

# Professional First Technology Liability Insurance Policy Wording

In consideration of payment of the premium and in reliance on the **Proposal** or declaration and subject to the provisions of this **Policy**, the **Insurer** will indemnify the **Insured** as follows.

## Section 1: TECHNOLOGY PROFESSIONAL INDEMNITY

All cover under Section 1 is afforded solely with respect to a **Claim** first made against an **Insured** during the **Policy Period** and reported to the **Insurer** as required by this **Policy**.

### INSURING CLAUSE

- 1.1 The **Insurer** will indemnify the **Insured** for all **Damages** and **Defence Costs** resulting from any **Claim** for any civil liability of the **Insured** arising from:
- 1.1.1 a **Wrongful Act** in the performance of or failure to perform **Technology Services**; or
  - 1.1.2 a **Breach** or a **Cyber Wrongful Act**.

### AUTOMATIC EXTENSIONS

The cover provided by Insuring Clause 1.1.1 of this **Policy** is extended as detailed below. This cover is subject to the terms, conditions and limitations of this **Policy**.

1.2 **Misleading or Deceptive Conduct**

The **Insurer** will indemnify the **Insured** for all **Damages** and **Defence Costs** resulting from any **Claim** alleging breach of sections 9 to 14 of the Fair Trading Act 1986 (or any amending or replacing legislation), or any provisions which form part of similar fair trading legislation enacted by New Zealand or the states or territories of the Commonwealth of Australia.

1.3 **Fraud and Dishonesty**

The **Insurer** will indemnify the **Insured** for all **Damages** and **Defence Costs** resulting from any **Claim** brought about or contributed to by any fraudulent or dishonest conduct of an **Employee**, provided that this indemnity will not be provided to any person committing or condoning, expressly or implicitly, such act or omission.

1.4 **Defamation**

The **Insurer** will indemnify the **Insured** all **Damages** and **Defence Costs** resulting from any **Claim** for defamation committed by the **Insured**.

1.5 **Joint Venture Liability**

The **Insurer** will indemnify the **Insured** all **Damages** and **Defence Costs** resulting from any **Claim** arising from the **Insured's** involvement in any joint venture or partnership. No cover is provided to any other joint venture party or partner of the **Insured**.

#### 1.6 Intellectual Property

The **Insurer** will indemnify the **Insured** all **Damages** and **Defence Costs** resulting from any **Claim** for any infringement of any intellectual property rights, other than patents and trade secrets.

#### 1.7 Vicarious Liability

The **Insurer** will indemnify the **Insured** for all **Damages** and **Defence Costs** resulting from **Claims** against the **Insured** arising from contractors and/or consultants providing **Technology Services** on behalf of the **Insured**, provided that this indemnity will not extend to the contractor and/or consultant who committed the **Wrongful Act**.

#### 1.8 Continuous Cover

In the event of a **Claim**, or circumstance that may reasonably have been expected by any **Insured** to give rise to a **Claim**, which could have been notified to the **Insurer** under any earlier policy and the **Insurer** has continuously been an insurer of the **Insured** under a policy of which this **Policy** is a direct or indirect renewal or replacement, the **Insurer** will treat that **Claim** or circumstance as though it had been properly notified to the **Insurer** during the **Policy Period** provided always that:

- 1.8.1 the **Insured** first became aware of the circumstances that might give rise to the **Claim** after the **Continuity Date**;
- 1.8.2 the failure to notify was not fraudulent or intentionally dishonest; and
- 1.8.3 the cover provided by this Extension will be subject to the terms, conditions and limitations of the policy in force when the **Insured** first became aware of the circumstances or this **Policy**, at the **Insurer's** discretion.

#### 1.9 Reinstatement

If a **Claim** or **Claims** erode any **Limit of Indemnity** under Section 1 of this **Policy**, the **Insurer** agrees to reinstate the relevant **Limit of Indemnity** under Section 1 of this **Policy** to the extent of the eroded amount, provided always that the **Insurer's** total amount payable under this **Policy** will not exceed:

- 1.9.1 the relevant **Limit of Indemnity** in respect of any one **Claim**, or related **Claims**, under Section 1 of this **Policy**; or
- 1.9.2 twice the relevant **Limit of Indemnity** in respect of all **Claims** under Section 1 of this **Policy** during the **Policy Period**.

If the **Policyholder** has in effect any policy providing coverage in excess of this **Policy**, the reinstatement provided will become effective only after the total exhaustion of the limits of all such excess coverage by reason of the payment of indemnity thereunder but prior to any similar reinstatement provision contained in such policy or policies becoming effective.

It is the intention of this cover that the sums reinstated will only provide cover in respect of subsequent **Claims** which are totally unrelated to the **Claims** that eroded the **Limit of Indemnity**.

#### 1.10 Public Relations Costs

The cover provided by this **Policy** extends to cover **Public Relations Costs** reasonably incurred by the **Insured** with the prior written consent of the **Insurer** (which consent will not be unreasonably withheld or delayed), provided always that:

1.10.1 those reasonable fees, costs and expenses arise as a result of a **Claim** first made against the **Insured** during the **Policy Period**; and

1.10.2 no admission of liability is made by the **Insured**.

All payments made under this Extension will be subject to an aggregate sub-limit of indemnity as specified at item 6 of the **Schedule**. The cover under this Extension is part of the **Limit of Indemnity** for Section 1 **Defence Costs** specified at item 5 of the **Schedule**.

#### 1.11 Mitigation Costs

The cover provided by this **Policy** extends to cover **Mitigation Costs** reasonably incurred by the **Insured** with the prior written consent of the **Insurer** (which consent will not be unreasonably withheld or delayed), provided that:

1.11.1 no admission of liability is made by the **Insured**; and

1.11.2 where the **Insured** has waived outstanding fees to avoid a **Claim** that would be payable under this **Policy**, the total amount payable by the **Insurer** is 50% of the outstanding fees that are in excess of the Section 1 **Retention**. The **Insurer** will only pay outstanding fees that relate to the performance of **Technology Services**.

All payments made under this Extension will be subject to an aggregate sub-limit of indemnity as specified at item 6 of the **Schedule**. The cover under this Extension is part of the **Limit of Indemnity** for Section 1 (excluding **Defence Costs**) specified at item 5 of the **Schedule**.

#### 1.12 Investigation Costs

In relation to any complaint about or investigation into the **Insured** in relation to **Technology Services** or the provision of **Technology Products** by, or to, an **Official Body** the **Insurer** will pay on behalf of the **Insured** any reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with the **Insurer's** prior consent in relation to the complaint or investigation. The cover provided by this Extension does not cover any complaint or investigation arising from an actual or suspected **Breach**.

All payments made under this Extension will be subject to an aggregate sub-limit of indemnity as specified at item 6 of the **Schedule**. The cover under this Extension is part of the **Limit of Indemnity** for Section 1 **Defence Costs** specified at item 5 of the **Schedule**.

#### 1.13 Court Attendance Costs

The cover provided by this **Policy** extends to the cost of attendance for any person described in 1.13.1 and 1.13.2 below who attends Court as a witness in connection with a **Claim** notified and covered under this **Policy** as follows:

1.13.1 for any principal, partner or director **Insured**: \$500 per day; or

1.13.2 for any **Employee**: \$250 per day.

All payments made under this Extension will be subject to an aggregate sub-limit of indemnity as specified at item 6 of the **Schedule**. The cover under this Extension is part of the **Limit of Indemnity** for Section 1 **Defence Costs** specified at item 5 of the **Schedule**.

No **Retention** will apply to payments made under this Extension.

#### 1.14 **Extended Reporting Period**

If the **Insurer** cancels or does not renew this **Policy**, other than for non-payment of premium, the **Policyholder** will have the right to a period of 60 days following the date of cancellation or expiry in which to give notice of any **Claim** first made against the **Insured** during the **Policy Period**. This extended reporting period will not apply if this **Policy** has been replaced by substantially similar cover.

### **OPTIONAL EXTENSIONS**

Cover is only provided for the following Extensions where shown on the **Schedule** as “Included”. This cover is subject to the terms, conditions and limitations of this **Policy**.

