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INTRODUCTION

Lloyd's of London Insurance Policy

Effected through GSI Insurance Brokers (Auckland) Limited (the "COVERHOLDER")

This Policy confirms that in return for the INSURED making payment of the premium (as shown in the Schedule) certain Underwriters at Lloyd's of London (the INSURERS) have agreed to provide cover in accordance with the terms and conditions outlined in the Schedule and Policy.

You can obtain further information about the INSURERS and the proportions for which they have subscribed to this Policy from the COVERHOLDER on the information shown below.

In agreeing to indemnify you, the INSURERS have relied on the information and statements you have made in the proposal. We advise you to read the terms and conditions contained within the Schedule and Policy carefully. In the event that the information is incorrect please contact the COVERHOLDER on the details shown below.

This Policy has been issued by the COVERHOLDER for and on behalf of the INSURERS in accordance with the authority granted by the INSURERS under the Agreement Number referred to in the Schedule under which the COVERHOLDER has been appointed as the INSURERS' agent to perform their duties in respect of this Policy.

For Further Information

Should you require any further information about the Schedule, or the Policy, or Claims please contact GSI Insurance Brokers (Auckland) Limited at:

Address: PO Box 15854, New Lynn, Waitakere 0640

Phone: +64 (0) 9 280 4844

Freephone: 0800 463 366

Email: help@gsidirect.co.nz

Website: www.gsidirect.co.nz

SECTION 1: CYBER INSURANCE

- 1.1 The INSURED has made a written proposal to the INSURERS which includes particulars and statements which form the basis of this Policy and are to be considered as incorporated in the Policy, together with any endorsements to the Policy.
- 1.2 Those words which are printed in capitals have been defined in Section 7 of the Policy and have the meaning defined in that Section.
- 1.3 Any general or specific reference to statute(s) or statutory provisions, bylaws, rules, or regulations will be construed as including a reference to any amendment, consolidation or re-enactment for the time being in force.

SECTION 2: INSURING CLAUSES

In consideration of the INSURED having paid or agreed to pay the premium and subject to the terms of this Policy, the INSURERS will pay:

2.1 RESPONSE COSTS

- 2.1.1 RESPONSE COSTS incurred by the INSURED in response to an actual or suspected NETWORK SECURITY FAILURE, PRIVACY EVENT or MULTIMEDIA LIABILITY EVENT which has been reported to INSURERS during the POLICY PERIOD.

2.2 CRISES MANAGEMENT COSTS

- 2.2.1 CRISES MANAGEMENT COSTS incurred by the INSURED in response to an actual or suspected NETWORK SECURITY FAILURE, PRIVACY EVENT or MULTIMEDIA LIABILITY EVENT which has been reported to INSURERS during the POLICY PERIOD.

2.3 Business Interruption

- 2.3.1 BUSINESS INTERRUPTION LOSSES and BUSINESS INTERRUPTION EXPENSES incurred by the INSURED due to the interruption, suspension or deterioration of the INSURED'S business following the TIME RETENTION and up to the end of the RESTORATION PERIOD resulting from a BUSINESS INTERRUPTION EVENT first occurring during the POLICY PERIOD.

2.4 Liability and Defence Costs

- 2.4.1 Any CLAIM and associated DEFENCE COSTS resulting from a NETWORK SECURITY FAILURE, PRIVACY EVENT or MULTIMEDIA LIABILITY EVENT first made against the INSURED and reported to INSURERS during the POLICY PERIOD.

2.5 Social Engineering

- 2.5.1 SOCIAL ENGINEERING LOSS resulting from a SOCIAL ENGINEERING EVENT first occurring and reported to INSURERS during the POLICY PERIOD.
- 2.5.2 Any CLAIM and associated DEFENCE COSTS arising from a SOCIAL ENGINEERING EVENT.
- 2.5.3 The cost of reimbursing the INSURED'S customers, clients, or other third party with which the INSURED has dealings for financial losses arising directly from fraudulent communications impersonating the INSURED.

2.6 Cyber Extortion

- 2.6.1 CYBER EXTORTION LOSS incurred by the INSURED in response to a CYBER EXTORTION EVENT first occurring during the POLICY PERIOD.

2.7 Regulatory Investigations

- 2.7.1 Any fines or penalties, which are insurable at law, issued against the INSURED by a government body or regulator for the INSURED'S breach of a DATA PROTECTION LAW arising from a NETWORK SECURITY FAILURE or PRIVACY EVENT.
- 2.7.2 The cost of complying with any mandatory orders or requirements ordered by a government body or regulator following, or as part of, that body or regulator's investigation into the INSURED'S breach of a DATA PROTECTION LAW arising from a NETWORK SECURITY FAILURE or PRIVACY EVENT.
- 2.7.3 DEFENCE COSTS arising out of an investigation by a government body or regulator into the INSURED'S breach of a DATA PROTECTION LAW arising from a NETWORK SECURITY FAILURE or PRIVACY EVENT.

2.8 Continuous Cover

- 2.8.1 Notwithstanding Exclusion 6.18 (Previous CLAIMS/CIRCUMSTANCE(S)) INSURERS agree to indemnify the INSURED in respect of any loss covered under clauses 2.1–2.8 above or CIRCUMSTANCE(S) first notified to INSURERS during the POLICY PERIOD that the INSURED first knew of or ought to have known of prior to the POLICY PERIOD provided that:
 - a. INSURERS were the cyber insurer of the INSURED when the INSURED first became aware of such loss or CIRCUMSTANCE(S);
 - b. INSURERS have continued, without interruption, to be the INSURED'S cyber insurer up until the POLICY PERIOD when this Policy came into effect;
 - c. there has not been any fraudulent non-disclosure or fraudulent misrepresentation by the INSURED in respect of such loss or CIRCUMSTANCE(S); and

- d. INSURERS have the sole discretion to apply either the terms and conditions of the Policy in existence when the INSURED first knew or ought to have known of the loss or CIRCUMSTANCE(S) or the terms and conditions of this Policy.
- 2.8.2 Subject to the terms of clause 2.8 and the Policy, indemnity will be provided where the lead subscribing insurance company or Lloyd's Syndicate has provided continuous cover to the INSURED notwithstanding any change in the following subscribing INSURERS.

