set forth under Paragraph A. of Section I. INSURING AGREEMENTS is the maximum liability of the **Insurer** for all **Damages** and **Regulatory Damages** arising from all **Claims**, as applicable, and shall be the amount stated in Item 5.A. (A.1. through A.3.) of the Schedule as the limit of liability for each applicable corresponding Liability Coverage.
- B. The Aggregate Limit of Liability for each REIMBURSEMENT COVERAGE set forth under Paragraph B. of Section I. INSURING AGREEMENTS is the maximum liability of the **Insurer** for all **First-Party Loss** arising from all **Events**, **Insured System Failures**, **Dependent Business Interruptions** and **Extortion Threats**, as applicable, and shall be the amount stated in Item 5.B. (B.1 through B.10.) of the Schedule as the limit of liability for each applicable corresponding Reimbursement Coverage.
- C. All Aggregate Limits of Liability under 5.A. and 5.B. of the Schedule are part of and not in addition to the Maximum Limit of Liability stated in Item 5.C. of the Schedule.
- D. The Maximum Limit of Liability of the **Insurer** for all **Damages**, **Regulatory Damages** and **First-Party Loss** arising from all **Incidents** shall be the amount stated in Item 5.C. of the Schedule. The **Insurer** shall not be responsible to pay any **Damages**, **Regulatory Damages** or **First-Party Loss** upon exhaustion of such Limit of Liability.
- E. The Maximum Limit of Liability of the **Insurer** for all **Defence Costs** arising from all **Incidents** shall be the amount stated in Item 5.D. of the Schedule. The **Insurer** shall not be responsible to pay any **Defence Costs** upon exhaustion of such Limit of Liability.

VI. RETENTION

- A. The retentions set forth in Item 5 of the Schedule for each INSURING AGREEMENT shall apply to **Defence Costs**, **Damages**, **Regulatory Damages** and **First-Party Loss** resulting from each **Incident**.
- B. The **Insurer's** liability with respect to covered **Defence Costs**, **Damages**, **Regulatory Damages** and **First-Party Loss** resulting from each **Incident** shall be in excess of the applicable retention specified in Item 5 of the Schedule. The applicable retention shall be borne by the **Insured** and is uninsured under this policy and at the **Insured's** own financial risk, and shall apply to all covered **Defence Costs**, **Damages**, **Regulatory Damages** and **First-Party Loss**.
- C. The **Insurer** will pay **Business Interruption Loss**, **Dependent Business Interruption Loss** and **Consequential Reputational Loss** resulting from any one **Event**, **Insured System Failure** or **Dependent Business Interruption**, as applicable, in excess of the applicable retention up to the applicable Limit of Liability. The retention shall be reduced by any **Business Interruption Loss**, **Dependent Business Interruption Loss** and **Consequential Reputational Loss** incurred during the **Waiting Period**. The **Business Interruption Loss** and **Dependent Business Interruption Loss** applicable to the retention shall be computed as of the start of the **Business Interruption** or **Dependent Business Interruption**, as applicable, and the **Consequential Reputational Loss** applicable to the retention shall be computed as of the start of the **Adverse Publicity**.

VII. RELATED INCIDENTS

- A. All **Incidents** involving the same **Wrongful Act**, **Related Wrongful Acts**, **Event**, **Insured System Failure**, **Dependent Business Interruption** or **Extortion Threat** shall be considered a single **Incident**. Only one retention shall be applicable to such single **Incident**. In the event such single **Incident** triggers more than one retention, the highest applicable retention shall apply.
- B. All **Incidents** constituting a single **Incident** shall be deemed to have been first made on the earlier of the following dates: (1) the earliest date on which any **Claim** or **Extortion Threat** that is part of such single **Incident** was first made against any **Insured** or deemed made by the reporting provisions of this Policy or any other policy; (2) the earliest date on which any **Event**, **Insured System Failure** or **Dependent Business Interruption** that is part of such single **Incident** was first discovered by any **Insured**; or (3) the earliest date on which any such **Wrongful Act**, **Related Wrongful Acts**, **Event**, **Insured System Failure**, **Dependent Business Interruption** or **Extortion Threat** giving rise to or involved in any such single **Incident** was reported under this Policy or any other policy providing similar coverage, regardless whether such date is before or during the **Policy Period**.
- C. In no event shall a single lawsuit or proceeding constitute more than one **Incident** subject to more than one retention. All **Wrongful Acts** that are asserted in any one **Claim** shall be considered **Related Wrongful Acts**.