#### 1.15 **Contractual Liability**

The **Insurer** will indemnify the **Insured** for all **Damages** and **Defence Costs** resulting from any **Claim** as a result of a **Wrongful Act** for any contractual liability or obligation arising from warranties or guarantees given by the **Insured** that:

- 1.15.1 the **Insured** will use reasonable skill and care in the performance of **Technology Services**;
- 1.15.2 the **Technology Services** will not infringe upon any third party’s intellectual property (including any indemnities provided for such); or
- 1.15.3 the **Technology Services** will be performed in substantial conformance with any material, written specifications relating to the way in which the **Technology Services** are performed.

#### 1.16 **Patents**

Notwithstanding the exclusion for patents and trade secrets at Automatic Extension 1.6 (Intellectual Property), the **Insurer** will indemnify the **Insured** all **Damages** and **Defence Costs** resulting from any **Claim** for any infringement of any registered patents.

All payments made under this Extension will be subject to an aggregate sub-limit of indemnity as specified at item 7 of the **Schedule**.

### **Section 2: CYBER**

All cover under Section 2 is afforded solely with respect to an actual or suspected **Breach** or **Extortion Threat** on or after the **Retroactive Date** and first discovered by **Executive Management** and reported to the **Insurer** during the **Policy Period** and as required by this **Policy**.

#### **INSURING CLAUSE**

##### 2.1 The **Insurer** will:

- 2.1.1 pay on behalf of the **Insured** all **Emergency Response Costs** and/or **First Party Response Costs**; and
- 2.1.2 reimburse the **Insured** for:
  - (a) **Business Interruption Loss**;

- (b) costs resulting directly from an **Extortion Threat**; or
- (c) **Fines and Penalties**.

## **Section 3: GENERAL LIABILITY**

### **INSURING CLAUSES**

3.1 The **Insurer** will indemnify the **Insured** for legal liability in respect of **Personal Injury** and/or **Property Damage** first happening during the **Policy Period** as a result of an **Occurrence** in connection with the **Insured's Business**.

#### **3.2 Defence Costs**

In addition to the **Limit of Indemnity**, the **Insurer** will pay **Defence Costs**.

### **AUTOMATIC EXTENSIONS**

The cover provided by this Part of the **Policy** is extended as set out below. This cover is subject to the terms, conditions and limitations of the **Policy**.

#### **3.3 Care, Custody or Control**

The **Insurer** will indemnify the **Insured** for legal liability in respect of **Property Damage** to the following property when it is in the **Insured's** care, custody or control:

3.3.1 **Vehicles**, other than **Vehicles** owned or used by or on behalf of the **Insured**, only whilst the **Vehicles** are in a car park owned or operated by the **Insured** other than for income or reward as a car park operator; and

3.3.2 goods, equipment, merchandise and property (including **Employees'** property), other than real property, except where the goods, equipment, merchandise or property is stored by the **Insured** for a fee.

All payments made under this Extension will be subject to an aggregate sub-limit of indemnity as specified at item 6 of the **Schedule**. The **Retention** specified at item 8 of the **Schedule** will apply.

#### **3.4 First Aid**

The **Insurer** will indemnify the **Insured** for legal liability in respect of **Personal Injury** and/or **Property Damage** arising out of the giving of first aid or medical services or failure to give first aid or medical services on the **Insured's** premises by medical persons employed by the **Insured**.

#### **3.5 Technology Product Recall Expenses**

The **Insurer** will indemnify the **Insured** for **Technology Product Recall Expenses**.

All payments made under this Extension will be subject to an aggregate sub-limit of indemnity as specified at item 6 of the **Schedule**. The **Retention** specified at item 8 of the **Schedule** will apply.

### 3.6 Punitive or Exemplary Damages

The **Insurer** will indemnify the **Insured** for legal liability to pay punitive or exemplary damages awarded for **Personal Injury** (where cover for the **Personal Injury** is determined to exist under the Accident Compensation Act 2001 or any amending or replacing legislation) where the **Personal Injury** happened in New Zealand during the **Policy Period** and was caused by an **Occurrence** in connection with the **Insured's Business**.

Provided that:

- 3.6.1 any liability under this Extension arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse is excluded; and
- 3.6.2 any punitive or exemplary damages awarded by any court outside New Zealand are excluded.

All payments made under this Extension will be subject to an aggregate sub-limit of indemnity as specified at item 6 of the **Schedule**. The **Retention** specified at item 8 of the **Schedule** will apply.

### 3.7 Tenants Liability

The **Insurer** will indemnify the **Insured** for legal liability in respect of **Property Damage** to premises (including landlord's fixtures and fittings) leased or rented, but not owned, by the **Insured**.

### 3.8 Vehicle and Watercraft Service and Repair

Notwithstanding Exclusion 5.29 (Vehicles, Watercraft and Aircraft), the **Insurer** will indemnify the **Insured** for legal liability in respect of **Personal Injury** or **Property Damage** in New Zealand arising from the service, repair, modification by the **Insured** of any **Vehicle**, and/or **Watercraft** capable of being transported by trailer and not exceeding 10 metres in length, and/or its internal combustion engine, accessories or fittings.

Provided that:

- 3.8.1 the **Vehicle** or **Watercraft** is not owned, hired, leased, or rented by the **Insured**, and is in the care, custody and control of the **Insured** for the purposes of the service, repair, modification or installation; and
- 3.8.2 the cost of rectifying defective workmanship in respect of the actual part or parts worked on is excluded; and
- 3.8.3 liability in respect of **Watercraft** during testing on water is excluded.

All payments made under this Extension will be subject to an aggregate sub-limit of indemnity as specified at item 6 of the **Schedule**. The **Retention** specified at item 8 of the **Schedule** will apply.

### 3.9 Visits to Non-Territory Countries

Notwithstanding the **Policy** territory, the **Insurer** will indemnify the **Insured** in respect of **Personal Injury** or **Property Damage** occurring outside of the **Policy** territory caused by any **Employee** of the **Insured** who normally resides in the **Policy** territory while the **Employee** is temporarily travelling on behalf of the **Insured** outside the **Policy** territory.

## Section 4: DEFINITIONS

### 4.1 **Breach** means:

- 4.1.1 the unintentional corruption, destruction, deletion or disclosure of **Confidential Information** by an **Insured** or a third party for whom the **Insured** is legally responsible;
- 4.1.2 the intentional, reckless or deliberate theft or disclosure of **Confidential Information** by an **Employee** of the **Insured** acting independently of the **Executive Management**;
- 4.1.3 the intentional, reckless or deliberate transmission of malicious code by an **Employee** of the **Insured** acting independently of the **Executive Management**;
- 4.1.4 unauthorised use or access to the **Computer Network** which results in:
  - (a) the disclosure of **Confidential Information**;
  - (b) the corruption, destruction or deletion of **Electronic Data**;
  - (c) a denial of service attack suffered by the **Insured**; or
  - (d) defamation, product disparagement or infliction of emotional distress;
- 4.1.5 participation of the **Computer Network** in a denial of service attack directed against a third party;
- 4.1.6 unintentional transmission of malicious code from the **Computer Network** causing harm to a third party; or
- 4.1.7 physical theft or loss of hardware on which **Electronic Data** is stored.

### 4.2 **Business Interruption** means the actual and measurable interruption, deterioration or suspension of an **Insured's Business** directly caused by:

- 4.2.1 the corruption, destruction or deletion of the **Insured's Electronic Data** by a third party or an **Employee** acting independently of the **Executive Management**;
- 4.2.2 a denial of service attack directed at the **Insured**; or
- 4.2.3 a restriction of access to the **Insured's** network of computer hardware, software, and any associated components leased, owned or operated by the **Insured**, due to a **Breach** or **Extortion Threat**.

### 4.3 **Business Interruption Loss** means:

- 4.3.1 the additional costs incurred by the **Insured** to continue normal business operations as a direct consequence of the **Business Interruption**; and
- 4.3.2 the sum of the following calculated on an hourly basis:
  - (a) the **Policyholder** and/or **Subsidiary's** net income (before income taxes) that would have been earned but for the **Business Interruption**; and
  - (b) the fixed operating expenses of the **Policyholder** and/or a **Subsidiary**, which are made redundant as a direct result of the **Breach**,

within the **Period of Recovery**.