SECTION 3: EXCESS

- 3.1 Subject to the terms of the Policy:
- 3.1.1 INSURERS are liable under clause 2.4 of Section 2 of this Policy only for that part of the loss arising from each and any CLAIM or SERIES OF CLAIMS which exceeds the EXCESS for claims or WAITING PERIOD.
 - 3.1.2 The EXCESS does not apply to DEFENCE COSTS.

SECTION 4: CLAIMS CONDITIONS

4.1 Notification of a Loss, CLAIM or CIRCUMSTANCE(S)

- 4.1.1 If during the POLICY PERIOD the INSURED receives any CLAIM, or any notice of intention to make a CLAIM, or a CYBER EXTORTION EVENT occurs on a COMPUTER SYSTEM, it is a condition precedent of this Policy that the INSURED give written notice to INSURERS as soon as reasonably practicable. All CLAIMS must in any event be notified prior to expiry of the POLICY PERIOD.
- 4.1.2 When a loss covered under clauses 2.1–2.3, 2.5 or 2.7–2.8 is discovered or suspected it is a condition precedent of this Policy that the INSURED give written notice to INSURERS as soon as reasonably practicable.
- 4.1.3 If during the POLICY PERIOD the INSURED becomes aware of any CIRCUMSTANCE(S), the INSURED must give written notice to INSURERS of those CIRCUMSTANCE(S) as soon as reasonably practicable including (where possible) the following detail:
 - a. If there is a CLAIM, the name(s) of the potential claimant(s).
 - b. The date of the incident, occurrence, fact, matter, act or omission which has given rise to the CIRCUMSTANCE(S).
 - c. The name(s) of the individual(s) involved in the CIRCUMSTANCE(S).
 - d. The date of the INSURED'S first awareness or discovery of such CIRCUMSTANCE(S).
 - e. The estimated amount of any potential CLAIM which may arise thereafter.
 - f. Any other information the INSURERS reasonably require.

All CIRCUMSTANCE(S) must in any event be notified prior to the expiry of the POLICY PERIOD.

Any CIRCUMSTANCE(S) notified to INSURERS during the POLICY PERIOD which subsequently gives rise to a claim after expiry of the POLICY PERIOD will be deemed to be a claim first made during the POLICY PERIOD.

- 4.1.4 If during the POLICY PERIOD the INSURED discovers:
 - a. a reasonable cause for suspicion of dishonesty or fraud on the part of a past or present partner, director, member, EMPLOYEE or CONSULTANT of the PRACTICE; or
 - b. an occurrence that may require representation at a properly constituted hearing, tribunal, inquiry or proceeding,

which might give rise to a CLAIM or indemnity under this Policy, the INSURED will give written notice to INSURERS of that discovery as soon as reasonably practicable but in any event prior to the expiry of the POLICY PERIOD.

Any such discovery or occurrence notified to INSURERS during the POLICY PERIOD which subsequently gives rise to a CLAIM or indemnity under this Policy after expiry of the POLICY PERIOD will be deemed to be a CLAIM first made during the POLICY PERIOD.

- 4.1.5 Notification is deemed to have been made to INSURERS when made to the person identified in the Schedule.

4.2 No Admission of Liability

In the event of a CLAIM, loss which may be covered under clause 2.1–2.8, or the discovery of CIRCUMSTANCE(S), the INSURED must not admit liability, incur any costs, make any offers of settlement or otherwise prejudice the investigation, conduct, defence or settlement of any such CLAIM or CIRCUMSTANCE(S) without INSURERS' prior written consent (such consent not to be unreasonably withheld or unreasonably delayed), regardless of:

- 4.2.1 the provisions of any complaints handling procedure; or

4.2.2 whether the amount in dispute is less than the EXCESS.

Clause 4.2 shall not prevent the INSURED from taking steps necessary to comply with the requirements of any DATA PROTECTION LAW, including notification to any relevant regulator or government authority, impacted individual or other person or entity of a NETWORK SECURITY FAILURE or PRIVACY EVENT.

4.3 Conduct of CLAIMS

Following notification of a CLAIM, loss which may be covered under clause 2.1–2.8, or notification of any CIRCUMSTANCE(S) or occurrence that may require representation at a properly constituted hearing, tribunal, inquiry or proceeding, INSURERS will be entitled if they so desire to take over and conduct in the name of the INSURED the investigation, response to, defence and/or settlement of any such matter. The INSURED will cooperate with INSURERS and will give all information and assistance (as set out at clause 4.4 of this Section below) as INSURERS may reasonably require.

4.4 CLAIMS Control and Cooperation

4.4.1 The INSURED will give to INSURERS all information and assistance as INSURERS may reasonably require and is in the INSURED'S power to provide.

