



eRisks Business Protection Policy

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Important notice

This policy is a claims made and notified policy. Except as otherwise provided herein, this policy covers only claims first made and notified to underwriters during the policy period and on or after the retroactive date but before the end of the policy period or any extended reporting period, if applicable. All claims are subject to the applicable limits of indemnity and the applicable excess(es). Please note that the limits of indemnity for Insuring Agreements 1, 2, 3, and 5 include defence costs.

Terms that appear in bold face type are defined terms in this policy. Please read this policy carefully. When used below, the words 'you', 'your', or 'yours' shall mean the insured as provided in Section 6 below and 'we', 'us', and 'our' shall mean the underwriters or insurers providing this insurance.

1 Insuring Agreements

You have purchased some or all of the following Insuring Agreements. Please refer to the Schedule, which shows the Insuring Agreement(s) **you** have purchased. If an Insuring Agreement has not been purchased, that portion of this policy is not applicable.

Insuring Agreement 1: Professional services

We shall pay on **your** behalf all **damages** and **defence costs** which exceed **your** excess, as stated within item 4 of the Schedule which **you** become legally obliged to pay as a result of any **claim** first made against **you** and notified by **you** to **us** in writing, in accordance with Section 11 of this policy, during the **policy period** or any **extended reporting period**, if applicable, arising from the performance of **technology professional services** for others, by **you** or by others on **your** behalf for whom **you** are legally responsible, for any actual or alleged wrongful acts, which for the purpose of this Insuring Agreement shall mean:

- a Negligent breach of duty, negligent misrepresentation, or negligent act, error or omission in the performance of or failure to perform **technology professional services**;
- b Unintentional **breach of contract**;
- c Defamation, including, but not limited to, disparagement or harm to the reputation or character of any person or organisation, libel, slander, product disparagement or trade libel;
- d Plagiarism, piracy or misappropriation of ideas under implied contract, misappropriation of name or likeness for commercial advantage; any act of passing-off; misappropriation of formats, characters, trade names, character names, titles, plots, musical compositions, voices, slogans, graphic materials, or artwork; negligence regarding the content of any media communication, including harm caused through any reliance or failure to rely upon such content

provided that the above actual or alleged wrongful acts occurred on or after the **retroactive date**.

Insuring Agreement 2: Multimedia liability

We shall pay on **your** behalf all **damages** and **defence costs** which exceed **your** excess, as stated within item 4 of the Schedule which **you** become legally obliged to pay as a result of any **claim** first made against **you** and notified by **you** to **us** in writing, in accordance with Section 11 of this policy, during the **policy period** or any **extended reporting period**, if applicable, arising from **your multimedia** activities, for any actual or alleged wrongful acts, which for the purpose of this Insuring Agreement shall mean:

- a Defamation including, but not limited to, disparagement or harm to the reputation or character of any person or organisation, libel, slander, product disparagement or trade libel;
- b Invasion, infringement, or interference with the right to privacy or right of publicity, including public disclosure of private facts, including those of an **employee**, intrusion, or commercial appropriation of name or likeness;
- c Plagiarism, piracy or misappropriation of ideas in connection with **your multimedia** activities;

- d Infringement of copyright, domain name, title, or slogan; trade duress; or the dilution or infringement of trademark, service mark, service name, or trade name;
- e Liability arising out of **your** negligence in connection with **your** release of **multimedia** content

provided that the above actual or alleged wrongful acts occurred on or after the **retroactive date**.

Insuring Agreement 3: Security and privacy liability

We shall pay on **your** behalf all **damages** and **defence costs** which exceed **your** excess as stated within item 4 of the Schedule, which **you** become legally obliged to pay as a result of any **claim** first made against **you** and notified by **you** to **us** in writing, in accordance with Section 11 of this policy, during the **policy period** or any **extended reporting period**, if applicable, arising from a **security breach** or **privacy breach** by **you** or others on **your** behalf for whom **you** are legally responsible, resulting from any of the following actual or alleged wrongful acts, which for the purposes of this agreement shall mean:

- a The failure to prevent or hinder unauthorised access to or unauthorised use of a **computer network**; failure to prevent physical theft or loss of information or **hardware** controlled by **you**, **your** people, or processes; security failures; or false communications designed to trick the user into surrendering personal information (commonly known as 'phishing' or 'pharming') that results in:
 - i The alteration, copying, corruption, destruction, deletion, or damage to electronic **data** on a **computer network**;
 - ii Unauthorised disclosure of commercial, personal, or private information or **data**;
 - iii Theft of **data** (including theft of **data** which is commonly referred to as identity theft);
 - iv **Your** failure to disclose a breach of security affecting personally identifiable, non-public information, or failure to dispose of such information within the required time period in violation of notification laws or regulations in effect now or in the future;
 - v The failure to prevent transmission of **malicious code** or **computer virus** from a **computer network** to third party computers or systems; or
 - vi **Your** breach of duty to maintain the security or confidentiality of personally identifiable information stored on **your computer network** under any contract, including but not limited to a payment card processing agreement with a merchant bank or payment processor.
- b **Privacy breach, security breach**, or breach of **privacy regulations**; or
- c The failure to prevent or hinder participation in a **denial of service** from a **computer network** operated by **you** or on **your** behalf against **internet** sites or **computer networks** of a third party; or
- d Loss of **employee** personally identifiable information, as defined in **privacy regulations**

provided that the above actual or alleged wrongful acts occurred on or after the **retroactive date**.

Insuring Agreement 4: Data recovery and loss of business income coverage

We shall indemnify **you** for **first party costs and expenses** which exceed **your** excess as stated within item 4 of the Schedule, and for **loss of business income** after expiration of the applicable **waiting period** as stated within item 4 of the Schedule, as a result of a **first party insured event** incurred by **you** and notified by **you** to **us** in writing, in accordance with Section 11 of this policy, during the **policy period** or any **extended reporting period**, if applicable, provided that the **first party insured event** occurred on or after the **retroactive date**.