**Business Interruption Loss** will not include any:

- 4.3.3 contractual penalties or liquidated damages;

- 4.3.4 any liability to a third party;
- 4.3.5 legal costs or legal expenses of any nature;
- 4.3.6 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**;
- 4.3.7 any costs or expenses to correct any deficiencies with any **Computer Network** or remediate software errors or vulnerabilities;
- 4.3.8 any consequential loss or damage; or
- 4.3.9 loss resulting from unfavourable business conditions or trend, variation or special circumstances affecting any **Policyholder** and/or **Subsidiary** either before or after the **Breach** which would have affected the **Policyholder** and/or **Subsidiary** in any event.
- 4.4 **Claim** means:
  - 4.4.1 a written demand; or
  - 4.4.2 a civil or administrative proceeding, that seeks **Damages** or non-monetary relief.
- 4.5 **Computer Network** means a network of computer hardware, software, and any associated components:
  - 4.5.1 leased, owned or operated by the **Insured**; or
  - 4.5.2 operated for the benefit of the **Insured** by a third-party service provider under written contract with the **Insured**.
- 4.6 **Confidential Information** means:
  - 4.6.1 **Personal Information**; or
  - 4.6.2 the **Insured's** or a third party's commercial information, which is not available to the general public, and:
    - (a) for which the **Insured** is legally responsible; or
    - (b) which is in the care, custody or control of a third party which is legally responsible pursuant to contract with the **Insured** and to whom the **Insured** has provided such information.
- 4.7 **Continuity Date** means the date specified at item 11 of the **Schedule**.
- 4.8 **Cyber Terrorism** means actual or threatened attacks against a **Computer Network** or **Electronic Data** with the intention to cause harm in order to further political, religious or ideological objectives. **Cyber Terrorism** does not include activities that are in support of any war or military action by any sovereign state.
- 4.9 **Cyber Wrongful Act** means any actual or alleged:
  - 4.9.1 infringement of intellectual property rights;
  - 4.9.2 invasion of or interference with the right to privacy or publicity, false light, public disclosure of private facts, intrusion of privacy, or invasion of privacy including infliction of emotional distress or mental anguish in connection with any of the foregoing; or



4.9.3 defamation, product disparagement, trade libel, infliction of emotional distress, arising out of **Electronic Content**.

4.10 **Damages** means any amount that an **Insured** is legally liable to pay in respect of judgments against an **Insured**, or settlements which conform with the consent requirements set out in this **Policy**.

**Damages** will not include any of the following:

4.10.1 fines or penalties;

4.10.2 taxes;

4.10.3 costs incurred by an **Insured** to comply with any order for non-monetary relief or with any agreement to provide such relief;

4.10.4 any amount which constitutes disgorgement, restitution, the return of fees (other than as provided by Section 1 Extension 1.11 (Mitigation Costs)), accounting of profits, commissions, charges or other compensation;

4.10.5 liquidated damages; or

4.10.6 any amount not insurable under the law pursuant to which this **Policy** will be construed.

4.11 **Defence Costs** means:

4.11.1 all reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with the **Insurer's** prior consent, in the investigation, defence, adjustment, settlement or appeal of any **Claim** and

4.11.2 in respect to Section 3 (General Liability), all expenses incurred by the **Insured** for first aid rendered for **Personal Injury** to others at the time of an **Occurrence**, except any medical expenses which the **Insurer** is prohibited by law from paying.

Provided that the **Insurer** will not pay any **Defence Costs** in respect of any **Occurrence** after the **Insurer** has paid compensation up to the **Limit of Indemnity** for that **Occurrence**.

**Defence Costs** will not include any internal or overhead expenses of any **Insured** or the cost of any **Insured's** time, except as provided for under Section 1 Extension 1.13 (Court Attendance Costs).

4.12 **Electronic Content** means digital media including advertising and promotional material that is published, disseminated, released, gathered, distributed or transmitted in electronic or digital format, by or on behalf of the **Insured**.

**Electronic Content** does not include:

4.12.1 computer software except to the extent that it displays digital content; or

4.12.2 any actual products or services described, illustrated or displayed in such **Electronic Content**.

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

- 4.14 **Emergency Response Costs** means all **First Party Response Costs** incurred within the first 72 hours following discovery of an actual or suspected **Breach** or **Extortion Threat** provided those costs are incurred by engagement of the **Incident Response Team**. This cover does not require the **Insurer's** prior written consent.
- 4.15 **Employee** means any natural person who is or has been expressly engaged as an employee under a contract of employment with the **Insured**. **Employee** will not mean any:
- 4.15.1 principal, partner or director; or
  - 4.15.2 temporary contract labour, self-employed person or labour only sub-contractor.
- 4.16 **Executive Management** means a Director of the Board, the Chief Executive Officer, Chief Financial Officer, Chief Information Security Officer, General Counsel, Risk Manager or any office holder with functionally equivalent roles and responsibilities.
- 4.17 **Extortion Threat** means any threat or series of related threats directed at the **Insured** to harm or restrict access to the **Computer Network** or **Electronic Data** in conjunction with a demand for money or other valuable consideration to avert, eliminate or mitigate the harm or restriction of access. An **Extortion Threat** will be deemed made when **Executive Management** is first made aware of any such threat.
- 4.18 **Family Member** means:
- 4.18.1 any spouse, domestic partner or companion; or
  - 4.18.2 any parent or parent of the spouse; or
  - 4.18.3 any sibling or child,  
of the **Insured**.
- 4.19 **Fines and Penalties** means any monetary fine or penalty imposed by any **Official Body** pursuant to a **Regulatory Proceeding** arising from an actual or suspected **Breach** including:
- 4.19.1 reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with the **Insurer's** prior consent in the defence of the **Regulatory Proceeding**;
  - 4.19.2 all charges, expenses and legal costs recoverable from the **Insured** by the **Official Body**.
- Fines and Penalties** will not include any amount not insurable under the law pursuant to which this **Policy** will be construed.
- 4.20 **First Party Response Costs** means:
- 4.20.1 costs arising from the engagement and advice provided by the **Incident Response Team** as a result of an actual or suspected **Breach** or **Extortion Threat**;
  - 4.20.2 costs arising from the engagement and advice provided by third party forensics services solely in respect of determining the scope and cause of the **Breach** and/or to end the **Breach** or **Extortion Threat**;
  - 4.20.3 notification expenses whether or not required by any applicable **Privacy Breach Notice Laws**;
  - 4.20.4 costs incurred from the provision of up to 12 months credit monitoring and call centre services to support impacted individuals as a result of a **Breach**;

4.20.5 costs arising from the engagement of a public relations firm, crisis management firm, or law firm solely in respect of communications designed for the purpose of restoring or protecting the **Insured's** reputation which has or may be injured as a result of the **Breach** or **Extortion Threat**;

4.20.6 costs incurred to:

- (a) restore or recreate **Confidential Information** from existing physical or electronic backups;
- (b) repair or replace damaged computer hardware or software upon which the **Insured's Electronic Data** was stored; or
- (c) including the costs incurred in determining whether it is possible to do so. In the event that **Electronic Data** cannot be restored or recreated, costs will be limited to the expenses incurred to reach that determination.

4.20.7 reimbursement of reasonable fees, costs and expenses incurred by the **Insured** that result directly from an **Extortion Threat**, including but not limited to monies paid in response to the **Extortion Threat** for the purpose of terminating the **Extortion Threat** and the costs to conduct an investigation to determine the cause of the **Extortion Threat**.

**First Party Response Costs** will not include:

4.20.8 any salaries, wages, overhead or internal charges associated with any **Insured** (other than fixed operating expenses made redundant as a direct result of a **Breach** covered under **Business Interruption Loss**);

4.20.9 contractual penalties or liquidated damages;

4.20.10 any legal liability to a third party;

4.20.11 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, Breach** or **Extortion Threat**; or

4.20.12 loss resulting from unfavourable business conditions or a trend or variation affecting any **Policyholder** or **Subsidiary** in any event.