VIII. DEFENCE AND SETTLEMENT

A. Defence

1. The **Insurer** shall have the right to defend a **Claim** alleging a **Wrongful Act** or **Event**, even if the **Claim** is groundless, false or fraudulent. The **Insurer's** right and duty to defend and pay on the **Insured's** behalf end when the applicable Limit of Liability has been exhausted.
2. The **Insured** shall not incur any **Defence Costs** without the prior written consent of the **Insurer**.

B. Settlement

1. The **Insured** shall not admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld or delayed. The **Insurer** shall not be liable under this Policy for **Defence Costs**, **Damages** and **Regulatory Damages** incurred as a result of any such admission, offer or agreement to which the **Insurer** did not so consent.
2. Notwithstanding the preceding paragraph 1., the **Insured** may settle all **Claims** subject to a single retention without the **Insurer's** prior written consent if the settlement amount plus **Defence Costs** for all such **Claims** do not exceed the applicable retention.

C. Consent to Settlement

The **Insurer** shall not settle any **Claim** without the prior written consent of the **Insured**. If the **Insured** refuses to consent to a settlement recommended by the **Insurer** and agreed to by the claimant within the Policy limit, the **Insurer's** limit of liability for such **Claim** will be reduced to:

1. the amount for which the **Claim** could have been settled plus all **Defence Costs** incurred up to the date the **Insurer** made its recommendation; plus
2. fifty percent (50%) of **Defence Costs** incurred after the **Insurer** made its recommendation,

the total of which shall not exceed the applicable limit of liability stated in the Schedule of the Policy.

D. Assistance and Cooperation

The **Insured** shall cooperate with the **Insurer** and provide to the **Insurer** all information which the **Insurer** reasonably requests, including but not limited to attending hearings, depositions and trials and assistance in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defence of any **Claim** covered by this Policy. The **Insured** shall do nothing that may prejudice the **Insurer's** position.

E. Counsel

1. With regard to any **Claim**, **Event**, or **Extortion Threat** for which the **Insured** seeks coverage, the **Insurer** shall appoint a law firm and/or counsel which shall provide legal services and defence to the **Insured**.
2. With regard to any **Claim** for which the **Insured** seeks coverage, the **Insurer** and the **Insured** agree that as a condition to payment under this Policy, counsel must agree to communicate regularly with the **Insurer's** assigned claim professionals in coordinating defence efforts and that counsel apprise the **Insurer** on a regular and timely basis as to case developments and shall provide the **Insurer** with such information that the **Insurer** reasonably requests in connection with the defence of such **Claim**.

IX. NOTICE

A. Notice of Claim

The **Insureds** shall, as a condition precedent to their rights under this Policy, give the **Insurer** written notice of any **Claim** made during the **Policy Period** as soon as practicable after an **Executive Officer** first learns of such **Claim**, but in no event later than sixty (60) days after the end of the **Policy Period**.

In addition, immediately upon discovery of an actual or alleged **Event**, the **Insured** should contact the **Panel Advisers** 24-hour hotline using the details set forth in Item 9 of the Schedule.

B. Notice of Event/Insured System Failure/Dependent Business Interruption/Extortion Threat

The **Insureds** shall, as a condition precedent to their rights under this Policy give the **Insurer** notice in writing of any **Event**, **Insured System Failure**, **Dependent Business Interruption** or **Extortion Threat** as soon as practicable after an **Executive Officer** discovers such **Event**, **Insured System Failure** or **Dependent Business Interruption** or is made aware of such **Extortion Threat**, but in no event later than sixty (60) days after the end of the **Policy Period**.