Insuring Agreement 5: Privacy regulatory defence and penalties

We shall pay on **your** behalf those amounts, which exceed **your** excess as stated within item 4 of the Schedule, which **you** become legally obliged to pay, including **defence costs**, as a result of a civil regulatory action, including a **regulatory compensatory award**, civil penalty, or fines to the extent insurable by law, imposed by a governmental regulatory body against **you** and notified by **you** to **us**, in writing, in accordance with Section 11 of this policy, during the **policy period** or any **extended reporting period**, if applicable, as a result of a **privacy breach, security breach**, or breach of **privacy regulations** by **you** or others on **your** behalf for whom **you** are legally responsible, provided that the **privacy breach, security breach**, or breach of **privacy regulations** occurred on or after the **retroactive date**.

Insuring Agreement 6: Crisis management costs, customer notification expenses, and customer support and credit monitoring expenses

We shall indemnify **you** for **crisis management costs, customer notification expenses**, and **customer support and credit monitoring expenses** which exceed **your** excess, as stated within item 4 of the Schedule, when such costs and expenses are incurred, following a **security breach, privacy breach** or breach of **privacy regulations**, and notified by **you** to **us** in writing, in accordance with Section 11 of this policy, during the **policy period** or any **extended reporting period**, if applicable, provided that the **security breach, privacy breach** or breach of **privacy regulations** occurred on or after the **retroactive date**.

Insuring Agreement 7: Data extortion

We shall indemnify **you** for those amounts which exceed **your** excess, as stated within item 4 of the Schedule, when **cyber extortion monies** are paid by **you** following a **cyber extortion threat**, in excess of **your retention**, to the extent insurable by law and notified by **you** to **us** in writing, in accordance with Section 11 of this policy, during the **policy period** or any **extended reporting period**, if applicable, provided that the **cyber extortion threat** occurred on or after the **retroactive date**.

2 Defence, settlement, and investigation of claims

- a With respect to Insuring Agreements 1, 2, 3, and 5, if purchased, **we** shall have the right but not the obligation, to take control of and conduct in your name the investigation, defence, or settlement of any claim or circumstance as **we** in our absolute discretion see fit.
- b The limit of indemnity available to pay **damages** and as stated within item 3 of the Schedule shall be reduced, and may be completely exhausted, by payment of **defence costs** or any other amounts covered under the policy. **Damages, defence costs**, and any other amounts covered under this policy are all subject to the excess, as stated within item 4 of the Schedule.
- c **We** shall have the right to make any investigation **we** deem necessary including, without limitation, any investigation with respect to the **application**, statements made in the **application** and with respect to coverage.
- d With respect to Insuring Agreements 1, 2, 3, and 5, if **you** refuse to consent to any settlement or compromise recommended by **us** that is acceptable to the claimant and elect to contest the **claim**, **our** total liability for any **damages, defence costs**, and other amounts covered under this policy shall not exceed:
 - i The amount for which the **claim** could have been settled, less the remaining excess, plus the **defence costs** incurred up to the time of such refusal; and
 - ii Twenty-five percent (25%) of any additional **damages, defence costs** or other payments incurred after the date such settlement or compromise was recommended to **you**. The remaining seventy five percent (75%) of such **damages, defence costs**, or other payments are to be borne by **you** at **your** own risk and are uninsured under this policy.
- e It is further provided that **we** shall not be obligated to pay any **damages, defence costs**, or any other amounts covered under this policy, or to undertake or continue to defend any claim after the applicable limit of indemnity has been exhausted by payment of **damages, defence costs**, or other amounts covered under this policy and that upon such payment, **we** shall have the right to withdraw from the further defence thereof by tendering control of said defence to **you**.

3 Limit of indemnity

- a The limits of indemnity specified in item 3(A) of the Schedule shall be the limit of **our** liability for each **claim** and in the aggregate arising under each Insuring Agreement, including **defence costs**, where applicable.
- b The limits of indemnity specified in item 3(B) of the Schedule shall be **our** total limit of liability under this policy regardless of the number of Insuring Agreements that apply, including **defence costs** where applicable.
- c Notwithstanding the aggregate limit of indemnity under each Insuring Agreement as set forth in item 3(A) of the Schedule, all payments made under this policy, regardless of the number of Insuring Agreements that apply, will reduce the total limit of indemnity specified in item 3(B) of the Schedule. In no event will we pay more than the total limit of indemnity specified in item 3(B) of the Schedule.
- d All **claims** arising out of the same event without regard to the number of insureds, **claims**, or claimants shall be considered a single **claim** and only one limit of indemnity, as set forth in item 3(A) of the Schedule, will apply. All such **claims** shall be deemed to have been made at the time of the first such **claim**.

- e In the event that a **claim** is notified by **you**, in accordance with Section 11 of this policy, and attaches to more than one Insuring Agreement, only one limit of indemnity as set forth in item 3(A) of the Schedule shall apply. In such event, at most, only the highest of the applicable limits of indemnity shall apply to such **claim**. **We** have the sole discretion to allocate **claims** paid, if any, against the appropriate applicable limit of indemnity. With regard to such **claim**, in no event shall the amount paid by **us** under any Insuring Agreement be greater than the limit of indemnity specified in item 3(A) of the Schedule.
- f The limits of indemnity for the **extended reporting period**, if applicable, shall be part of and not in addition to the limit of indemnity for the **policy period**.

4 Excess

- a The excess specified in item 4 of the Schedule shall apply to each and every **claim**. The excess shall be satisfied by **your** payment of amounts covered under the policy. If a **claim** attaches to more than one Insuring Agreement, only the highest excess applies.
- b **Your** payment of the applicable excess is a condition precedent to the payment by **us** of any amounts covered under this policy and **we** shall only be liable for the amount which exceeds the excess, not to exceed **our** total limit of indemnity as stated in item 3 of the Schedule. **You** shall make direct payments within the excess to the appropriate parties designated by **us**.
- c All **claims** arising out of the same originating cause without regard to the number of insureds, **claims**, or claimants shall be considered a single **claim** and only one excess shall apply. All such **claims** shall be deemed to have been made at the time of the first such **claim**.
- d With respect to the **loss of business income** under Insuring Agreement 4, the **waiting period** listed on item 4 of the Schedule shall apply to covered amounts.