4.21 **Incident Response Team** means the entities and individuals specified at item 13 of the **Schedule**.

4.22 **Insured** means:

4.22.1 the **Policyholder** and any **Subsidiary**;

4.22.2 any natural person, who is or has been a principal, partner or director of the **Policyholder** or any **Subsidiary**;

4.22.3 any **Employee**; and

4.22.4 any temporary contract labour, self-employed person or labour-only sub-contractors, solely under contract with, and under the direction and direct supervision of the **Policyholder** or any **Subsidiary**,

but for the purposes of Section 1 only when providing **Technology Services** or **Technology Products** in the foregoing capacities, and for the purposes of Section 2 and 3 only whilst performing duties related to the conduct of the **Insured's Business**.

4.22.5 In respect of Section 3 only, the **Insured** includes any social and/or sporting clubs formed with the consent of the **Insured**, including any office bearers or members whilst acting in that capacity.

4.22.6 This **Policy** also extends to cover any estates, heirs, legal representatives or assigns of a natural person **Insured** who is deceased or the legal representatives or assigns of a natural person **Insured** who is incompetent, insolvent or bankrupt, to the extent that the **Insured** would have been covered by this **Policy** in the absence of such **Insured's** death, incompetency, insolvency or bankruptcy.

4.23 **Insured's Business** means the business as specified at item 3 of the **Schedule**.

4.24 **Insurer** means Berkshire Hathaway Specialty Insurance Company (Incorporated in Nebraska, USA).

4.25 **Limit of Indemnity** means the respective amounts specified at item 5 of the **Schedule**.

4.26 **Mitigation Costs** means reasonable fees, costs and expenses incurred by the **Insured** as a result of action taken by the **Insured** to mitigate a potential **Claim** against the **Insured** during the **Policy Period**, provided that:

4.26.1 the notification of the relevant circumstance has been made to the **Insurer** in accordance with Claims Condition 6.5.1 (b) (Notification);

4.26.2 if the notified circumstance were to give rise to a **Claim**, that **Claim** would result in a civil liability of the **Insured Person** to the potential claimant, but no such **Claim** has yet been made by the potential claimant;

4.26.3 The **Insured** demonstrates, to the reasonable satisfaction of the **Insurer**, that the incurring of such reasonable and necessary fees, costs and expenses is reasonable and proportionate, that these costs will not exceed the liability that would have existed under this **Policy** if the **Claim** had been made against the **Insured Person** by the potential claimant and the incurring of these costs is reasonably likely to prevent or mitigate the potential **Claim**; and

4.26.4 the burden of proving that any **Claim** would be covered under this **Policy** will rest with the **Insured**.

Except as provided for in Section 1 Automatic Extension 1.11.2 (Mitigation Costs), **Mitigation Costs** will not include any internal or overhead expenses of any **Insured** or the cost of any **Insured's** time.

4.27 **Occurrence** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** neither expected nor intended from the standpoint of the **Insured**. All events of a series consequent on or attributable to one source or original cause will be deemed one **Occurrence**.

4.28 **Official Body** means any entity with the legal authority to conduct an investigation into or adjudicate on matters relating to the **Insured**.

- 4.29 **Period of Recovery** means the period from the date and time **Business Interruption** is first discovered until such time as the **Computer Network** and/or the **Insured's Electronic Data** is restored from physical or electronic backups, or could have been restored to substantially the level of operation that had existed prior to such **Business Interruption**; provided, however, that in no event will such period exceed one hundred and twenty (120) days.
- 4.30 **Personal Information** means any non-public personal information owned, licensed or maintained by the **Insured** or by any third party to whom the **Insured** has entrusted such information that is defined as such in any **Privacy Laws**.
- 4.31 **Personal Injury** means physical injury, sickness, disease or death; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury.
- In respect of Section 3 (General Liability), **Personal Injury** also means:
- 4.31.1 false arrest, wrongful detention or imprisonment, malicious prosecution;
- 4.31.2 wrongful entry or eviction;
- 4.31.3 assault and battery not committed by or at the direction of the **Insured** unless committed for the purpose of preventing **Personal Injury** and/or **Property Damage** or eliminating danger; or
- 4.31.4 libel, slander, defamation of character or invasion of right of privacy.
- 4.32 **Policy** means this policy wording, the **Schedule**, the **Proposal** and any Endorsement attaching to and forming part of the policy either at commencement or at any time during the **Policy Period**.
- 4.33 **Policy Period** means the period of time specified at item 4 of the **Schedule** unless the **Policy** is cancelled in which event the **Policy Period** will end on the effective date of cancellation.
- 4.34 **Policyholder** means the entity specified at item 1 of the **Schedule**.
- 4.35 **Pollutants** means but is not limited to any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, asbestos fibres or derivatives of asbestos, smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids, alkalis, nuclear or radioactive material of any sort, chemicals or waste. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed.
- 4.36 **Privacy Breach Notice Laws** means any statute or regulation that requires notice to persons whose **Personal Information** has been or is suspected to have been disclosed to or accessed by an unauthorised person or group.
- 4.37 **Privacy Laws** means any statute or regulation that requires the protection of non-public information pertaining to an individual or natural person.
- 4.38 **Product** means any commodity, article or thing (after it has ceased to be in the possession or under the control of the **Insured**), including **Technology Products** which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the **Policyholder** or any **Subsidiary** or by others trading under the name of the **Insured** (including any container thereof other than a motor **Vehicle**).

4.39 **Property Damage** means:

- 4.39.1 physical damage to or destruction of tangible property including all resulting loss of use of that property. All such loss of use will be deemed to happen at the time of the physical damage that caused it; or
- 4.39.2 loss of use of tangible property that is not physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property which first happened during the **Policy Period**. All such loss of use will be deemed to happen at the time of the physical damage or destruction that caused it.

For the purposes of this insurance tangible property does not include any information, facts, programs, instructions, commands, **Electronic Data**, and anything else stored as or on, created or used on, or transmitted to or from computers or their software, including, but not limited to, systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices, networks, clouds, or other media used with electronically controlled equipment.

4.40 **Proposal** means the written proposal provided to the **Insurer** by the **Insured** together with any written materials attached to the proposal or submitted to the **Insurer** in connection with the underwriting of this **Policy**.

4.41 **Regulatory Proceeding** means a request for information, demand, suit, civil investigation or civil proceeding by or on behalf of an **Official Body** that alleges a violation of **Privacy Laws** or a Payment Card Industry Data Security Standard.

4.42 **Retention** means the amount specified at item 8 of the **Schedule**.

4.43 **Retroactive Date** means the date specified at item 10 of the **Schedule**.

4.44 **Schedule** means the schedule attached to and forming part of this **Policy**.

4.45 **Subsidiary** means any entity in which the **Policyholder**:

- 4.45.1 controls the composition of the Board of Directors;
- 4.45.2 controls more than half of the voting power; or
- 4.45.3 holds more than half of their issued share capital.

For any **Subsidiary**, cover under this **Policy** will only apply while such entity is or was a **Subsidiary** of the **Policyholder**.

4.46 **Technology Products** means any electronic equipment, communication equipment or computer hardware or software developed, manufactured, sold, licensed or distributed by the **Policyholder** or any **Subsidiary**.

4.47 **Technology Product Recall Expense** means the reasonable and necessary costs incurred by the **Insured** with the **Insurer's** prior approval during a period not exceeding twelve (12) consecutive months, exclusively for the recall, recovery, or destruction of **Technology Products** as a result of a specific defect in the design or manufacture of the **Technology Product** which has caused **Personal Injury** and/or **Property Damage** for which indemnity would be provided by this **Policy**. These costs are limited to the following:

- 4.47.1 communications to notify others of the recall, including but not limited to, radio and television announcements and printed advertisements;

- 4.47.2 the cost of shipping the **Technology Product** from any distributor, purchaser or user to the place or places the **Insured** designates;
- 4.47.3 the actual cost of disposal of the **Technology Product**;
- 4.47.4 the extra expense to rent additional warehouse or storage space to receive the **Technology Product**;
- 4.47.5 the cost to hire additional persons other than the **Insured's** regular **Employees**;
- 4.47.6 remuneration paid to the **Insured's** regular **Employees**, other than salaried **Employees**, at the **Insured's** usual rates of salary or wages for necessary straight time or overtime; and
- 4.47.7 expenses incurred by the **Insured's Employees**, including transportation and accommodations.