4.4.2 The INSURED will cooperate with INSURERS and their appointed representatives:

- a. By providing all information, assistance, signed statements, affidavits or depositions as may be required to facilitate compliance with Court Directions, Civil Procedure Rules, or Practice Directions that may apply.
- b. By assisting them to present the best possible defence of any CLAIM or remediate any loss which may be covered under clause 2.1–2.8.
- c. By ensuring access to all and any information that INSURERS or their representatives may require in the defence of a CLAIM, investigation and remediation of a loss which may be covered under clause 2.1–2.8, or in the investigation of any CIRCUMSTANCE(S), whether or not privileged.
- d. Where there has been a NETWORK SECURITY FAILURE, PRIVACY EVENT, CYBER EXTORTION EVENT, or MULTIMEDIA LIABILITY EVENT, by providing: information and evidence known to the INSURED of the facts relating to the loss event, threat, or failure, and the amount of the loss; a description of the incident and any COMPUTER SYSTEM or DATA involved; and copies of available system and security logs, and any reports of outside experts and CONSULTANTS.
- e. By making payment on demand of the EXCESS in order to comply with the terms of any settlement agreed by INSURERS.
- f. By providing all information, assistance, signed statements or depositions as may reasonably be required to permit INSURERS to exercise rights of subrogation.
- g. By ensuring that all documents of any description (whether kept in paper, magnetic or electronic form) relevant to any CLAIM and CIRCUMSTANCE(S) are preserved in their entirety.

4.5 Other Insurance

If at any time any claim arises under this Policy and the INSURED is, but for the existence of this Policy, entitled to indemnity under any other policy of insurance, INSURERS will still be liable under this Policy subject to all terms and conditions of this Policy.

4.6 Loss Mitigation

The INSURED shall take all reasonable steps to avoid or mitigate and prevent any loss, damages, or any other amounts covered under this Policy. Once a loss or potential loss has been discovered or a CLAIM has been made, the INSURED must take all reasonable steps to prevent further loss, damages, or any other amounts that might be covered under this Policy.

4.7 Fraudulent claims

If the INSURED makes any claim knowing it to be false or fraudulent as regards the amount or any other matter, this Policy will become void ab initio and the INSURED will forfeit all benefit under the Policy and if INSURERS so require, all previous payments by INSURERS will be refunded by the INSURED.

4.8 Calculation of Business Interruption Loss under Clause 2.3

4.8.1 BUSINESS INTERRUPTION LOSS under clause 2.3 shall be calculated as the net profit the INSURED would have earned but for the BUSINESS INTERRUPTION EVENT:

- a. following the TIME RETENTION;
- b. up to the end of the RESTORATION PERIOD;
- c. appropriately adjusted to provide for the INSURED'S business trends and including variations in other circumstances affecting the INSURED'S business either prior to or following the BUSINESS INTERRUPTION EVENT; and

- d. taking into account any alternative trading or operational practices that the INSURED adopted, or reasonably could have been expected to adopt, following the BUSINESS INTERRUPTION EVENT.

SECTION 5: GENERAL CONDITIONS

The following General Conditions apply to this Policy:

5.1 Discharge of Liability

- 5.1.1 INSURERS may at any time pay to the INSURED in connection with any loss, CLAIM, SERIES OF CLAIMS, or sum which may be subject to indemnity under clauses 2.1-2.8 under this Policy:
 - a. the INDEMNITY LIMIT (less any sums already paid); or
 - b. any lesser sum being the loss suffered by the INSURED which falls for cover under this Policy or for which such CLAIMS can be settled.
- 5.1.2 Upon such payment INSURERS will not be liable under any further liability in respect of such loss or CLAIMS except for DEFENCE COSTS incurred prior to such payment and with INSURERS' prior written consent.

5.2 INDEMNITY LIMIT and EXCESS

The INDEMNITY LIMIT and EXCESS apply to all the INSUREDS jointly.

5.3 Related CLAIMS

- 5.3.1 Where the same originating cause gives rise to an entitlement on the part of the INSURED to indemnity under clauses 2.1-2.8 of this Policy, the maximum amount payable by INSURERS as may entitle the INSURED to indemnity will not exceed the INDEMNITY LIMIT.
- 5.3.2 Where a CLAIM is brought against more than one INSURED it will be deemed to be one CLAIM and INSURERS' liability will be the same as if the CLAIM had been brought against one INSURED only.

5.4 RETROACTIVE DATE

Where a RETROACTIVE DATE is specified in the Schedule, this Policy will not indemnify the INSURED for any loss, CIRCUMSTANCE and/or CLAIM notified under the terms of this Policy prior to the RETROACTIVE DATE.

5.5 Several Liability Notice

The subscribing INSURERS' obligations under this Policy are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing INSURERS are not responsible for the subscription of any co-subscribing INSURER who for any reason does not satisfy all or part of its obligations under this Policy.

5.6 Rights of Recovery

Immediately on the notification of a loss for which the INSURED is indemnified under clauses 2.1-2.8 of this Policy, CLAIM or CIRCUMSTANCE(S), the INSURED grants the INSURERS all rights of recovery against any parties from whom a recovery may be made, and the INSURED will take all reasonable steps to preserve such rights and will cooperate with INSURERS in accordance with clause 4.4.

However, INSURERS agree to waive any rights of recovery against the INSURED unless liability has resulted in whole or part from:

- 5.6.1 any act or omission on the part of any person which is dishonest, fraudulent, criminal or malicious; or
- 5.6.2 any act or omission of any CONSULTANT, sub-contractor or agent of the PRACTICE. This clause 5.6.2 does not apply to any CONSULTANT, sub-contractor or agent expressly stated in the Schedule or any endorsement to this Policy.

5.7 Contract and Commercial Law Act 2017

A person who is not a party to this Policy has no right under the Contract and Commercial Law Act 2017 to enforce any term of this Policy but this does not affect any right or remedy of a third party which exists or is available other than by virtue of the Act.