5 Territorial limits

This insurance applies to any wrongful acts, insured events, breaches or threats detailed under the relevant Insuring Agreements, committed, alleged to have been committed or occurring anywhere in the world or as stated in item 11 of the Schedule.

6 Insured

The **insured** means:

- a The legal entity(s) shown in item 1 of the Schedule;
- b Any **subsidiary** of the legal entity(s) shown in item 1 of the Schedule, but only with respect to wrongful acts, insured events, breaches, or threats as detailed under the relevant Insuring Agreement, which occur while it is a **subsidiary** and otherwise covered by this policy;
- c Any past, present, or future officer, director, trustee, or **employee** of any party described in 6 (a) or (b) above, but only while acting solely within the scope of their duties as such;
- d In the event that any party described in 6 (a) or (b) above is a partnership, limited liability partnership, or limited liability company, then any general or managing partner, principal, member, or owner thereof, but only while acting solely within the scope of their duties as such;
- e Any agent or independent contractor, including distributors, licensees, and sub-licensees, but only while acting on behalf of at the direction of, or under the control of any party described in 6 (a) or (b) above; and
- f Any entity required by contract to be named an **insured** under this policy and to whom **we** consent in writing, but only for the acts of any entity, as detailed under the relevant Insuring Agreement.

7 Definitions

Application means all application forms, including any attachments thereto, and all other information and materials submitted to **us** by **you** or on **your** behalf in connection with the underwriting of this policy. All such applications, attachments, information, and materials are deemed attached to and incorporated into this policy.

Bodily injury means physical injury, sickness, disease, or death sustained by any person and, where resulting from such physical injuries only, mental anguish, mental injury, shock, humiliation, or emotional distress.

Breach of contract means breach of a written contract(s) with a client to perform **technology professional services** because of:

- i The **technology professional services** being negligently performed or containing a material defect;
- ii The **technology professional services** failing to meet any statutory term concerning quality, safety, or fitness for a particular express purpose, or failing to meet an implied duty to exercise that degree of care or skill consistent with applicable industry standards; or
- iii Breach of any hold harmless or indemnity provision regarding infringement of intellectual property rights, breach of security, or the confidentiality of information.

Claim means:

- i A written demand for monetary damages or non-monetary relief, a request for a standstill agreement, the service of civil proceedings, or institution of arbitration proceedings received by **you** seeking monetary damages or including the threat or initiation of proceedings seeking a temporary restraining order or an interim or permanent injunction;
- ii Formal regulatory action to the extent covered by Insuring Agreement 5;
- iii A **first party insured event**;
- iv A **crisis management event** or the incurring of **customer notification expenses** or **customer support and credit monitoring expenses**;
- v A **cyber extortion threat**; or
- vi Notice by a third party to **you** of circumstances that could reasonably be expected to result in any of the foregoing (i) to (v) above.

Defence costs means:

- i Reasonable and necessary legal costs and expenses incurred with **our** consent and charged by a solicitor designated by **us** to defend a **claim**;
- ii All other reasonable and necessary fees, costs, and expenses resulting from the investigation, adjustment, defence, and appeal of a **claim**, if incurred by **us**, or by **you** with our written consent;
- iii **Defence costs** does not include any salary, overhead, or other charges incurred by **you** for any time spent in cooperating in the defence and investigation of any **claim** or circumstance which might lead to a **claim** notified under this policy; or
- iv With respect to Insuring Agreement 5, **your** reasonable and necessary legal costs and expenses incurred with **our** consent in the defence of any civil administrative proceeding or regulatory action as a result of a **privacy breach, security breach**, or breach of **privacy regulations** by **you** or on **your** behalf for whom **you** are legally responsible.

Computer network(s) means interconnected electronic, wireless, web, or similar systems (including all **hardware** and software) used to process **data** or information in an analogue, digital, electronic or wireless format including, but not limited to, computer programs, electronic data, operating systems, servers, media libraries, associated input and output devices, mobile devices, networking equipment, websites, extranets, off line storage facilities (to the extent that they hold electronic data), and electronic backup equipment.

Computer virus means a program that possesses the ability to create replicas of itself (commonly known as ‘auto-reproduction’ program) within other programs or operating system areas, or which is capable of spreading copies of itself wholly or partly to other computer systems/networks.

Crisis management costs means any fees reasonably and necessarily incurred by **you** and approved by **us** for the employment of a public relations consultant if **you** reasonably consider that such appointment is needed in order to avert or mitigate any material damage to any of **your** brands following an actual or alleged **security breach** or breach of **privacy regulations** and such event has been publicised through any media channel and has arisen due to a **claim**.

Customer notification expenses means those reasonable and necessary legal expenses, public relations expenses, postage expenses, and related advertising expenses incurred by **you** to comply with governmental privacy legislation mandating customer notification in the event of a **security breach, privacy breach, or breach of privacy regulations** that results in the compromise or potential compromise of personal information maintained by **you** or otherwise residing on a **computer network** operated by **you** or on **your** behalf.

Customer support and credit monitoring expenses means those reasonable and necessary expenses **you** incur for the provision of customer support activity, including the provision of credit file monitoring services and identity theft education and assistance in the event of a **privacy breach** that results in the compromise or potential compromise of personal information maintained by **you** or otherwise residing on a **computer network** operated by **you** or on **your** behalf.

Cyber extortion threat means a credible threat or series of related threats, including a demand for funds, directed at **you** to avoid corruption, damage, destruction, or introduction of a **computer virus, malicious code, or a denial of service** to any aspect of the **insured's computer networks**.

Cyber extortion monies means:

- i Monies paid by **you**, with **our** prior written consent, to a person(s) or entity(ies) reasonably believed to present a **cyber extortion threat** for the purpose of terminating such a threat; or
- ii Other reasonable and necessary costs and expenses paid by **you** that have been subject to **our** prior consent directly resulting from a **cyber extortion threat**.