**Technology Product Recall Expenses** will not include:

- 4.47.8 the costs of examination, repair, alteration, treatment, replacement of any **Technology Product** or any part thereof;
- 4.47.9 any **Claim** or **Claims** directly or indirectly caused by, contributed to, by or arising out of the insolvency or bankruptcy of the **Insured**;
- 4.47.10 any liability incurred as a result of the disclosure by the **Insured** of the existence of this insurance cover in any advertising material, information or data sheets or similar documentation supplied by the **Insured**;
- 4.47.11 any withdrawal or recall arising out of facts or circumstances of which the **Insured** was aware or ought reasonably to have been aware at the commencement of the **Policy Period** whether notified under any other insurance or not;
- 4.47.12 claims arising out of deliberate product contamination or alleged deliberate product contamination;
- 4.47.13 expenses incurred for the withdrawal or recall of any **Technology Product** which were supplied by the **Insured** prior to the applicable **Retroactive Date**. For the purpose of this clause, the date of supply is deemed to be the date that the **Technology Product** first leaves the **Insured's** physical possession, control or custody;
- 4.47.14 where the **Insured** has deliberately caused the loss or, having knowledge of the defective nature of the **Technology Product**, has not taken reasonable steps to avoid or to minimise the loss;
- 4.47.15 claims arising out of loss(es) of a **Technology Product**, which **Technology Product's** specific purpose was not sufficiently tested in accordance with the accepted standards of technology, science or any other applicable standard(s); or
- 4.47.16 the withdrawal or recall of the **Technology Products** bearing the same trade or brand names but from batches other than those which have been determined as possibly or likely to become a cause of loss under this **Policy**.

4.48 **Technology Services** means the advice and services of the **Policyholder** or any **Subsidiary** in relation to:

- 4.48.1 the design, development, integration, maintenance or sale of software;

- 4.48.2 the design, development, integration or maintenance of **Technology Products**;
- 4.48.3 network integration, management or maintenance;
- 4.48.4 the design, development, integration or maintenance of websites;
- 4.48.5 information security services;
- 4.48.6 computer facilities management;
- 4.48.7 electronic data processing; or
- 4.48.8 training or consultancy services in respect of the above;
- 4.49 **Waiting Hours Period** means the number of hours specified at item 9 of the **Schedule** that must elapse from when the **Business Interruption** is first discovered by **Executive Management** in order for coverage to apply for **Business Interruption Loss**.
- 4.50 **Workers' Compensation Law** means any law relating to compensation for **Personal Injury to Employees**.
- 4.51 **Wrongful Act** means any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty by the **Insured** in the provision of **Technology Services** and/or **Technology Products**.

## Section 5: EXCLUSIONS

### General Exclusions

These exclusions apply to all Sections under the **Policy**.

The **Insurer** will not be liable for or make any payment under this **Policy** arising out of, based upon or attributable to:

- 5.1 **Anti-competitive conduct**  
any actual or alleged restrictive trade practices, restraint of trade or unfair competition.
- 5.2 **Assumed liability**
  - 5.2.1 any liability or other obligation assumed or accepted by an **Insured** under any contract or agreement, except to the extent that such liability would have attached to the **Insured** in the absence of such contract or agreement; or
  - 5.2.2 any guarantee or warranty,

This Exclusion will not apply to the cover provided by Section 1 Optional Extension 1.15 (Contractual Liability).
- 5.3 **Conduct**
  - 5.3.1 anything which a Court, official tribunal, arbitrator or professional or statutory body finds, or which an **Insured** admits, to be a criminal, dishonest or fraudulent **Wrongful Act, Cyber Wrongful Act** or act or omission; or
  - 5.3.2 any reckless, deliberate, intentional or wilful act or **Wrongful Act, Cyber Wrongful Act** or act or omission by an **Insured**.



In the event of a criminal, dishonest or fraudulent **Wrongful Act, Cyber Wrongful Act** or act or omission by an **Insured**, the **Insurer's** obligation to indemnify that **Insured** will cease and that **Insured** will reimburse all sums paid in connection with that **Claim**.

For the purpose of determining the applicability of this Exclusion, the relevant conduct of any **Insured** will not be imputed to any other **Insured**, provided that for the purposes of Section 2 (Cyber Liability) only, the relevant conduct of an employee of the **Insured** acting independently of the **Executive Management** any **Insured** will not be imputed to any other **Insured**.

This Exclusion will not apply to the cover provided by Section 1 Insuring Clause 1.3 (Fraud and Dishonesty).

In respect to Section 2 (Cyber Liability) only, the **Insurer** will also not be liable for or make any payment under this **Policy** arising out of, based upon or attributable to any **Insured** gaining any profit, financial advantage or remuneration that such **Insured** is not legally entitled to receive, provided, however, that this exclusion will apply only if a Court, **Official Body**, or arbitrator finds, or the **Insured** admits, that such conduct occurred.

#### 5.4 **Fines & Penalties**

any:

- 5.4.1 taxes;
- 5.4.2 fines or penalties;
- 5.4.3 liquidated, aggravated, multiple, punitive or exemplary damages;
- 5.4.4 trading debt incurred by an **Insured**; or
- 5.4.5 restitutionary relief.

This Exclusion will not apply to the cover provided by Section 2 Insuring Clause 2.1.2 (c) (Fines and Penalties).

#### 5.5 **Funds Transfer**

- 5.5.1 any electronic funds transfer or transaction by an **Insured**;
- 5.5.2 any theft of money or securities from an **Insured** or the transfer or loss of money, property or securities from or to an **Insured's** account or any account under the **Insured's** control, including without limitation, any customer account; or
- 5.5.3 any financial trading loss or change in account value.

#### 5.6 **Infrastructure**

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

#### 5.7 **Insolvency**

the actual or alleged insolvency, administration or receivership of the **Insured**.

#### 5.8 **Patents and Trade Secrets**

any actual or alleged infringement of, or misappropriation of patents or trade secrets.

This Exclusion will not apply to the cover provided by Section 1 (Technology Professional Indemnity) Optional Extension 1.16 (Patents).

#### 5.9 **Pollution**

arising out of, based upon or attributable to:

5.9.1 the actual, alleged or threatened presence, discharge, disbursement, release, migration or escape of **Pollutants**; or

5.9.2 any direction, request or effort to:

(a) test for, monitor, clean up, remove, contain, treat detoxify or neutralise **Pollutants**; or

(b) respond to or assess the effects of **Pollutants**.

#### 5.10 **Sanctions**

any claim or any benefit hereunder to the extent that the provision of cover or provision of such benefit would expose the **Insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, New Zealand, the European Union, United Kingdom or United States of America.

#### 5.11 **USA/Canada**

any **Claim** or claim for which there is cover under this **Policy** brought or maintained within the jurisdiction of, or to enforce a judgment obtained in, or based upon any laws of, the United States of America, Canada, or any of their respective territories or possessions.

#### 5.12 **War/Terrorism**

any war (declared or otherwise), terrorism, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property and/or a **Computer Network** or **Electronic Data** by or under the order of, any governmental, public or local authority or any political or terrorist organisation.

This Exclusion will not apply to **Cyber Terrorism**.

### **Technology Professional Indemnity Exclusions**

In respect to Section 1 only, the **Insurer** also will not be liable for, or make any payment under this **Policy** arising out of, based upon or attributable to:

#### 5.13 **Delay/Cost Overruns**

5.13.1 any cost estimate; or

5.13.2 delay in performing, failing to perform or failing to complete any **Technology Services**, unless such delay or failure arises from the design, development, integration or maintenance of software.

5.14 **Personal Injury/Property Damage**

**Personal Injury** or **Property Damage** unless arising out of an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in the provision of **Technology Services**.