C. Notice of Circumstances

If during the **Policy Period** an **Insured** elects to report any circumstance which could give rise to a **Claim**:

1. such notice shall include information regarding the nature of any **Wrongful Acts** and the reasons for anticipating a **Claim**, with full particulars as to dates, persons and entities involved;
2. any **Claim** that is subsequently made alleging, arising out of, based upon or attributable to such circumstances shall be deemed to have been first made at the time such circumstance was first reported to the **Insurer**; and
3. notice of any subsequent **Claim** shall be given to the **Insurer** as soon as practicable after an **Executive Officer** first learns of such **Claim**. No coverage shall be provided under this Policy for fees, costs, expenses or other loss incurred as a result of such circumstances prior to the time a **Claim** is actually made.

- D. Except as otherwise provided in this Policy, all notices under any provision of this Policy shall be in writing and given by email, prepaid express courier or certified mail properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Parent Company** at the address shown in Item 1 of the Schedule. Notice to the **Insurer** shall be given to the respective address shown in Item 2 of the Schedule. If notice is given as described above, it shall be deemed to be received and effective upon the date of transmittal, subject to proof of transmittal.

X. PROOF OF LOSS, VALUATION AND APPRAISAL

A. Proof of Loss

With respect to **Business Interruption Loss**, the **Insured** must submit a written, sworn proof of **Business Interruption Loss** providing details relating to the particulars and composition of the amounts claimed in the event of a **Business Interruption**. The proof of loss shall be submitted with reasonable promptness, but in no event later than six (6) months after the date initial notice of **Business Interruption** was submitted to the **Insurer**. The amount of **Business Interruption Loss** shall be payable by the **Insurer**, to the **Insured**, within sixty (60) days after the **Insurer's** formal agreement to the amounts claimed in the proof of loss.

With respect to **Dependent Business Interruption Loss**, it is a condition precedent that the **Insured**:

1. submit a written, sworn proof of **Dependent Business Interruption Loss** providing details relating to the particulars and composition of the amounts claimed in the event of a **Dependent Business Interruption**. The proof of loss shall be submitted with reasonable promptness, but in no event later than six (6) months after the date initial notice of **Dependent Business Interruption** was submitted to the **Insurer**; and
2. instruct the **Dependent Business** to provide the **Insurer** with a written report confirming, as far as reasonably possible, the basis on which the **Dependent Business** believes that the **Dependent Business Interruption** was caused by a **Dependent Business Event** or **Dependent Business System Failure** and the duration of the **Dependent Business Interruption** or **Dependent Business System Failure**.

It is agreed that an official notice pertaining to the **Dependent Business Event** or **Dependent Business System Failure** published by the **Dependent Business** to its shareholders, including where such notification is published on the **Dependent Business's** website, shall constitute a sufficient basis on which to support a proof of loss.

The amount of **Dependent Business Interruption Loss** shall be payable by the **Insurer**, to the **Insured**, within sixty (60) days after the **Insurer's** formal agreement to the amounts claimed in the proof of loss.

B. Valuation

Business Interruption Loss and **Dependent Business Interruption Loss** will be calculated on an hourly basis. In determining the amount of net profit or loss and costs covered under INSURING AGREEMENT I.B.3. (Business Interruption Coverage) and under INSURING AGREEMENT I.B.4. (Dependent Business Interruption Coverage), the **Insurer** will give due consideration to: (1) the net profit or loss of the **Insured** before the **Business Interruption** or **Dependent Business Interruption** occurred; (2) the probable net profit or loss of the **Insured** if no **Business Interruption** or **Dependent Business Interruption** had occurred; and (3) the net profit or loss of the **Insured** following the **Business Interruption** or **Dependent Business Interruption**. However, such net profit or loss calculations shall not include net income that would likely have been earned as a result of an increase in the volume of the **Insured's** business due to favorable business conditions caused by the impact of an **Event** on other businesses. The **Insured** will provide the **Insurer** with access to all relevant sources of information, including, but not limited to:

1. the **Insured's** financial records, tax returns, accounting procedures;
2. bills, invoices and other vouchers; and
3. deeds, liens and contracts.