Damages means a monetary judgment, award, or settlement including punitive damages to the extent insurable under the law pursuant to which this policy is construed. **Damages** does not include:

- i **Your** future profits or royalties, restitution, or loss of **your** profits;
- ii The cost to comply with orders granting injunctive or non-monetary relief, including specific performance, or any agreement to provide such relief;
- iii Loss of **your** fees or profits, return or offset of **your** fees or charges, or **your** commissions or royalties provided or contracted to be provided;
- iv Taxes, fines, penalties, or sanctions, save to the extent insurable by law;
- v Any damages that are a multiple of compensatory damages;

- vi Any amount which **you** are not financially or legally obligated to pay;
- vii Loss of any remuneration or financial advantage to which **you** were not legally entitled;
- viii Monetary judgments, awards, or settlements which are uninsurable under the law pursuant to which this policy is construed;
- ix Past, present and/or future license fees of any kind; or
- x Liquidated damages.

Data means any machine readable information, including ready for use programs or electronic data, irrespective of the way it is used and rendered including, but not limited to, text or digital media.

Delivered programs means programs, applications, and software where the development stage has been finalised, and are ready for operational use, having passed all test-runs and been proven successful in a live environment.

Denial of service means unauthorised or unexpected interference or malicious attack on **your computer network** that restricts or prevents access to **your computer network** by persons or entities authorised to gain access to it.

Employee(s) means any individual in **your** service, including any part-time, seasonal, and temporary **employees** who are under a contract of service with **you** or any individual who is working on **your** behalf, or at **your** direction, and under **your** direct control. **Employee** does not include any partner or director of **you**.

Excess means the amount specified in item 4 of the Schedule.

Extended reporting period means the period of time after the end of the **policy period** for reporting **claims** as provided in Section 10 of this policy.

First party costs and expenses means costs authorised by **us**, which may include:

- i **Your** actual costs to restore, re-collect, or replace **your data**, including expenses for materials, working time, and overhead cost allocation at the affected location(s) associated with restoring or replacing **your data**;
- ii **Your** reasonable and necessary costs and expenses of specialists, investigators, forensic auditors, or loss adjusters retained by **you** for the purpose of conducting a review or audit to substantiate that a **first party insured event** is occurring or has occurred or to determine the scope, cause, or extent of any theft or unauthorised disclosure of **your** information or **data, privacy breach, or breach of privacy regulations**;

- iii **Your** reasonable and necessary costs and expenses for the use of rented, leased, or hired external equipment, services, labour, premises, or additional operating costs, including staff overtime and expenditure, provided that these costs and expenses were reasonably incurred as a result of a **first party insured event**; or
- iv Any other reasonable and necessary costs and expenses that **you** incur directly as a result from a **first party insured event**.

First party costs and expenses do not include loss of profits or **loss of business income**. **First party costs and expenses** are part of, and not in addition to, the limit of indemnity stated within item 3 of the Schedule.

First party insured event means loss sustained by **you** that occurs at **your** premises, or at **your** external backup, data centre or storage facilities
 Arising from:

- i **Security breach**;
- ii **Computer virus**;
- iii **Malicious code**;
- iv Accidental damage or destruction of **data** because of **human error**;
- v Electrostatic build-up or electromagnetic disturbances;
- vi Accidental damage or destruction of **hardware**, so that the **data** stored is not machine readable;
- vii Malfunction or failure of **your computer network**;
- viii **Programming error of delivered programs**;
- ix Natural disaster, but only for corruption, destruction, or damage to **your data**; or
- x Failure of a direct or back-up power supply or under/over voltage but only if such power supply is owned, operated, and controlled by **you** or by a business process service provider or IT service provider

First party insured event only pertains to **your** loss and does not include coverage for any **claim** made by a third party.

Hardware means any and all physical components of a **computer network**.

Human error means an operating error, an error in setting parameters, or an unintentional mistake by **your employee** or a third party providing services to **you**, which results in a **first party insured event** sustained by **you**.

Loss of business income means:

- i The net income (net profit or loss before income taxes) which **you** would have earned had no **first party insured event** occurred; or
- ii Reasonable, continuing, and normal operating expenses that were incurred and affected by a **first party insured event**.

Malicious code means software designed to infiltrate or damage a **computer network** without the owner's informed consent by a variety of forms including, but not limited to, Trojan horses, spyware, dishonest adware, and crimeware.

Multimedia means the release of any content in a physical or electronic format, including electronic data, internet, newspapers, newsletters, magazines, books, brochures or other types of publications, and advertising materials, including packaging, photographs, and digital images.

Named insured means the individual, partnership, entity, or corporation designated as such in item 1 of the Schedule.

Policy period means the period of time from the inception date to the termination date as specified in item 2 of the Schedule, or to any earlier cancellation date.

Privacy breach means a breach of confidentiality, infringement, or violation of any right to privacy including, but not limited to, a breach of **your** privacy policy, breach of a person's right of publicity, false light, intrusion upon a person's seclusion, public disclosure of a person's private information.

Privacy regulations means the following, as well as similar statutes and regulations, as they currently exist and as amended, associated with the confidentiality, access, control, and use of personally identifiable, non-public information including, but not limited to:

- i Data Protection Act 1998;
- ii The Regulation of Investigatory Powers Act 2000;
- iii Privacy and Electronic Communications (EC Directive) Regulations 2003;
- iv US State and Federal statutes and regulations regarding the security and privacy of consumer information;
- v Governmental privacy protection regulations or laws associated with the control and use of personal information;
- vi Privacy provisions of consumer protection laws;
- vii Similar privacy laws worldwide.

Programming error means an error which occurs during the development or encoding of a computer program, software, or application, which would, when in operation, result in a malfunction or incorrect operation of a **computer network**.

Property damage means physical injury to, impairment, destruction, or corruption of any tangible property, including the loss thereof.

Data is not considered tangible property.

Regulatory compensatory award means a regulatory agency's monetary award to a third party. **Regulatory compensatory award** does not include a criminal penalty or fine issued by a regulatory agency of any kind.

Retroactive date means the date specified in item 5 of the Schedule.

Security breach means the intentional, malicious and wilful misuse of **your computer network** to modify, delete, corrupt, or destroy **data** or a **denial of service**, or the actual or alleged act, error, omission, or breach of duty to protect the security and confidentiality of non-public proprietary corporate information, personally identifiable non-public information of a medical or financial nature, or other personal or confidential paper records or electronic information. This includes, but is not limited to, electronic or non-electronic security failures, failure to protect against anticipated threats or hazards, failure to protect against unauthorised access, use, disclosure or physical theft of information or **hardware**, false communications, or social engineering techniques designed to trick the user into surrendering personal information (commonly known as 'phishing' or 'pharming').