5.15 **Prior Claims**

5.15.1 **Claims** made prior to or pending at the inception of this **Policy**;

5.15.2 **Claims** arising out of, based upon or attributable to any circumstance which may reasonably be expected by any **Insured** to give rise to a **Claim**, that is known to the **Insured** prior to inception of the **Policy**; or

5.15.3 **Claims** derived from the same or essentially the same facts as alleged in any **Claim** made prior to or pending at the inception of the **Policy**.

5.16 **Recall of Products**

the withdrawal, recall, inspection, repair, adjustment, removal, replacement or loss of use of any **Product** or work completed for the **Insured** and/or the withdrawal or recall of any property of which such **Product** forms a part.

5.17 **Related Entities**

**Claims** brought or maintained by or on behalf of:

5.17.1 any **Insured**, or any associated entity (whether incorporated or not) of the **Insured**;

5.17.2 any person who, at the time of the **Wrongful Act** giving rise to the **Claim**, is a **Family Member**; or

5.17.3 any person, firm, company or entity:

(a) operated or controlled by any **Insured**;

(b) operated or controlled by any **Employee**, partner, nominee or trustee of any **Insured**;

(c) in which any **Insured** has a direct or indirect financial interest (a shareholding of less than 5% in a publicly listed company will not constitute a financial interest); or

(d) advised or induced by the **Insured** to invest in or lend money to any person, firm, company or entity referred to in any of (a), (b) or (c) above or to the **Insured**.

For the purpose of this Exclusion, the term **Insured** will include both the **Insured** and any **Family Member**.

5.18 **Retroactive Date**

any **Technology Services** provided prior to the applicable **Retroactive Date**, or a **Breach** or **Cyber Wrongful Act** happening prior to the **Retroactive Date**.

## Cyber Exclusions

In respect to Section 2 only, the **Insurer** also will not be liable for, or make any payment under this **Policy** arising out of, based upon or attributable to:

### 5.19 Personal Injury/Property Damage

any **Personal Injury** or **Property Damage**; provided, however, that this exclusion will not apply to **First Party Response Costs** following the physical theft or loss of hardware on which **Electronic Data** is stored.

## General Liability Exclusions

In respect to Section 3 only, the **Insurer** also will not be liable for, or make any payment under this **Policy** arising out of, based upon or attributable to:

### 5.20 Asbestos

5.20.1 asbestos; including any group of natural fibrous silicate minerals that comprises actinolite, amosite, anthophyllite, chrysotile, crocidolite and tremolite; or

5.20.2 the group of man-made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres, and includes asbestos products and products containing asbestos.

### 5.21 Building Defects

5.21.1 the failure of any building or structure to meet or conform to the requirements of the New Zealand Building Code or any applicable New Zealand regulation or standard (or any amended or substituted regulation or standard) in relation to leaks, water penetration, weatherproofing, moisture, or any effective water exit or control system; or

5.21.2 mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure.

This Exclusion does not apply to liability that is caused by, or directly arises from, the leakage of internal pipes, internal water systems or internal cisterns.

### 5.22 Care, Custody or Control

except as set out in Extension 3.3 (Care, Custody or Control), damage to property owned by the **Insured**, or otherwise in the **Insured's** care, custody or control.

### 5.23 Disclosure of Personal or Confidential Information

actual or alleged:

5.23.1 unauthorised or improper access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of **Electronic Data**, including but not limited to, any patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of non-public information; or

- 5.23.2 violation of any statute, regulation, common law, or any other law regulating or protecting access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of **Electronic Data**.

This Exclusion applies to, among other things, damages or amounts associated with any notification costs, credit monitoring expenses, forensic expenses, public relations expenses, or any other loss, cost or expense, whether incurred by the **Insured** or others, arising out of any access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information that is subject to this Exclusion.

This Exclusion does not apply to any **Personal Injury** or **Property Damage**.

5.24 **Employee Liability**

- 5.24.1 **Personal Injury** suffered by any **Employee** arising out of or in the course of employment of that person in the **Insured's Business** whether or not any **Workers' Compensation Law** applies; or
- 5.24.2 any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, unfair contracts, harassment or discrimination (sexual or otherwise) in respect of employment by the **Insured**.

5.25 **Professional Advice**

the giving of or failure to give professional advice, the rendering of or failure to render any professional services, including but not limited to, **Technology Services**, or any error or omission connected therewith by the **Insured** or by any other person acting on behalf of any **Insured**.

This Exclusion will not apply to any coverage provided under Extension 3.4 (First Aid).

5.26 **Recall of Products**

the withdrawal or recall of any **Product** except as provided for in Extension 3.5 (Technology Products Recall Expenses).

5.27 **Reinstatement, Repair or Replacement of Products**

- 5.27.1 damage to any **Product** or any property of which such **Product** forms a part if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof, however this Exclusion will not apply to damage to other property resulting therefrom; or
- 5.27.2 damage to any part of any property that must be repaired, reconditioned, reinstated, corrected or replaced by reason of incorrect work performed by the **Insured** or on the **Insured's** behalf, or by reason of materials or equipment which are or are proved to be defective or inadequate in connection with such work, provided, however, this Exclusion does not apply to damage resulting from such work.

5.28 **Tobacco**

**Personal Injury** sustained due to the inhalation or ingestion of, or exposure to:

- 5.28.1 tobacco or tobacco smoke; or
- 5.28.2 any ingredient or additive present in any articles, items or goods which contain or include tobacco.

## 5.29 Vehicles, Watercraft and Aircraft

the ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the **Insured** of any aircraft, aerial device or any **Watercraft** including any **Technology Product** which is incorporated into the structure, machinery or controls of any aircraft, aerial device or **Watercraft**.

## Section 6 CLAIMS CONDITIONS

### 6.1 The **Insured** will at its own cost:

- 6.1.1 render all reasonable assistance to the **Insurer** and co-operate in the defence of any **Claim**, complaint or investigation by an **Official Body, Regulatory Proceeding**, actual or suspected **Breach** or **Extortion Threat**, or claim under Section 3 (General Liability), and the assertion and exercise of any indemnification and/or contribution rights;
- 6.1.2 use due diligence and do all things reasonably practicable to avoid or diminish any loss under this **Policy**; and
- 6.1.3 give such information and assistance to the **Insurer** as the **Insurer** may reasonably require to enable it to investigate any loss or determine the **Insurer's** liability under this **Policy**.

### 6.2 The **Insured** waives all claims to legal professional privilege between themselves and any lawyer retained by the **Insurer** to act on the **Insured's** behalf in relation to any **Claim** or claim that may be covered under this **Policy**. The **Insured** will allow the lawyer to disclose to the **Insurer** any information obtained in the course of the lawyer's duties.

### 6.3 Defence/Consent for Defence Costs and Settlement/Allocation

- 6.3.1 As a condition precedent to the right to be indemnified under this **Policy**, the **Insured** (and any person, firm, or company acting for or on behalf of the **Insured**) will not admit liability for, compromise, settle or make any offer or payment in respect of any claim for which there is cover under this **Policy**, without the **Insurer's** prior written consent, which consent is not to be unreasonably withheld or delayed, provided the **Insurer** is entitled to exercise all of its rights under the **Policy** and at law.
- 6.3.2 The **Insured** (and any person, firm, or company acting for or on behalf of the **Insured**) will not incur any **Defence Costs** without the **Insurer's** prior written consent, which consent is not to be unreasonably withheld or delayed, provided the **Insurer** is entitled to exercise all of its rights under the **Policy** and at law.
- 6.3.3 The **Insured** will defend any **Claim**, complaint or investigation by an **Official Body, Regulatory Proceeding**, or claim for which there is cover under this **Policy**, brought against the **Insured**; however the **Insurer** will have the right but not the duty to take over the investigation, defence and settlement of any circumstance or claim that may be covered under this **Policy**, and the **Insurer** will have full discretion in the handling and resolution thereof (notwithstanding that a dispute may have arisen between the **Insured** and the **Insurer**).