5.8 Cancellation

- 5.8.1 The INSURED may cancel this Policy at any time by notifying the INSURER in writing.
- 5.8.2 INSURERS may cancel this Policy at any time by giving notice in writing to the INSURED or their broker. Any cancellation notice may be delivered personally, by post, fax or electronic means to the Insured or their broker's last known address. The Policy will be cancelled at 4pm on the later of:
 - a. the 30th day after the date of the notice;
 - b. the date specific in the notice.
- 5.8.3 On cancellation of the Policy, INSURERS will refund the INSURED the proportion of the premium reflecting the unused portion of the POLICY PERIOD, calculated pro-rate as at the date of the cancellation.

5.9 Choice of Law, Disputes and Jurisdiction

- 5.9.1 This Policy is governed by and construed in accordance with the laws of New Zealand.
- 5.9.2 Any dispute between the INSURERS and the INSURED:
- a. as to the correct interpretation of the definition of PROFESSIONAL BUSINESS under this Policy; or
 - b. regarding the Application of the Special Institution Condition (clause 5.10),
- will be referred by either party to arbitration in accordance with the Arbitration Act 1996.
- 5.9.3 If the INSURED and INSURERS cannot agree a common course of action with regard to the contesting of any legal proceedings (whether a defence or prosecution), the dispute will be resolved by reference to King's Counsel (or Senior Counsel) of the New Zealand Bar to be mutually agreed between INSURERS and the INSURED and whose decision will be binding. In resolving the dispute, the King's Counsel will have due regard to the interests of both the INSURED and INSURERS. In the event of disagreement regarding the appointment of King's Counsel, the King's Counsel will be appointed by the President for the time being of the New Zealand Law Society. The costs of such an exercise will be allocated by the agreed or appointed party on a fair and equitable basis.
- 5.9.4 Subject to the preceding clauses, the Courts of New Zealand will have exclusive jurisdiction to hear and determine any dispute arising out of or in connection with this Policy.

5.10 Goods and Services Tax

Where the INSURED is liable to pay Goods and Services Tax under New Zealand law in relation to any CLAIM payments or costs, on receiving any indemnity payment under this contract, INSURERS will indemnify the INSURED for the cost of that tax.

5.11 Special Institution Condition

Where there has been non-disclosure or misrepresentation of fact or untrue statements in the proposal form or in any other information or statements provided to or made to or warranted to INSURERS and there has been no intention to deceive or mislead INSURERS, INSURERS will not exercise their right to avoid this Policy nor will INSURERS be discharged from any liability under this Policy.

SECTION 6: EXCLUSIONS

INSURERS will not be liable under this Policy for:

6.1 Arbitration

Any arbitration award made in respect of any CLAIM or counterclaim where the seat of the arbitration was located outside New Zealand unless that seat was agreed to by INSURERS.

6.2 Asbestos

Any CLAIM directly or indirectly caused by or contributed to by, or arising from asbestos or any material containing asbestos in whatever form or quantity.

6.3 Assumed/Contractual Liability

6.3.1 Any contractual liability incurred by the INSURED in the conduct of PROFESSIONAL BUSINESS carried on by the INSURED as a result of:

- a. any duty, obligation or penalty assumed by the INSURED by way of warranty or guarantee including any relating to the period of a project, indemnity contract, or agreement, unless the INSURED would have incurred the liability in the absence of such warranty or guarantee.
- b. the INSURED, without INSURERS' written consent, surrendering or waiving any right of contribution or indemnity to which the INSURED might otherwise have been entitled.

6.3.2 This exclusion does not apply if liability would have attached to the INSURED in the absence of any such express agreement, or if INSURERS have expressly approved the contractual terms giving rise to the said liability.

6.4 Betterment

Any costs or expenses arising out of, based upon, or attributable to:

- 6.4.1 updating, upgrading, enhancing, improving, restoring or replacing any COMPUTER SYSTEM to a level beyond that which existed prior to the NETWORK SECURITY FAILURE, PRIVACY EVENT, CYBER EXTORTION EVENT or MULTIMEDIA LIABILITY EVENT; and/or
- 6.4.2 the removal or addressing of software program errors or vulnerabilities.

6.5 COMMUNICABLE DISEASE exclusion

6.5.1 Notwithstanding any provision to the contrary within this POLICY, all actual or alleged CLAIMS, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, DEFENCE COSTS, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from,

caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a COMMUNICABLE DISEASE or the fear or threat (whether actual or perceived) of a COMMUNICABLE DISEASE.

- 6.5.2 For the purposes of this exclusion 6.5, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a COMMUNICABLE DISEASE.

Definitions

- 6.5.3 For the purposes of this exclusion 6.5:

- a. **COMMUNICABLE DISEASE** means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
- the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
 - the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
 - the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

6.6 CONTROLLING INTEREST

Any CLAIM brought by:

- 6.6.1 the INSURED, or brought on behalf of or for the benefit of the INSURED;
- 6.6.2 any entity in which the INSURED exercises a CONTROLLING INTEREST; or
- 6.6.3 any entity exercising a CONTROLLING INTEREST over the INSURED,

unless such CLAIM is made against the INSURED for indemnity or contribution in respect of a CLAIM made by an independent third party.

6.7 Directors' and Officers' Liability

Any CLAIM against any INSURED in their capacity as a director, officer or trustee in respect of the performance or non-performance of their duties as a director, officer or trustee.