Subsidiary(ies) means:

- i Any entity of which more than 50% of the issued and outstanding shares are owned by **you**, on or before the commencement of the **policy period**; or

- ii Any entity which becomes a **subsidiary** during the **policy period** provided that such entity does not represent more than a fifteen percent (15%) increase in **your** total assets, employee count or gross revenue as of the date of the acquisition. Where such entity represents an increase in **your** total assets, employee count or gross revenue of more than fifteen percent (15%), such entity shall be deemed a **subsidiary** under this policy, but only upon the condition that within thirty (30) days of it becoming a **subsidiary**, **you** shall have provided **us** with full particulars of the new **subsidiary** and agreed to any additional premium and/or amendment of the provisions of this policy required by **us** relating to such new **subsidiary**, subject to advanced review and acceptance by **us** of full and complete underwriting information.

Technology professional services means **your** business services, which are performed for and on behalf of **your** clients or customers in the course of **your** business and arising from **your** activities, advice, or products. Such services include, the design or sale of any products relating to information technology, data processing, installation, design, development, integration, or configuration of a **computer network** or any aspect thereof, web design and content delivery, and those **technology professional services** stated in item 12 of the Schedule.

Waiting period means the number of hours that must elapse as provided in item 4 of the Schedule before the recovery of **loss of business income** can be considered.

'**We**', '**us**' or '**our**' means the underwriters or insurers providing this insurance.

'**You**', '**your**' and '**yours**' means the insured as provided in Section 6 of this policy.

8 Exclusions

We shall not be liable for any **claim** directly or indirectly arising out of or in any way attributable to:

- 1 Any **claim** or circumstance arising from any wrongful acts or the same, related, or continuing acts, facts, or circumstances under Insuring Agreement(s) 1, 2, or 3, **first party insured event** under Insuring Agreement 4, **privacy breach, security breach**, or breach of **privacy regulations** under Insuring Agreement 5, **security breach, privacy breach**, or breach of **privacy regulations** under Insuring Agreement 6, and/or **cyber extortion threat** under Insuring Agreement 7, which were first committed or occurred prior to the **retroactive date**;
- 2 Any **claim** or circumstance arising from any wrongful acts under Insuring Agreement(s) 1, 2, or 3, **first party insured event** under Insuring Agreement 4, **privacy breach, security breach**, or breach of **privacy regulations** under Insuring Agreement 5, **security breach, privacy breach**, or breach of **privacy regulations** under Insuring Agreement 6, and/or **cyber extortion threat** under Insuring Agreement 7, which took place prior to the inception of this policy, if **you** knew or could have reasonably foreseen such acts, facts, or circumstances could be the basis of a **claim** or circumstance;
- 3 Any **claim** or circumstance notified to a previous insurer prior to the inception of this policy;
- 4 Any **claim** made by an insured against another insured unless such claim is brought by an **employee** under Insuring Agreements 3 and 6;
- 5 Any **claim** arising out of **your** wilful, deliberate, malicious, fraudulent, dishonest, or criminal act. Notwithstanding the foregoing, the insurance afforded by this policy shall apply to **defence costs** incurred in defending any such **claim**, but shall not apply to any **damages** that **you** might become legally obligated to pay. **We** will have the right to recover those **defence costs** incurred from those parties found to have committed criminal, wilful, deliberate, dishonest, fraudulent, or malicious acts by a court, jury, or arbitrator. However, with respect to only a **first party insured event** under Insuring Agreement 4, this exclusion does not bar coverage for **employee** sabotage;
- 6 Any **claim** arising out of **your** activities as a trustee, partner, officer, director, or employee of any employee trust, charitable organisation, corporation, company, or business other than that of the **named insured**;
- 7 **Your** insolvency or bankruptcy or the insolvency or bankruptcy of any other entity including, but not limited to, the failure, inability, or unwillingness to make payments because of the insolvency, liquidation, or bankruptcy of any individual or entity;
- 8 **Bodily injury**, except that this exclusion shall not apply to wrongful infliction of emotional distress or mental anguish arising out of actual or alleged **technology professional services, multimedia activities, privacy breach, security breach**, or breach of **privacy regulations**;
- 9 **Property damage**;
- 10 The confiscation, commandeering, requisition, destruction of or damage to, **hardware** by order of a government de jure or de facto, or by any public authority for whatever reason;
- 11 Satellite failures; electrical or mechanical failures and/or interruption including, but not limited to, electrical disturbance, spike, brownout, or blackout; and outages to electricity gas, water, telephone, cable, telecommunications, or other infrastructure, unless such infrastructure is under **your** operational control and unless such **claim** forms part of a **first party insured event**;

- 12 The wear and tear, drop in performance, progressive or gradual deterioration, or aging of electronic equipment and other property or **hardware** used by **you**, or the failure of **you** or those acting on **your** behalf to maintain any computer, **computer network** or network, computer software, or other equipment;
- 13 Failure or gradual deterioration of overhead transmission, distribution lines or subterranean insulation or cabling;
- 14 Fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, an act of God, or any other physical event however caused, unless such **claim** is part of a **first party insured event**;
- 15 The actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products, or services including **your** cost guarantees, cost representations, contract price, or cost estimates being exceeded;
- 16 The violation of any economic or trade sanctions by the United States government including, but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ('OFAC');
- 17 Any breach of any express, implied, actual, or constructive contract, warranty, guarantee, or promise, but this exclusion does not apply to:
 - i Any liability or obligation **you** would have in the absence of such contract or agreement;
 - ii Unintentional **breach of contract**; or
 - iii A breach of **your** privacy policy;
- 18 The liability of others assumed by **you** under any contract or agreement, either oral or written, except and to the extent **you** would have been liable in the absence of such contract or agreement;
- 19 The actual or alleged loss of value of any securities;
- 20 The actual or alleged purchase, sale, offer of, or solicitation of an offer to purchase or sell securities, or violation of any securities law including, but not limited to, the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002, or any regulation promulgated under the foregoing statutes, or any federal, state, local, or foreign laws similar to the foregoing statutes, including 'Blue Sky' laws, whether such law is statutory, regulatory, or common law;
- 21 The actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as 'Racketeer Influenced And Corrupt Organizations Act' or 'RICO'), as amended, or any regulation promulgated under the foregoing statutes, or any similar federal, state, local or foreign laws, whether such law is statutory, regulatory or common law;
- 22 The actual or alleged government enforcement of any state or federal regulation including, but not limited to, regulations promulgated by the United States Federal Trade Commission, Federal Communications Commission, or the Securities and Exchange Commission; however this exclusion does not apply:
 - i To the extent that a **claim** falls under Insuring Agreement 5; or
 - ii To a **claim** by a government entity brought in its capacity as a customer of **you** arising in the course of **your** provision of **technology professional services** to such government entity;