- 6.3.4 The **Insured** will not be required by the **Insurer** to contest any legal proceedings against the **Insured** unless a Queen's Counsel (to be mutually agreed upon by the **Insurer** and the **Insured** and in the absence of agreement to be determined by the President of the New Zealand Law Society) advises that the proceedings can be contested with a reasonable prospect of success. The costs of that advice will be borne by the **Insurer**.
- 6.3.5 If the **Insured** does not agree with the decision by the **Insurer** to settle a **Claim** or claim for which there is cover under this **Policy**, the **Insured** can elect to contest the **Claim** or claim at its own expense but the liability of the **Insurer** will not exceed the amount for which the claim could have been settled in the opinion of a Queen's Counsel (to be mutually agreed upon by the **Insured** and the **Insurer** and in the absence of agreement to be determined by the President of the New Zealand Law Society). The costs of that advice are to be borne by the **Insurer**.
- 6.3.6 The **Insurer** will pay all **Defence Costs** incurred up to the date the **Insured** notifies the **Insurer** in writing of its election under paragraph 6.3.5 above and will pay the **Insured** (subject to the **Retention**) the amount for which the **Claim** or claim giving rise to indemnity under the **Policy** could have been settled. The **Insured** expressly agrees that the **Insurer's** liability in respect of that **Claim** or claim giving rise to indemnity under the **Policy** will then be at an end.
- 6.3.7 In the event of a **Claim** or claim which involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the **Insurer** agree to use their best endeavours to determine a fair and proper allocation of amounts covered under this **Policy**, based on the relative legal and financial exposures of the parties to covered and uncovered matters. If the **Insured** and the **Insurer** cannot agree on an allocation of **Defence Costs**, the **Insurer** will advance **Defence Costs** which the **Insurer** believes to be covered under this **Policy** until a different allocation is negotiated, arbitrated or judicially determined. In that event, that allocation will be applied retroactively to all **Defence Costs**.

#### 6.4 **Fraudulent Claims**

If an **Insured** claims cover for any loss under this **Policy** knowing that claim to be false or fraudulent as regard amounts or otherwise, or uses fraudulent devices to advance what is otherwise a valid claim, that claim will be excluded under the **Policy**, and the **Insurer** will have the right to cancel the **Policy** and to be reimbursed by that **Insured** for all payments (including **Defence Costs** and any other fees, costs or expenses covered under any Extension) made in connection with that claim. Provided that this does not exclude cover for any related claim made by any other **Insured** which is not knowingly false or fraudulent.

#### 6.5 **Notification**

- 6.5.1 The **Insured** must, as a condition precedent to the obligations of the **Insurer** under this **Policy**, give written notice to the **Insurer** as soon as practicable of:
- (a) any **Claim** made against an **Insured**;
  - (b) the receipt of notice from any person of an intention to make a **Claim** against any **Insured**;
  - (c) any **Occurrence** or other matter which may give rise to a claim under this **Policy**; or

- (d) any circumstance which may reasonably be expected by any **Insured** to give rise to cover under this **Policy**.

Any **Claim** which is subsequently made against the **Insured** alleging, arising out of, based upon and attributable to a notified circumstance, will be considered made at the time notice of them was first given to the **Insurer**.

- 6.5.2 In the event of an actual or suspected **Breach** or **Extortion Threat**, the **Insured** must either:
  - (a) notify one of the **Incident Response Team**. Notice to one of the **Incident Response Team** will be deemed notification to the **Insurer**; or
  - (b) notify the **Insurer**,
  - (c) as soon as practicable after the **Executive Management** first learns of the actual or suspected **Breach** or **Extortion Threat**.
- 6.5.3 Notifications to the **Insurer** must be in writing and sent to the **Insurer** via the **Insured's** broker or to the **Insurer** as specified at item 14 of the **Schedule**.

## 6.6 Related Claims

Any claim for which there is cover under this **Policy** arising out of, based upon or attributable to:

- 6.6.1 the same **Breach, Cyber Wrongful Act, Extortion Threat, Occurrence or Wrongful Act**;  
or
- 6.6.2 a series of repeated **Breaches, Cyber Wrongful Acts, Extortion Threats, Occurrences or Wrongful Acts**, arising from causally or logically related facts or circumstances,

will be considered a single claim for the purposes of cover under each respective Section of this **Policy** and will attract a single **Retention** which will apply to each Section.

All such claims will be considered first made at the earliest time that any such claim is first made against the **Insured**.

## Section 7 GENERAL CONDITIONS

### 7.1 Authorisation

The **Policyholder** will act as agent on behalf of all **Insureds** with respect to all matters under this **Policy** including:

- 7.1.1 the giving and receiving of all correspondence regarding this **Policy**;
- 7.1.2 the sending or receiving of notice of cancellation;
- 7.1.3 the payment of the premium; and
- 7.1.4 the receipt and acceptance of any endorsements attaching to and forming part of this **Policy**.



## 7.2 Bankruptcy

Bankruptcy or insolvency of any **Insured** will not relieve the **Insurer** of any of its obligations under this **Policy**. In that event the **Insured** hereby waives and releases any automatic stay or injunction in any proceeding which may apply to this **Policy** or its proceeds and agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from any such stay or injunction.

## 7.3 Basis of Valuation

**Business Interruption Loss** will be calculated on an hourly basis. In determining the amount of net income or loss and expenses covered under **Business Interruption Loss**, the **Insurer** will give due consideration to the net income or loss of the **Insured** before the **Business Interruption** occurred and the probable net income or loss of the **Insured** if no **Business Interruption** had occurred. However, such net income or loss calculations will 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 favourable business conditions caused by the impact of any event similar to a **Breach** suffered by other businesses. The **Insured** must provide the **Insurer** with access to all relevant sources of information, to enable it to determine the amount of any **Business Interruption Loss** including, but not limited to:

- 7.3.1 the **Insured's** financial records, tax returns, accounting procedures;
- 7.3.2 bills, invoices and other vouchers; and
- 7.3.3 deeds, liens and contracts.

## 7.4 Cancellation

- 7.4.1 The **Policyholder** may cancel the **Policy** at any time by notifying the **Insurer** in writing stating the effective time of the cancellation, provided that date is at least 30 days after the date the notice is given.
- 7.4.2 The **Insurer** may cancel the **Policy** at any time by sending 30 days' notice in writing to the **Policyholder** of the date from which cancellation is to take effect, or 10 days' notice in writing to the **Policyholder** in the event of non-payment of premium. That notice may be delivered personally, posted, emailed or faxed to the **Policyholder** or the representative last notified to the **Insurer**. If the **Policyholder** pays in full the premium due within the notice period, the **Insurer's** notice of cancellation will be ineffective. If the premium is not paid in full within the notice period, the **Policy** may be cancelled as of inception.
- 7.4.3 On cancellation of this **Policy**, the **Insurer** will retain the proportion of the premium calculated pro-rata as at the date of the cancellation. If the **Insured** has notified any **Claim**, actual or suspected **Breach** or **Extortion Threat**, then the premium will be deemed to be fully earned by the **Insurer** and no refund of premium will be payable.

## 7.5 Confidentiality

The **Insured** will not disclose to any third party any of the terms of this **Policy** or the amount of the premium except to the extent that they are required by law to do so or with the prior written consent of the **Insurer**, which consent will not be unreasonably withheld or delayed.

## 7.6 Currency

All premiums, limits, retentions, loss and other under this **Policy** are and will be expressed and payable in the currency of New Zealand unless specifically noted to the contrary. If any covered loss, including judgments or settlements, is expressed in, calculated on or otherwise based upon any other currency, payment of such loss, whether in such other currency or New Zealand dollars, will be made at the buy cash rate of exchange published in The New Zealand Herald on the date the **Insurer's** obligation to pay such loss is established by judgment or settlement (or, if not published on that date, on the date of next publication).

## 7.7 Entire Agreement

This **Policy** constitutes the entire agreement between the parties. The terms, conditions and limitations of this **Policy** can be waived or changed only by written Endorsement to this **Policy**.

## 7.8 Goods and Services Tax

7.8.1 Where, upon receiving any indemnity payment under this **Policy**, the **Insured** is liable to pay tax under section 5 (13) of the Goods and Services Act 1985 (or any statutory amendment or re-enactment of the section or Act) and/or under the equivalent legislation of any other jurisdiction specified in the **Schedule**, the **Insurer** will indemnify the **Insured** for the amount of that tax. The indemnity under this paragraph is payable by the **Insurer** in addition to the **Limits of Indemnity**.