6.8 Dishonesty or Fraud

Any loss for which the INSURED is indemnified under clauses 2.1–2.8 of this Policy or CLAIM arising out of any dishonesty or fraud of any INSURED except to the extent that the CLAIM arises by reason of and was solely and directly caused by the (actual or allegedly) dishonest and/or fraudulent act(s) of any past or present partner, director, member, CONSULTANT or EMPLOYEE of the PRACTICE (whether committed alone or in collusion with others) which caused any client of the INSURED to suffer loss and provided always that:

- 6.8.1 no indemnity is provided in respect of any loss for which the INSURED is indemnified under clauses 2.1–2.8 of this Policy or CLAIM arising out of dishonesty or fraud by any person after discovery by the INSURED, in relation to that person, of reasonable cause for suspicion of fraud or dishonesty;
- 6.8.2 any dishonesty and/or fraud committed by a person or persons acting in concert will for the purposes of this Policy be treated as one CLAIM; and
- 6.8.3 the annual accounts of the INSURED have been (and where applicable are being) prepared and/or certified by an independent and properly qualified accountant or auditor.

6.9 Insolvency of the INSURED

Any CLAIM or loss from, or directly or indirectly caused by, or in any way connected with the insolvency, bankruptcy, receivership, statutory management or liquidation of the INSURED. This exclusion, however, will not apply to:

- 6.9.1 any CLAIMS in respect of monies held on behalf of third parties; and/or
- 6.9.2 any CLAIM that otherwise would be indemnified by this Policy but for the insolvency or bankruptcy of the INSURED.

6.10 Jurisdiction

Any CLAIM arising from or directly or indirectly attributable to or in consequence of any legal action or regulatory proceedings:

- 6.10.1 first brought in a Court of Law in the United States of America or Canada; or
- 6.10.2 brought in a Court of Law to enforce a judgment obtained in a Court of Law in the United States of America or Canada, whether by way of reciprocal agreement or otherwise.

6.11 Liability Arising out of Bodily INJURY of property damage

Any CLAIM:

- 6.11.1 arising from or directly or indirectly attributable to or in consequence of the death of, or bodily INJURY or illness to, any person;
- 6.11.2 arising from or directly or indirectly attributable to damage, destruction or loss of tangible property, unless the CLAIM or loss would otherwise fall for cover under clause 2.3 and constitute a BUSINESS INTERRUPTION EVENT.

6.12 Liability Arising out of Employment

Any CLAIM arising from any liability to any EMPLOYEE, former EMPLOYEE, or prospective EMPLOYEE in respect of employment-related humiliation or defamation, unfair or wrongful dismissal, repudiation or breach of any employment contract or agreement termination of a training contract or contract of apprenticeship, harassment, discrimination or like conduct.

6.13 Non-Compensatory Awards, Fines and Penalties

Any loss for which the INSURED is indemnified under clauses 2.1–2.8 of this Policy or CLAIM for:

- 6.13.1 criminal fines or penalties;
- 6.13.2 civil fines and penalties (except in so far as covered under clause 2.8);
- 6.13.3 any amount INSURERS are prohibited from paying as a result of an applicable law or regulation;
- 6.13.4 punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages or the consequences of non-payment; and
- 6.13.5 any demand for the repayment or refund by the INSURED to a third party of professional fees paid to the INSURED for the provision of professional or other services by way of damages or otherwise.

6.14 Natural Disaster

- 6.14.1 Fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, or any other natural weather or seismic event.

6.15 Nuclear Risks

- 6.15.1 Any CLAIM whether directly or indirectly caused by or contributed to by, or arising from:
 - a. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
 - b. the radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

6.16 Other Policies

Any CLAIM where the INSURED is entitled to indemnity under any other policy except in respect of any EXCESS beyond the amount which would have been payable under any other policy had this Policy not been effected.

6.17 Payment Card Industry Data Security Standard

Based upon, directly or indirectly arising from, attributable to fines or penalties attributable to the INSURED'S failure to comply with the Payment Card Industry Data Security Standard.

6.18 POLLUTION

- 6.18.1 Any CLAIM arising directly or indirectly from POLLUTION. Subject to the provisos below, this exclusion will not apply to any CLAIM caused by a negligent act, negligent error or negligent omission in the conduct of PROFESSIONAL BUSINESS. Provided always that such CLAIM is:
 - a. first made against the INSURED; and/or
 - b. arises out of any CIRCUMSTANCE(S),which the INSURED will first notify during the POLICY PERIOD.
- 6.18.2 The maximum amount payable in the aggregate in the POLICY PERIOD by INSURERS in respect of any such CLAIMS, any claimant's costs and any DEFENCE COSTS will not exceed the INDEMNITY LIMIT for POLLUTION. The INDEMNITY LIMIT for POLLUTION is not additional to and does not increase the INDEMNITY LIMIT for CLAIMS.

For the purposes of this exclusion only asbestos is deemed not to be a contaminant or a pollutant.

6.19 **Previous CLAIMS/CIRCUMSTANCE(S)**

Any loss, CLAIM or CIRCUMSTANCE(S) the INSURED was or should have been aware of prior to the inception of this Policy, provided that this clause will not reduce the rights of the INSURED under (or otherwise affect the application of) the Special Institution Condition in Section 5 and/or the Continuous Cover Clause in Section 2.

6.20 **Product Liability and Product Recall**

Any loss covered under clauses 2.1–2.8, CLAIM or liability arising from or in connection with:

6.20.1 the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by the INSURED, or the failure of such goods or products to perform in any way; or

6.20.2 the recall, redesign or rectification of any goods or products sold, supplied or distributed by the INSURED.

6.21 **Sanctions**

INSURERS shall not be deemed to provide cover and INSURERS shall not be liable to pay any loss covered under clauses 2.1–2.8, CLAIM or provide any benefit under the Policy to the extent that the provision of such cover, payment of such CLAIM or provision of such benefit would expose INSURERS to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of New Zealand, Australia, the European Union, United Kingdom or United States of America.

6.22 **Supply of Goods**

Any CLAIM arising out of the supply of any goods by the INSURED or products manufactured, constructed, altered, repaired, treated, sold, supplied or distributed by the INSURED.