- 23 Any employer-**employee** relations, policies, practices, acts, or omissions, any actual or alleged refusal to employ any person, or any misconduct with respect to **employees**. This includes but is not limited to claims arising under workers compensation or similar laws;
- 24 Any actual or alleged discrimination of any kind including, but not limited to, age, colour, race, gender, creed, national origin, marital status, sexual preferences, disability, or pregnancy;
- 25 The violation of any pension, healthcare, welfare, profit sharing, mutual, or investment plans, funds, or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974 and its amendments and/or the Pension Protection Act of 2006 and its amendments, or any regulation, ruling, or order issued pursuant thereto;
- 26 Strikes or similar labour actions, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular uprising, military uprising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions. This exclusion also excludes coverage for any loss or damages arising out of 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. This exclusion also excludes loss, cost, **damages**, or **defence costs** of whatsoever nature directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing, or in any way relating to the above;
- 27 All losses or expenses arising from a terrorist act. For the purposes of this agreement, a terrorist act means an act or series of acts including the use of force or violence of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s), committed for political, religious, or ideological purposes, including the intention to influence any government and/or to put the public in fear for such purposes;
- 28 **Your** commercial decision to cease providing a particular product or service;
- 29 Gambling, pornography, prizes, awards, coupons, or the sale or provision of prohibited, restricted, or regulated items including, but not limited to, alcoholic beverages, tobacco, or drugs;
- 30 Any fine or penalty arising out of any agreement by **you** to comply with or follow the Payment Card Industry Standard or any Payment Card Company Rules; or implement, maintain, or comply with any security measures or standards related to any payment card data including, but not limited to, any fine or penalty imposed by a payment card company on a merchant bank or payment processor that **you** have paid or agreed to reimburse or indemnify. However, this exclusion shall not apply to civil penalties and fines to the extent insurable by law arising out of an otherwise covered **claim** under Insuring Agreement 5;
- 31 Any actual or alleged unfair competition, antitrust violations, deceptive trade practices, or restraint of trade or any actual or alleged breach of any competition or antitrust statute, legislation, or regulation;
- 32 The actual or alleged infringement of any patent or the misappropriation, theft, copying, display or publication of any trade secret by, or with the active cooperation, participation, or assistance of any insured, any of **your** former **employees**, subsidiaries, directors, executive officers, partners, principals, trustees, or any of **your** successors or assignees;

- 33 The use of programs that are not **delivered programs**, however this exclusion applies only in respect of Insuring Agreement 4;
- 34 **Your** knowing use of illegal or unlicensed programs that are in violation of the provisions or laws referring to software protection;
- 35 The existence, emission, or discharge of any electromagnetic field, electromagnetic radiation, or electromagnetism that actually or allegedly affects the health, safety, or condition of any person or the environment or that affects the value, marketability, condition, or use of any property.

9 Innocent insured provision

- a Whenever coverage under this policy would be excluded, suspended, or lost because of non-compliance with Section 11, relating to the giving of notice of a **claim to us**, with respect to which any other insured shall be in default solely because of the failure to give such notice or concealment of such failure by one or more insureds responsible for the loss or damage otherwise insured hereunder, then such insurance as would otherwise be afforded under this policy shall cover and be paid with respect to those insureds who did not personally commit or personally participate in committing or personally acquiescing in such failure to give notice, provided that the insured entitled to the benefit of this provision shall comply with Section 11 promptly after obtaining knowledge of the failure of any other insured to comply therewith. Notwithstanding the foregoing, the reporting of any such **claim** must be made during the **policy period** or **extended reporting period**, if applicable.
- b Any insurance as afforded by this provision shall not cover a **claim** if a current executive officer or director failed to give notice as required by Section 11 for a **claim** or circumstance that could reasonably be the basis of a **claim**, which was known to a current executive officer or director.
- c Whenever coverage under this policy would be excluded, suspended, or lost because of Exclusion 5 relating to willful, deliberate, malicious, fraudulent, dishonest, or criminal acts by any insured, then such insurance as would otherwise be afforded under this policy shall cover and be paid with respect to those insureds who did not personally commit, personally participate in committing, personally acquiesce, or remain passive after having personal knowledge thereof.

10 Extended reporting provisions

- a Automatic Extended Reporting Period: If either **you** or **us** cancel or non-renew this policy, **you** shall have the right following the effective date of such cancellation or non-renewal, to a period of sixty (60) days in which to give written notice to **us** of **claims**, provided that any actual or alleged wrongful acts under Insuring Agreement(s) 1, 2, or 3, **first party insured event** under Insuring Agreement 4, **privacy breach, security breach**, or breach of **privacy regulations** under Insuring Agreement 5, **security breach, privacy breach** or breach of **privacy regulations** under Insuring Agreement 6, or **cyber extortion threat** under Insuring Agreement 7 occurred prior to the end of the **policy period** and are otherwise covered by this policy.