7.8.2 All amounts indicated in this **Policy** and **Schedule** are exclusive of Goods and Services Tax or the equivalent tax in any other jurisdiction specified in the **Schedule**.

## 7.9 Innocent Non-Disclosure and Material Non-Disclosure

7.9.1 The **Insurer** will not exercise its right to avoid this **Policy**, nor will the **Insurer** reject a request for indemnity solely on the grounds of non-disclosure in the **Proposal** or a breach of the notice provisions in Claims Condition 6.5 (Notification) provided that:

- (a) the **Insured** establishes to the **Insurer's** reasonable satisfaction that the non-disclosure or breach was free of any fraudulent conduct or intent to deceive; and
- (b) if the non-disclosure or breach has resulted in prejudice to the **Insurer** in the handling or settlement of any **Claim** or request for indemnity, the indemnity afforded by this **Policy** in respect of that **Claim** or request for indemnity will be limited to the sum as would have been payable, in the **Insurer's** reasonable opinion, by the **Insurer** in the absence of the prejudice.

7.9.2 In consideration of the **Insurer** waiving its right to avoid this **Policy** in accordance with General Condition 7.9.1 (a), and in the event of a material non-disclosure in the **Proposal**, the **Insurer** will be entitled in its sole discretion (i) to determine the amount of any additional premium to be paid by the **Insured**; and (ii) charge the additional premium to the **Insured**.

7.9.3 If the **Insurer** becomes entitled to avoid this **Policy** from inception or from the time of any variation in cover, the **Insurer** may at its discretion maintain this **Policy** in full force but exclude the consequences of any **Claim** relating to any matter which ought to have been disclosed before inception or any variation in cover.

## 7.10 Limits of Indemnity

7.10.1 The maximum liability of the **Insurer** under this **Policy** under each Section of the **Policy** will be the amount specified at item 5 of the **Schedule**. Sub-limits of indemnity and any amounts specified in the Insuring Clauses (including any Extensions contained in any Endorsement attaching to and forming part of this **Policy**) are part of and not payable in addition to the **Limit of Indemnity**. The inclusion of more than one **Insured** under this **Policy** does not increase the total amount payable by the **Insurer** under this **Policy**.

7.10.2 If the **Insured** is entitled to indemnity in respect of the same loss or liability under more than one Section of this **Policy**, then the **Insured** must elect under which Section it will seek indemnity, it being agreed that claims for indemnity for the same loss or liability cannot be made under more than one Section of this **Policy**.

Provided that with regard to Section 3 (General Liability) only:

7.10.3 the **Insurer** will not pay any **Defence Costs** in respect of any **Occurrence** after the **Insurer** has paid compensation up to the **Limit of Indemnity** under Section 3 (General Liability).

7.10.4 Under Extension 3.9 (Visits to Non-Territory Countries), **Defence Costs** incurred in connection with claims made and/or actions instituted within the United States of America or Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, will form part of the **Limit of Indemnity** and will not be payable by the **Insurer** in addition to the **Limit of Indemnity**.

## 7.11 Mergers, Acquisitions and Sales of the Policyholder or any Subsidiary

### 7.11.1 Merger or Acquisition of Policyholder

If during the **Policy Period** any of the following events occur:

- (a) the **Policyholder** sells all or substantially all of its assets to any other person or entity or affiliated group of persons or entities, or merges or consolidates with another entity such that the **Policyholder** is not the surviving entity; or
- (b) any person, entity or affiliated group of persons or entities acquires **Management Control** of the **Policyholder**,

then coverage under this **Policy** will continue until expiration of the **Policy Period**, but only for **Wrongful Acts**, **Cyber Wrongful Acts**, actual or suspected **Breaches** or **Extortion Threats** committed or occurring or allegedly committed or occurring prior to the effective date of such transaction. The entire premium for this **Policy** will be deemed earned as of the date of the transaction.

### 7.11.2 Acquisition of a Subsidiary

- (a) Except as set out in the following paragraph 7.11.2(b), if before or during the **Policy Period** any entity qualifies as a **Subsidiary**, that **Subsidiary** will be an **Insured**, but only with respect to **Wrongful Acts**, **Cyber Wrongful Acts**, actual or suspected **Breaches** or **Extortion Threats** committed or occurring or allegedly committed or occurring after that entity qualified as a **Subsidiary**.

- (b) If an entity first qualifies as a **Subsidiary** during the **Policy Period** and if at that time that **Subsidiary's** total assets exceed 25% of the total consolidated assets of the **Policyholder** as set out in the **Policyholder's** most recent audited consolidated financial statements, then coverage under this **Policy** for that **Subsidiary** as set out in the preceding paragraph will cease 90 days after such entity first qualifies as a **Subsidiary** unless:
- (i) the **Policyholder** within such 90 days provides the **Insurer** with written notice of the creation or acquisition;
  - (ii) the **Policyholder** and the **Insurer** agree on any revisions to the **Policy** either party may require; and
  - (iii) the **Policyholder** pays any additional premium required by the **Insurer** as a result of the addition of the new **Subsidiary**.

#### 7.11.3 Cessation of a Subsidiary

If during or prior to the end of the **Policy Period** any entity ceases to be a **Subsidiary**, then coverage for that former **Subsidiary** under this **Policy** will only be available, subject to all other terms, conditions and limitations of this **Policy**, for **Wrongful Acts, Cyber Wrongful Acts**, actual or suspected **Breaches** or **Extortion Threats** committed, occurring or allegedly committed or occurring prior to the date it ceased to qualify as a **Subsidiary**.

#### 7.12 Other Insurance

Such insurance as is provided under this **Policy** will apply only as excess over any other valid and collectible insurance.

#### 7.13 Plurals, Headings and Titles

The descriptions in the headings and titles of this **Policy** are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular includes the plural and vice versa. In this **Policy** words in bold typeface have special meaning and are defined. Words that are not specifically defined in this **Policy** have the meaning normally attributed to them.

#### 7.14 Policy Jurisdiction

This **Policy** is governed by the laws of New Zealand whose Courts have exclusive jurisdiction in any dispute regarding this **Policy** or the interpretation of it.

#### 7.15 Retention

7.15.1 The **Insurer** will only pay for the amount of any loss in excess of the applicable **Retention** or **Waiting Hours Period**.

7.15.2 The **Retention** is to be borne by the **Insured** and will remain uninsured under this **Policy** or any other policy.

7.15.3 The **Insurer** will only pay for the **Business Interruption Loss** resulting from any one **Breach** in excess of the applicable **Waiting Hours Period**.

#### 7.16 Severability

In granting cover to the **Insured**, the **Insurer** has relied upon the material statements and particulars in the **Proposal**. That written **Proposal** will be construed as a separate **Proposal** individually submitted for each **Insured**. For the purposes of determining entitlement to coverage, no state of mind or knowledge possessed by an **Insured** will be imputed to any other **Insured** other than that of an entity **Insured's Executive Management** which will be imputed to the that entity **Insured**.

#### 7.17 Subrogation

If any payment is to be made under this **Policy**, the **Insurer** will be subrogated to all rights of recovery of the **Insured** whether or not payment has in fact been made and whether or not the **Insured** has been fully compensated for the loss suffered. The **Insurer** will be entitled to pursue and enforce those rights in the name of the **Insured**, who will provide the **Insurer** with all reasonable assistance and cooperation in doing so, including the execution of any necessary instruments and papers. The **Insured** will do nothing to prejudice these rights. Provided that a waiver by an **Insured**, in the ordinary course of business and prior to the **Wrongful Act, Cyber Wrongful Act** or **Occurrence**, of any rights of recovery against a third party is not prejudice to the **Insurer** for the purposes of this General Condition. Any amount recovered in excess of the **Insurer's** total payment will be restored to the **Insured** less the cost to the **Insurer** of the recovery. The **Insurer** agrees not to exercise its rights of recovery against any **Employee** unless the claim is brought about or contributed to by serious or wilful misconduct of the **Employee**. In its sole discretion, the **Insurer** may, in writing, waive any of its rights in this Condition.