6.23 **Trading Losses/Debts**

Any CLAIM or loss:

6.23.1 arising out of any trading losses or trading liabilities incurred by the INSURED including loss of any business or custom or liability as a result of any guarantee given by the INSURED for a debt; or

6.23.2 relating to a refund of fees or disbursements charged or incurred by the INSURED whether by way of damages or otherwise;

unless the claim or loss would otherwise fall for cover under clause 2.3.

6.24 **Infrastructure**

Any loss covered under clauses 2.1–2.8 or CLAIM arising from any failure or outage in, or disruption of power, utility services, satellites, or telecommunications external services not under the direct operational control of the INSURED.

6.25 **WAR, Cyber WAR and CYBER OPERATION**

6.25.1 Notwithstanding any provision to the contrary in this policy, any CLAIM, loss, damage, liability, cost or expense of any kind (together "loss") directly or indirectly occasioned by, happening through or in consequence of WAR, CYBER OPERATION or ACT OF TERRORISM.

6.25.2 The INSURER shall have the burden of proving that this exclusion applies.

Attribution of a CYBER OPERATION to a STATE

6.25.3 The primary but not exclusive factor in determining attribution of a CYBER OPERATION shall be whether the government of the STATE (including its intelligence and security services) in which the COMPUTER SYSTEM affected by the CYBER OPERATION is physically located attributes the CYBER OPERATION to another STATE or those acting on its behalf.

6.25.4 Pending attribution by the government of the STATE (including its intelligence and security services) in which the COMPUTER SYSTEM affected by the CYBER OPERATION is physically located, the INSURER may rely upon an inference which is objectively reasonable as to attribution of the CYBER OPERATION to another STATE or those acting on its behalf. It is agreed that during this period no loss shall be paid.

6.25.5 In the event that the government of the STATE (including its intelligence and security services) in which the COMPUTER SYSTEM affected by the CYBER OPERATION is physically located either:

a. takes an unreasonable length of time to, or

b. does not, or

c. declares it is unable to

attribute the CYBER OPERATION to another STATE or those acting on its behalf, it shall be for the INSURER to prove attribution by reference to such other evidence as is available.

Definitions

6.25.6 For the purposes of this exclusion 6.25:

- a. **ACT OF TERRORISM** means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political or religious or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.
- b. **CYBER OPERATION** means the use of a COMPUTER SYSTEM by or on behalf of a STATE to disrupt, deny, degrade, manipulate or destroy information in a COMPUTER SYSTEM of or in another STATE.
- c. **STATE** means sovereign state.
- d. **WAR** means:
 - the use of physical force by a STATE against another STATE or as part of a civil war, rebellion, revolution, insurrection, and/or
 - military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority,
 whether WAR be declared or not.

SECTION 7: DEFINITIONS AND INTERPRETATIONS

- 7.1 **BUSINESS INTERRUPTION EVENT** means:
 - 7.1.1a COMPUTER SYSTEM OUTAGE; or
 - 7.1.2an OPERATIONAL ERROR.
- 7.2 **BUSINESS INTERRUPTION EXPENSES** means the costs and expenses which the INSURED has necessarily and reasonably incurred for the sole purpose of minimising the reduction in income during the RESTORATION PERIOD. Such costs and expenses are not to exceed the associated loss of income that would have been covered under this Policy.
- 7.3 **BUSINESS INTERRUPTION LOSSES** means the INSURED'S loss of net income (net profit or loss before income taxes) as a result of the BUSINESS INTERRUPTION EVENT after the TIME RETENTION and up to end of the RESTORATION PERIOD.
- 7.4 **CIRCUMSTANCE(S)** means an incident, occurrence, fact, matter, act or omission that is likely to give rise to a CLAIM or cover under clause 2.1–2.8.
- 7.5 **CLAIM** means:
 - 7.5.1 any demand for damages or compensation from, or the assertion of a right against, the INSURED; or
 - 7.5.2 any notice of intention, whether orally or in writing, to commence legal proceedings against the INSURED.
- 7.6 **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:
 - 7.6.1 owned or operated by the INSURED; or
 - 7.6.2 operated on the INSURED'S behalf by a third party service provider for use by the INSURED and in accordance with a written agreement.
- 7.7 **COMPUTER SYSTEM OUTAGE** means the suspension, interruption or deterioration of:
 - 7.7.1 the service of a COMPUTER SYSTEM caused by a NETWORK SECURITY FAILURE;
 - 7.7.2 the INSURED'S ability to access DATA due to that DATA being deleted, damaged, corrupted, altered or lost when caused by a NETWORK SECURITY FAILURE.
- 7.8 **CONSULTANT** means any person carrying out business for the INSURED and includes any person, whether or not expressly described as CONSULTANT, whose name and designation appear on any business stationery of the INSURED, or in business communications or material of any nature issued on behalf of the INSURED, or who is employed by the INSURED in offering surveying services to the public.
- 7.9 **CONTROLLING INTEREST** means:
 - 7.9.1 control of the composition of the board of the claiming entity;
 - 7.9.2 being in a position to exercise, or control the exercise of, more than one-half the maximum number of votes that can be exercised at a meeting of the claiming entity; or
 - 7.9.3 holding more than one-half of the issued shares of the claiming entity, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital.
- 7.10 **CRISES MANAGEMENT COSTS** means reasonable fees, costs and expenses incurred to:

- 7.10.1 engage legal counsel to advise on notification and other legal duties, engage with any investigation or action by regulators, and respond to impacted individuals and entities following a NETWORK SECURITY FAILURE or PRIVACY EVENT;
- 7.10.2 engage a crises communications or public relations firm to advise on external notifications and reputation management following a NETWORK SECURITY FAILURE or PRIVACY EVENT;
- 7.10.3 notify any relevant regulator or government authority, impacted individual or other person or entity of a NETWORK SECURITY FAILURE or PRIVACY EVENT, regardless of whether or not notification is required under a DATA PROTECTION LAW;
- 7.10.4 manage inbound communications or responses received from individuals or entities notified of a NETWORK SECURITY FAILURE or PRIVACY EVENT, including the costs of engaging call centre services, regardless of whether or not notification is required under a DATA PROTECTION LAW; and
- 7.10.5 provide credit monitoring and identified theft and restoration services to individuals notified of a NETWORK SECURITY FAILURE or PRIVACY EVENT with the prior written and continuing consent of the INSURERS (such consent not to be unreasonably withheld or unreasonably delayed or unreasonably withdrawn).
- 7.11 **CYBER EXTORTION EVENT** means a demand for payment of money, cryptocurrency, securities or other property or consideration by the perpetrator of a NETWORK SECURITY FAILURE or PRIVACY EVENT or threatened NETWORK SECURITY FAILURE or PRIVACY EVENT.
- 7.12 **CYBER EXTORTION LOSS** means all reasonable and necessary:
- 7.12.1 payments made in accordance with local legal requirements to terminate or end a CYBER EXTORTION EVENT;
- 7.12.2 costs of engaging legal counsel and other specialist cyber extortion advisory services to advise on the legality of a payment, conduct necessary investigations into the CYBER EXTORTION EVENT and associated perpetrator to inform engagement with the perpetrator, engage and negotiate with the perpetrator of CYBER EXTORTION EVENT and facilitate any payment; and
- 7.12.3 any other costs an INSURED pays to avoid, defend, preclude or resolve a CYBER EXTORTION EVENT with the prior written and continuing consent of the INSURERS (such consent not to be unreasonably withheld or unreasonably delayed or unreasonably withdrawn).
- 7.13 **DATA** means any information, facts or programs stored, created, used, or transmitted on any hardware or software held by the INSURED or on the INSURED'S behalf.
- 7.14 **DATA PROTECTION LAW** means any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).
- 7.15 **DEFENCE COSTS** means all legal costs and legal expenses incurred with the prior written and continuing consent of the INSURERS (such consent not to be unreasonably withheld or unreasonably delayed or unreasonably withdrawn) in the investigation, defence or settlement of any CLAIM and/or CIRCUMSTANCE(S), including legal costs and legal expenses incurred engaging in a regulator investigation or in defence of any regulatory proceedings. It does not include the INSURED'S own costs and expenses.
- 7.16 **EMPLOYEE** means any person employed by the INSURED under a contract of service or apprenticeship (whether directly or through an agency) during or prior to the commencement of the INSURED PERIOD.
- 7.17 **EXCESS** means the sum stated in the Schedule.
- 7.18 **INDEMNITY LIMIT** means the amount specified in the Schedule.
- 7.19 **INJURY** means bodily injury, death, disease and illness which shall include mental distress.
- 7.20 **INSURED** means:
- 7.20.1 the person, partnership, company, SUBSIDIARY or other entity specified as the INSURED in the Schedule;
- 7.20.2 any person who during the INSURANCE PERIOD is or becomes a principal, partner, director or EMPLOYEE of the person, partnership, company, SUBSIDIARY or other entity specified as the INSURED in the Schedule, but only while acting in the course of the PROFESSIONAL BUSINESS;
- 7.20.3 the estate, heirs and executors and/or legal/personal representatives of those parties mentioned in clauses 7.20.1 and 7.20.2 above in the event of their death, incapacity, insolvency or bankruptcy;
- 7.20.4 former partners, directors, principals and/or EMPLOYEES of the PRACTICE;
- 7.20.5 CONSULTANTS, agents, contractors or sub-contractors of the PRACTICE; and
- 7.20.6 any retired partner, director or member of the PRACTICE remaining as CONSULTANT to the PRACTICE.
- 7.21 **INSURERS** means the insurance company or insurance companies and/or Lloyd's syndicate(s) subscribing to this Policy and named in the Schedule.
- 7.22 **MALWARE** means software designed to erase, corrupt or restrict access to data, damage or disrupt computer networks or COMPUTER SYSTEMS, or otherwise interfere with or circumvent network security. MALWARE includes ransomware and wiperware.
- 7.23 **MULTIMEDIA LIABILITY EVENT** means any of below in the course of publishing content, including print, written, electronic, digital or video:

- 7.23.1 unintentional infringement of intellectual property rights (including copyright, trademark, service mark, moral rights, patent rights, registered design);
- 7.23.2 breach of confidence or infringement of any rights of privacy;
- 7.23.3 unintentional false attribution of authorship, passing off or misappropriation of ideas under implied contract or other misappropriation of property rights, ideas or information;
- 7.23.4 defamation including but not limited to disparagement or harm to the character or reputation of any person or organization, malicious falsehood (including slander of title and slander of goods); and
- 7.23.5 wrongful entry or eviction, trespass, eavesdropping or other invasion of the right to private occupancy.

MULTIMEDIA LIABILITY EVENT shall not include:

- 7.23.6 contests;
- 7.23.7 inaccurate or incomplete description of price of goods, products or services; or
- 7.23.8 inaccurate or incomplete labelling or advertising.

7.24 **NETWORK SECURITY FAILURE** means:

- 7.24.1 unauthorised, malicious or criminal access to, processing of, use of or operation of any COMPUTER SYSTEM, including a person or persons who is authorised to access a COMPUTER SYSTEM doing so in an unauthorised manner;
- 7.24.2 a electronic attack on, or other malicious or criminal act which interferes with the operation of, any COMPUTER SYSTEM including a denial of service attack;
- 7.24.3 a MALWARE infection of any COMPUTER SYSTEM;
- 7.24.4 PHREAKING; and
- 7.24.5 the loss of DATA arising from the physical theft or loss of hardware or physical documentation owned or controlled by the INSURED.