- b Extended Reporting Period Endorsement: In the event of cancellation or non-renewal of this policy, **you** shall have the right, upon payment in full and not proportionally or otherwise in part:
- i 100% of the premium set forth in item 6 of the Schedule if **we** cancel or non-renew; or
 - ii 200% of the premium set forth in item 6 of the Schedule if **you** cancel or non-renew to have issued an endorsement providing a 12-month **extended reporting period** for **claims**, provided that any actual or alleged wrongful acts under Insuring Agreement(s) 1, 2, or 3, **first party insured event** under Insuring Agreement 4, **privacy breach, security breach**, or breach of **privacy regulations** under Insuring Agreement 5, **security breach, privacy breach** or breach of **privacy regulations** under Insuring Agreement 6, or **cyber extortion threat** under Insuring Agreement 7, occurred prior to the end of the **policy period** and are otherwise covered by this policy and are reported to **us** during the **extended reporting period**, subject to the conditions set forth with regard to the **extended reporting period** herein. In order for the **named insured** to purchase the **extended reporting period** endorsement, the payment of the additional premium for the **extended reporting period** must be paid to **us** within thirty (30) days of the non-renewal or cancellation.
- c The **extended reporting period** in (a) and (b) above only relates to those Insuring Agreement(s) purchased as shown in the Schedule.
- d The limit of indemnity for the **extended reporting period** shall be part of, and not in addition to, the limit of indemnity for the **policy period**.
- e The quotation by **us** of a different premium or **excess** or limit of indemnity or changes in policy language for the purpose of renewal shall not constitute a refusal to renew by **us**.
- f The right to the **extended reporting period** shall not be available to the **named insured** where cancellation or non-renewal by **us** is because of non-payment of premium or **your** failure to pay amounts within the applicable excess.
- g All notices and premium payments with respect to the **extended reporting period** option shall be directed to **us** through the entity named in item 8 of the Schedule.
- h At the commencement of the **extended reporting period** in item (b) above, the entire premium shall be deemed earned and in the event the **named insured** terminates the **extended reporting period** for any reason prior to its natural expiration, **we** will not be liable to return any premium paid for the **extended reporting period**.
- i Change of Control Extended Reporting Period: In the event of **your** acquisition by or merger into another entity, or **your** liquidation or dissolution, or the sale or disposition of substantially all of **your** assets, all of which collectively and alternatively constitute a 'change of control', provided that **you** have otherwise complied with the terms and conditions of this policy, **you** may notify **us** within thirty (30) days of the change of control, of **your** election for an **extended reporting period** of twelve (12) months from the date of such change of control. Such change of control **extended reporting period** shall cover **claims** made under Insuring Agreement(s) 1, 2, or 3, or **first party insured event** under Insuring Agreement 4, **privacy breach, security breach**, or breach of **privacy regulations** under Insuring Agreement 5, **security breach, privacy breach** or breach of **privacy regulations** under Insuring Agreement 6, or **cyber extortion threat** under Insuring Agreement 7, and reported to **us** during this change of control **extended reporting period**, but only in respect of any **claim** which took place prior to the end of the **policy period** and is otherwise covered by this policy.

11 Notice of claim or circumstance that might lead to a claim

- a If any **claim** under Insuring Agreement(s) 1, 2, 3, or 5 is made against **you, your** risk manager, General Counsel, senior officer, or director shall forward to **us** as soon as practicable through persons named in item 7 of the Schedule every demand, notice, summons, or other process received by **you** or **your** representative.
- b If **you** have any **claim** under Insuring Agreement(s) 4, 6, or 7, **your** risk manager, General Counsel, senior officer, or director shall forward to **us** as soon as practicable through persons named in item 7 of the Schedule such **claim**.
- c If during the **policy period, you** become aware of any acts, facts, or circumstances that could reasonably be a basis for a **claim, your** risk manager, General Counsel, executive officer, or director must give written notice of the following information to **us**, through persons named in item 7 of the Schedule, as soon as practicable during the **policy period**:
 - i Specific details of the acts, facts, or circumstances that could reasonably be the basis for a **claim**;
 - ii Possible **damages**, penalties, or other amounts potentially covered under this policy that may result or has resulted from the facts or circumstances;
 - iii Details regarding how **you** first became aware of the acts, facts, or circumstances; and
 - iv The **computer network** security and event logs, which provide evidence of the alleged incident.

Any subsequent **claim** arising out of such acts, facts, or circumstances which is the subject of the written notice to **us** will be deemed to be a **claim** at the time written notice complying with the above requirements was first given to **us**.

- d A **claim** shall be considered to be reported to **us** when notice is first given to **us** through persons named in item 7 of the Schedule.

12 Calculation of the net income aspect of loss of business income under Insuring Agreement 4

The calculation of the net income aspect of **loss of business income** under Insuring Agreement 4 shall be based on an analysis of the revenues and costs generated during each month of the twelve (12) months prior to the loss occurring and will also take into account the reasonable projection of future profitability or otherwise had no loss occurred and will include all material changes in market conditions that would affect the future profits generated.

Requests made by **you** for indemnity by **us** shall be accompanied by a computation of the loss. This shall set out in detail how the loss has been calculated and what assumptions have been made. **You** shall produce any documentary evidence, including any applicable reports, books of accounts, bills, invoices, and other vouchers and copies of the such which **we** may require, and **you** shall afford **us** or **our** agent every assistance in their investigations.

Any **claims** payment under this Section will, where applicable, be reduced by the extent to which **you**:

- i Use damaged or undamaged **data**; or
- ii Make use of available stock, merchandise, or other **data**; or
- iii Use substitute facilities, equipment, or personnel.

We will not indemnify **you** under this section in respect of **loss of business income** incurred during the time of the **waiting period** listed on item 4 of the Schedule.

13 Assistance and cooperation

- a **You** shall cooperate with **us** in all investigations. **You** shall execute or cause to be executed all papers and render all assistance as requested by **us**. Part of this assistance may require **you** to provide copies of a third party's system security and event logs.
- b Upon **our** request, **you** shall assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organisation who may be liable to **you** with respect to which insurance is afforded under this policy; and **you** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses at **your** own cost.
- c **You** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award, or dispose of any **claim** without **our** prior written consent. However, the prompt public admission of a **security breach** potentially impacting non-public personally identifiable information of **employees** or third parties as required by governmental privacy legislation or credit card association operating requirements will not be considered as an admission of liability requiring **our** prior consent; however **we** are to be informed as soon as practicable of such public admission if such public admission is a circumstance that could lead to a **claim**.
- d **We** shall have the right to make any investigation **we** deem necessary with respect to coverage including, but not limited to, any investigation with respect to the **application**, statements made in the **application** and any supplemental material submitted therewith.
- e **You** shall submit for examination under oath by **our** representative, if requested, in connection with all matters relating to this policy.