Hardware Expenses will be computed as of the date of the **Bricking Event** at the place of the **Bricking Event** and for no more than the **Insured's** interest in the impacted **Computer Device** or **Connected Device**. The adjustment of loss to such devices will be subject to the lesser of the following:

- a. the cost to repair; or
- b. the cost to replace such **Computer Device** or **Connected Device** with equipment that is the most functionally equivalent. Provided, however, such cost shall not include amounts incurred by the **Insured** to update, upgrade, restore or replace any **Computer Device** or **Connected Device** to a level beyond which existed immediately prior to sustaining the **Bricking Event** unless such costs or expenses are necessary based on market availability of comparable products.

C. Appraisal

If the **Insured** and the **Insurer** fail to agree on the amount of **Business Interruption Loss** or **Dependent Business Interruption Loss**, the **Insurer** and **Insured** shall each, upon written demand from the other made within sixty (60) days after the **Insurer's** receipt of the **Insured's** sworn proof of loss as set forth in paragraph A., select a competent and disinterested appraiser. The appraisers shall then select a competent and disinterested umpire. If, after fifteen (15) days, the two appraisers fail to agree upon such umpire, then upon the written request of either party such umpire shall be selected by the New Zealand Institute of Chartered Accountants. Then, the appraisers shall appraise the loss at a reasonable time and place, stating separately the value at the time of loss and the amount of loss. If the appraisers fail to agree, they shall submit their differences to the umpire. An award in writing signed by any two of them shall determine the amount of loss. The **Insured** and the **Insurer** shall each pay its chosen appraiser and shall bear equally the other expenses of the appraisal and of the umpire.

XI. ACQUISITION OR CESSATION OF PARENT COMPANY OR SUBSIDIARIES

A. Acquisition of the Parent Company

In the event of a **Change in Control** of the **Parent Company** during the **Policy Period**:

1. this Policy shall remain in force until the expiration of the **Policy Period**, but only for any **Wrongful Acts** and **Extortion Threats** taking place or **Events, Insured System Failures** and **Dependent Business Interruptions** discovered by an **Executive Officer** prior to the effective date of such transaction;
2. the entire premium for this Policy shall be deemed fully earned as of the effective date of such **Change in Control**; and
3. the **Parent Company** shall be entitled to receive a quote for up to a 6 year extension of coverage ("Run-Off Coverage") solely for **Wrongful Acts** and **Extortion Threats** taking place or **Events, Insured System Failures** and **Dependent Business Interruptions** discovered by an **Executive Officer** prior to such **Change in Control**. Coverage offered pursuant to such quote shall be subject to additional or different terms and conditions and payment of an additional premium. Any Run-Off Coverage purchased shall replace the Extended Reporting Period that would be available to an **Insured** pursuant to Section XV. EXTENDED REPORTING PERIOD.

B. Acquisition of a Subsidiary

1. Except as set forth in the following paragraph B.2., if before or during the **Policy Period** any entity qualifies as a **Subsidiary**, then such **Subsidiary** shall be an **Insured**, but only with respect to **Wrongful Acts** and **Extortion Threats** taking place or **Events, Insured System Failures** or **Dependent Business Interruptions** discovered by an **Executive Officer** after such entity qualified as a **Subsidiary**.
2. If the total revenues of any **Subsidiary** acquired during the **Policy Period** exceed 20% of the total revenues of the **Parent Company** (as reflected in the most recent audited consolidated financial statements of the **Parent Company** as of the date of such acquisition), the **Parent Company** shall have 90 days from the date of the acquisition to notify the **Insurer** of such acquisition. Following such notice to the **Insurer**, the **Parent Company** shall be required to provide the **Insurer** with any additional information the **Insurer** may reasonably request regarding the acquisition, and any coverage for an **Insured** of such newly acquired **Subsidiary** may be subject to additional or different terms or conditions under the Policy and the payment of additional premium. If the **Parent Company** fails to provide the foregoing notice and additional information, coverage under this Policy for any **Insured** of such newly acquired **Subsidiary** shall terminate with respect to any **Claim** or **Extortion Threat** first made or **Event, Insured System Failure** or **Dependent Business Interruptions** first discovered more than 90 days after the date of the acquisition.