NETWORK SECURITY FAILURE shall include any suspected or alleged NETWORK SECURITY FAILURE, provided that there are reasonable grounds to suspect a NETWORK SECURITY FAILURE has occurred.

7.25 **OPERATIONAL ERROR** means a negligent act or omission by an EMPLOYEE, contractor or authorised third party whilst operating a COMPUTER SYSTEM.

7.26 **PHREAKING** means the compromise and use of a telephone system by a third party resulting in the incurring of unauthorised telephony, internet or other connectivity services.

7.27 **POLICY PERIOD** means the period specified in the Schedule.

7.28 **POLLUTION** means discharge, dispersal, seepage, migration, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste.

7.29 **PRACTICE** means the practice or practices named in the Schedule and their predecessors and any other practices which are disclosed to INSURERS in the proposal form.

7.30 **PRIVACY EVENT** means the actual or alleged:

- 7.30.1 loss, destruction, unauthorised access, dissemination of, or interference with, any DATA or information for which the INSURED is responsible; and
- 7.30.2 the breach of any DATA PROTECTION LEGISLATION by any INSURED.

PRIVACY EVENT shall include any suspected or alleged PRIVACY EVENT, provided that there are reasonable grounds to suspect a PRIVACY EVENT has occurred.

7.31 **PROFESSIONAL BUSINESS** means the professional activity set out in the Schedule which is performed by or on behalf of the PRACTICE within the TERRITORIAL LIMITS and includes services of design, advice, specification, calculation and formula undertaken by or under the direct supervision of a properly qualified and appropriate professional in that professional activity.

7.32 **RESPONSE COSTS** means reasonable fees, costs and expenses incurred to:

- 7.32.1 engage an external computer forensic expert to investigate the cause, scope and nature of a NETWORK SECURITY FAILURE or PRIVACY EVENT and assess whether it is reasonably feasible to restore, recollect or recreate impacted data, information or COMPUTER SYSTEMS;
- 7.32.2 contain and minimise any NETWORK SECURITY FAILURE or PRIVACY EVENT;
- 7.32.3 cease any unauthorised access or other interference with a COMPUTER SYSTEM relating to a NETWORK SECURITY FAILURE or PRIVACY EVENT;
- 7.32.4 remove any MALWARE from a COMPUTER SYSTEM;
- 7.32.5 restore, repair, recreate or replace COMPUTER SYSTEMS or DATA damaged or impacted by a NETWORK SECURITY FAILURE or PRIVACY EVENT to their condition prior to the NETWORK SECURITY FAILURE or PRIVACY EVENT; and

- 7.32.6 preserve evidence of any malicious or other conduct or activity relevant to a NETWORK SECURITY FAILURE or PRIVACY EVENT.
- 7.33 **RETROACTIVE DATE** means the date specified in the Schedule.
- 7.34 **RESTORATION PERIOD** means the period specified in the Schedule.
- 7.35 **SERIES OF CLAIMS** means a number of CLAIMS (whether made against or involving one or more persons or entities comprising the INSURED and whether made by the same or different Claimants and whether falling under one or more insuring clauses of the Policy) that arise directly or indirectly from the same originating cause.
- 7.36 **SOCIAL ENGINEERING EVENT** means:
- 7.36.1 a NETWORK SECURITY FAILURE;
 - 7.36.2 the fraudulent amendment of electronic document or communications by a third party; and
 - 7.36.3 the impersonation of the INSURED, a client, customer, or other third party with which the INSURED has dealings by a third party for the intended purpose of manipulating a client, customer, or other third party with which the INSURED has dealings.
- 7.37 **SOCIAL ENGINEERING LOSS** means direct financial loss incurred by the INSURED, including:
- 7.37.1 the cost of reimbursing the INSURED for funds or financial assets paid or transferred to a third party in response to a SOCIAL ENGINEERING EVENT;
 - 7.37.2 direct financial loss incurred by the INSURED arising from PHREAKING; and
 - 7.37.3 costs incurred obtaining necessary and reasonable legal and crisis communications advice arising from a SOCIAL ENGINEERING EVENT.
- 7.38 **SUBSIDIARY** means any entity in which the INSURED:
- 7.38.1 holds 50% or more of the share capital;
 - 7.38.2 controls more than 50% of the voting power; or
 - 7.38.3 controls the composition of the board of directors.
- 7.39 **TERRITORIAL LIMITS** means New Zealand or such territorial limits as stated in the Schedule.
- 7.40 **TIME RETENTION** the period specified in the Schedule.

COMPLAINTS PROCEDURE

Any enquiry, concern or complaint should be referred to the INSURERS' appointed representative named in the Schedule in the first instance. If this does not resolve your complaint or you are not satisfied with the way it has been dealt with, you should contact the Lloyd's Underwriters' General Representative in New Zealand for consideration under the Lloyd's dispute resolution process.

His contact details are:

Scott Galloway
Lloyd's Underwriters' General Representative in New Zealand
c/- Hazelton Law
Level 29
Plimmer Towers
2-6 Gilmer Terrace
Wellington
New Zealand

Phone: 04 472 7582
Email: scott.galloway@hazelton.co.nz

Any legal proceedings or notice to be served upon the underwriters may be served upon:

Scott Galloway
Lloyd's Underwriters' General Representative in New Zealand
c/- Hazelton Law
Level 3, 101 Molesworth Street
PO Box 5639
Wellington
New Zealand

who has authority to accept service and enter an appearance on behalf of the underwriters.