14 Inspection and audit

We shall be permitted, but not obligated, to inspect any of **your** property, operations, or records at any time.

15 Subrogation

If any payment is made under this policy and there is available to **us** any of **your** rights of recovery against any third party, then **we** shall maintain all such rights of recovery. **You** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. **You** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **damages, defence costs**, or any other amounts paid by **us**, and lastly to the **excess**. Any additional amounts recovered shall be paid to **you**.

16 Other insurance

This policy shall apply in excess of any other valid and collectible insurance policy available to **you**, including any **retention** or deductible portion thereof, unless such other insurance is written only as specific excess insurance over the limit of indemnity of this policy.

17 Entire agreement

By acceptance of this policy, **you** agree that this policy embodies all agreements between **you** and **us** relating to this policy. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or stop **us** from asserting any right under the terms of this insurance; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy and signed by **us**.

18 Assignment

The interest hereunder is not assignable by **you** or **your subsidiaries**. If an insured shall die or be adjudged incompetent, such insurance shall cover **your** legal representative as **you** would be covered under this policy.

19 Cancellation by you

If this policy is cancelled by **you**, **we** will refund the unearned premium computed at the customary short rate. No premium will be refunded where any **claims** or circumstances have been notified under this policy.

20 Cancellation by us

We will only cancel this policy if **you** fail to pay the premium within forty-five (45) days of the inception of this **policy period**, or if a principal, partner, executive officer, or director intentionally makes a material misrepresentation to **us** in regard to any **claim** notified to **us** under this policy; in which case, **we** will provide a notice of cancellation in accordance with applicable law.

21 Words and titles of paragraphs

The titles of paragraphs, section, provisions, or endorsements of or to this policy are intended solely for convenience and reference and are not deemed in any way to limit or expand the provisions to which they relate and are not part of this policy. Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

22 Dispute resolution

- a No action shall lie against **us** unless, as a condition precedent thereto, there shall have been full compliance with all terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment or award against **you** after actual trial or arbitration or by written agreement of **you**, the claimant, and **us**.
- b No person or organisation or any legal representative thereof who has secured such judgment, award, or written agreement shall thereafter be entitled to make a **claim** under this policy to the extent of the insurance afforded by this policy. No person or organisation shall have any right under this policy to join **us** as a party to an action or other proceeding against **you** to determine **your** liability nor shall **you** be entitled to join us to any proceedings against **you** by a third party. Bankruptcy or insolvency of **you** or of **your** estate shall not relieve **us** of **our** obligations hereunder.
- c Mediation. If any dispute arises between any insured and **us** involving this policy and/or a **claim** hereunder, it is hereby mutually agreed by **you** and **us** that such dispute shall be referred to a qualified mediator in a good faith effort to negotiate a resolution of the dispute, prior to the initiation of any arbitration or other proceedings. The party electing to mediate shall provide written notice to the other party setting forth its request to mediate and a brief statement regarding the issue to be mediated. The persons named in item 9 of the Schedule are authorised and directed to accept the Notice of Mediation on behalf of **us**. The **named insured** is authorised and directed to accept the Notice of Mediation on behalf of any insured.

- d Arbitration. As a condition precedent to any right of action hereunder, in the event that a good faith effort to mediate pursuant to Section 22 (c) above cannot resolve a dispute between any insured and **us** involving this policy or a **claim** or circumstance hereunder, it is hereby mutually agreed that such dispute shall be determined by final and binding arbitration before a single arbitrator. If the parties cannot mutually select the arbitrator, the parties will refer the selection of the arbitrator to the Chairman of the Bar Council.

23 Service of proceedings clause

- a Subject to the application of Section 22, it is agreed that in the event of **our** failure to pay any amount claimed to be due under this policy, **we** herein, at **your** request, will submit to the jurisdiction of a court of competent jurisdiction within England and Wales. Nothing in this clause constitutes or should be understood to constitute a waiver of **our** rights to commence an action in any court of competent jurisdiction in England and Wales, or seek a transfer of a case to another court as permitted by the laws of England and Wales. It is further agreed that service of proceedings may be made upon **our** representative, designated in item 9 of the Schedule, and that in any proceedings instituted against any one of them upon this contract, **we** will abide by the final decision of such court, or of any appellate court in the event of an appeal.
- b **Our** representative designated in item 9 of the Schedule is authorised and directed to accept service of proceedings on **our** behalf.

24 Choice of law

The interpretation of this policy or any disputes involving this policy shall be resolved applying the law designated in item 10 of the Schedule.

25 Warranty by you

By acceptance of this policy, all insureds agree that the statements contained in the **application**, any application for insurance if this policy is a renewal, and any supplemental materials submitted therewith are their agreements and representations, which shall be deemed material to the risk assumed by **us**, and that this policy is issued in reliance upon the truth thereof.

The misrepresentation or non-disclosure of any matter by **you** or **your** agent in the **application**, any application for insurance if this policy is a renewal, or any supplemental materials submitted to **us**, will render this policy void ab initio and relieve **us** from all liability under this policy.

The **application** and any application for insurance if this policy is a renewal, and any supplemental materials submitted to **us** are deemed incorporated into and made a part of this policy.

26 Forfeiture

Any:

1. action or failure to act by **you** with the intent to defraud **us**; or
2. material misrepresentation or non-disclosure of any material fact or **claims** by **you** in the **application** or in any supplemental materials submitted to **us**;

shall render this policy void ab initio, and all coverage hereunder shall be forfeited.

27 Third party rights

A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this contract but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

28 Data Protection Act 1998

Any information about **you** which **you** provide to **us** will be processed by **us** in compliance with the Data Protection Act 1998, for the purpose of providing insurance and handling claims, if any, which may necessitate providing such information to third parties.