C. Cessation of a Subsidiary

If during or prior to the **Policy Period** any entity ceases to be a **Subsidiary**, then coverage for such former **Subsidiary** under this Policy shall only be available, subject to all other terms and conditions of this Policy, for any **Claim** or **Extortion Threat** first made or **Event, Insured System Failure** or **Dependent Business Interruptions** first discovered prior to the date it ceased to qualify as a **Subsidiary**.

XII. OTHER INSURANCE

All amounts payable under this Policy will be specifically excess of, and will not contribute with, any other valid and collectible insurance. This Policy applies to **Damages** or **Defence Costs** that exceed the available limit of liability and any self-insured retentions or retention amounts of any other insurance available to the **Insured**. This Policy will not be subject to the terms of any other insurance policy. In the event any other insurer has a duty to defend the **Insured** for any **Claim** also covered under this Policy but fails to do so, the **Insurer** shall be entitled to pursue and enforce all of the **Insured's** rights against any such other insurer.

XIII. SUBROGATION AND RECOVERY

- A. In the event of any payment under this Policy by the **Insurer**, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery, and the **Insureds** shall take all reasonable actions to secure and preserve the **Insurer's** rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of the **Insured**. The **Insurer** assumes no duty to seek a recovery of any amounts paid under this Policy.

Provided, however, the **Insurer** waives any and all right of subrogation against any entity included in paragraph 4. of the definition of **Insured**, when required by the **Company's** contract with such entity. This waiver applies only with respect to the specific contract existing between the **Company** and such entity and shall not be construed to be a waiver with respect to other operations of such entity in which the **Company** has no written or contractual interest.

- B. If the **Insurer** recovers any portion of an amount paid by the **Insurer** under this Policy, the **Insurer** shall reinstate the applicable Limit of Liability of this Policy with any amounts recovered up to such amount paid, less any costs incurred by the **Insurer** in obtaining such recovery.

XIV. APPLICATION AND REPRESENTATIONS

In issuing this Policy, the **Insurer** has relied upon the information and representations in the **Application** as being true and accurate.

XV. EXTENDED REPORTING PERIOD

A. Automatic Extended Reporting Period

In the event the **Insurer** shall cancel or refuse to renew the Policy, the **Parent Company** shall have the right following the effective date of such cancellation or non-renewal to a period of sixty (60) days ("Automatic Extended Reporting Period") in which to give written notice to the **Insurer** of a **Claim** first made against the **Insured** during the Automatic Extended Reporting Period for any **Wrongful Act** occurring or **Event, Insured System Failure** or **Dependent Business Interruption** discovered by an **Executive Officer** prior to the end of the **Policy Period** and otherwise covered under this Policy. The Automatic Extended Reporting Period shall not apply where an Optional Extended Reporting Period has been purchased as set forth below, or to **Claims** that are covered under any subsequent insurance that applies to such **Claims**, whether purchased by the **Insured** or for the **Insured's** benefit.

B. Optional Extended Reporting Period

In the event the **Insurer** refuses to renew this Policy or the **Parent Company** cancels or refuses to renew this Policy, the **Parent Company** shall have the right to elect an extension of the coverage provided by this Policy for the time period, and subject to the additional premium for the Extended Reporting Period set forth in Item 10 of the Schedule ("Optional Extended Reporting Period") in which to give written notice to the **Insurer** of any **Claims** first made against the **Insured** during the Optional Extended Reporting Period for any **Wrongful Acts** occurring or **Events, Insured System Failures** or **Dependent Business Interruptions** discovered by an **Executive Officer** prior to the end of the **Policy Period** and otherwise covered by the terms of the Policy.

- C. As a condition precedent to the right to purchase the Extended Reporting Period, the total premium for this Policy must have been paid and a written request to elect the Extended Reporting Period, together with payment of the additional premium for the Extended Reporting Period, must be provided to the **Insurer** no later than sixty (60) days following the effective date of such non-renewal or cancellation. The premium paid for the Extended Reporting Period is deemed fully earned at the inception of the Extended Reporting Period.
- D. Purchase of an Extended Reporting Period shall not in any way increase the Limit of Liability stated in Item 5 of the Schedule. For purposes of the Limit of Liability, the Extended Reporting Period is considered to be part of, and not in addition to, the **Policy Period**.

XVI. CANCELLATION OR NON-RENEWAL

A. This Policy shall terminate at the earliest of the following times:

1. the effective date of termination specified in a prior written notice by the **Parent Company** to the **Insurer**;
2. upon thirty (30) days' written notice of termination from the **Insurer** to the **Parent Company** at its last known address;
3. upon expiration of the **Policy Period** as shown in Item 3 of the Schedule; or
4. at such other time as may be agreed upon by the **Insurer** and the **Parent Company**.

- B. If the Policy is terminated, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

The terms of this Section XVI shall prevail over any conflicting state amendatory or policy language, including as set forth in Section XX. CONFORMITY TO STATUTE, to the extent allowed by applicable insurance laws or regulations.

XVII. DISPUTE RESOLUTION

The **Insurer** and the **Insureds** shall attempt in good faith to resolve any dispute arising out of or relating to this Policy promptly by negotiation between executives with authority to settle such dispute. If any dispute cannot be resolved through negotiation, the parties agree that they will submit the dispute to non-binding mediation. The parties will use best efforts to agree on the terms of any such mediation process, but if they do not agree within thirty (30) days of either party requesting mediation, the dispute will be submitted to a New Zealand King's Counsel for mediation. Each party will bear their own costs, regardless of the mediation process used, and the parties shall share equally all costs charged by a New Zealand King's Counsel or other mediation administrator agreed upon and the fees of the mediator. If the dispute is not settled at mediation, no party may commence an action against any other party until at least thirty (30) days after the final mediation session.

XVIII. ACTION AGAINST INSURER

No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms and conditions of this Policy. No person or organisation shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against an **Insured**, nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim**.

XIX. ASSIGNMENT

This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**, which consent shall be in the sole and absolute discretion of the **Insurer**.

XX. CONFORMITY TO STATUTE

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

XXI. WORLDWIDE TERRITORY, APPLICATION OF LAW AND LIBERALISATION

This Policy shall apply anywhere in the world, and any reference to laws, however described, shall include all U.S. federal, state and local statutory laws, all amendments to and rules and regulations promulgated under any such laws, common law, and any equivalent body of law anywhere in the world, unless specifically stated to the contrary.

XXII. COMPLIANCE WITH APPLICABLE TRADE AND ECONOMIC SANCTION LAWS

The **Insurer** shall not provide cover nor be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the **Insurer**, its reinsurer or any member of the **Insurer's** group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

XXIII. BANKRUPTCY

Bankruptcy or insolvency of any **Company** or any **Insured** or the bankruptcy or insolvency of any **Insured's** estate shall not relieve the **Insurer** of any of its obligations under this Policy nor deprive the **Insurer** of any rights or defences under this Policy.

XXIV. HEADINGS

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

XXV. ENTIRE AGREEMENT

By acceptance of this Policy, all **Insureds** and the **Insurer** agree that this Policy (including the Schedule and **Application**) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement hereto.

XXVI. AUTHORISATION

By acceptance of this Policy, the **Parent Company** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements, and the **Insureds** agree that the **Parent Company** shall act on their behalf.

XXVII. GOODS AND SERVICES TAX

Where, upon receiving any payment under this Policy, the **Insured** is liable to pay tax under section 5 (13) of the Goods and Services Tax Act 1985, the **Insurer** will indemnify the **Insured** for the amount of that tax. The indemnity under this clause is payable by the **Insurer** in addition to the Limit of Liability.

