



CPM

INSURANCE FOR CYBER, PRIVACY AND MEDIA RISKS

Esurance® CPM Policy Document

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PREAMBLE

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

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

IMPORTANT: INSURING CLAUSES I (SECTIONS A, B and F only), 4 and 5 provide cover on a claims made and reported basis. Under these **INSURING CLAUSES** a **claim** must be first made against **you** and notified to **us** during the **period of the policy** or the Extended Reporting Period to be covered.

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

INSURING CLAUSES

INSURING CLAUSE 1: CYBER & PRIVACY

SECTION A: CYBER LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** (regardless of who caused the **claim**) and notified to **us** during the **period of the policy** for any **third party** financial loss arising directly from a **hacking attack** or **virus** that has emanated from or passed through **your computer systems** or a **cloud computing provider's** systems.

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

SECTION B: PRIVACY LIABILITY

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

- a) an actual or suspected breach of any personally identifiable information (PII), including credit card information, or personal healthcare information (PHI); or
- b) **your** failure to adequately warn affected individuals or provide a timely breach notification; or
- c) a breach of any rights of confidentiality as a direct result of **your** failure to maintain the confidentiality of any data pertaining to an **employee**; or
- d) a breach of any rights of confidentiality, including a breach of any provisions of a non-disclosure agreement or breach of a contractual warranty relating to the confidentiality of commercial information or PII; or
- e) a breach of any part of **your** website's privacy statement; or
- f) a breach of any written contract between **you** and a **third party** governing the processing and storage of credit card information including any breach of the Payment Card Industry Data Security Standard (PCI DSS); or
- g) a breach of **your** data or data for which **you** are responsible that is located on a **cloud computing provider's** systems.

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

SECTION C: SYSTEM DAMAGE

We agree to pay on **your** behalf **rectification costs**, subject to **our** prior written agreement (such agreement not to be unreasonably withheld), which **you** incur:

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

SECTION D: SYSTEM BUSINESS INTERRUPTION

We agree to reimburse **you** for **your reduction in profit** during a **system outage period** as a direct result of a **cyber peril** first discovered during the **period of the policy**.

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

SECTION E: CONSEQUENTIAL REPUTATIONAL HARM

We agree to reimburse **you** for **your reduction in profit** during the **contingent period** as a direct result of the loss of current or future customers caused by damage to **your** reputation as a result of a system outage or **security breach** covered under **INSURING CLAUSE I, SECTION B** or **D** of this Policy for which **you** have purchased cover.

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

SECTION F: REGULATORY ACTIONS AND INVESTIGATIONS

We agree to pay on **your** behalf all **costs and expenses** and any resultant fines and penalties as a result of a **regulatory investigation** first initiated against **you** in writing and notified to **us** during the **period of the policy** arising out of an actual or suspected **security breach**.

INSURING CLAUSE 2: PRIVACY BREACH NOTIFICATION COSTS

SECTION A: YOUR NOTIFICATION COSTS

We agree to pay on **your** behalf all sums reasonably incurred, subject to **our** prior written agreement (such agreement not to be unreasonably withheld), as a result of an actual or alleged **security breach** first discovered during the **period of the policy**, to:

- a) fulfil any obligation **you** have to notify any **third party** or **employee**, including but not limited to the legal costs to draft appropriate notices for any **third party** or **employee** affected by the actual or suspected breach of privacy and the printing and postage costs to issue these notices or costs to issue any substitute notice; or
- b) provide credit monitoring services or an identity theft helpline; or
- c) conduct an independent security audit of **your computer systems** to identify the source and scope of the breach; or
- d) conduct a forensic investigation of **your computer systems** as required by law or a regulatory body (including a requirement for a PCI Forensic Investigator).

However, **we** will only pay these sums on **your** behalf where **you** are:

- i) legally obliged to incur them; or
- ii) not legally obliged to incur them, but where reimbursement will effectively mitigate or avoid a **claim** for which **you** would have been entitled to indemnity under **SECTION B** of **INSURING CLAUSE I** had these sums not been incurred; or
- iii) not legally obliged to incur them, but where reimbursement will effectively mitigate material damage to **your** brand or reputation.

SECTION B: THIRD PARTY NOTIFICATION COSTS

In the event that **you** experience a **security breach** during the **period of the policy** that creates a legal obligation for **your client** to notify affected individuals where **you** have contractually indemnified **your client** against this breach, **we** agree to pay on **your client's** behalf all sums reasonably incurred, subject to **our** prior written agreement (such agreement not to be unreasonably withheld), to fulfil any obligation they have to notify any **third party** or to provide credit monitoring services or establish an identity theft helpline.

INSURING CLAUSE 3: CYBER CRIME

SECTION A: COMPUTER CRIME

We agree to reimburse **you** for **loss** first discovered and notified to **us** during the **period of the policy** as a direct result of any **third party** committing:

- any unauthorised electronic funds transfer; or
- theft of money or other financial assets from **your** bank account or corporate credit cards by electronic means; or
- theft of any of **your** digital assets; or
- any fraudulent manipulation of electronic documentation.

SECTION B: IDENTITY THEFT

We agree to reimburse **you** for **loss** first discovered and notified to **us** during the **period of the policy** arising as a direct result of the fraudulent use or misuse of **your** electronic identity including the establishment of credit in **your** name, the electronic signing of any contract, the creation of any website designed to impersonate **you** or the reliance by any **third party** on a fraudulent version of **your** digital identity.

SECTION C: CYBER THREATS AND EXTORTION

We agree to reimburse **you** for all reasonable sums incurred as a direct result of a specific threat first made against **you** and notified to **us** during the **period of the policy** to:

- prevent access to **your computer systems** or any **third party** systems hosting **your** applications or data including **cloud computing providers**; or
- introduce a **virus** into **your computer systems**; or
- reveal **your** confidential information or confidential information entrusted to **you**; or
- damage **your** brand or reputation by posting false or misleading comments about **you** on social media sites.

However, **we** will only pay on **your** behalf any sums incurred in respect of:

- the cost of hiring an independent computer security consultant to assess the credibility of any threat; or
- the cost of consultancy services in relation to preventing the immediate threat; or
- the cost of offering a reward in order to identify the perpetrators of the threat; or
- the reimbursement of any ransom **you** are required to pay in the event that the above measures fail to mitigate the threat against **you**.

SECTION D: TELEPHONE HACKING

We agree to reimburse **you** for **loss** first discovered and notified to **us** during the **period of the policy** as a direct result of **your** telephone system being hacked by a **third party** including the cost of unauthorised calls or unauthorised use of **your** bandwidth.

SECTION E: PHISHING SCAMS

We agree to reimburse **you** in the event of fraudulent electronic communications or websites designed to impersonate **you** or any of **your products** first discovered and notified to **us** during the **period of the policy**, for:

- the cost of creating and issuing a specific press release or establishing a specific website to advise **your** customers and prospective customers of the fraudulent communications; and
- the cost of reimbursing **your** existing customers for their financial losses arising directly from the fraudulent communications; and
- your reduction in profit** as a direct result of the fraudulent communications.

INSURING CLAUSE 4: MULTIMEDIA LIABILITY AND ADVERTISING INJURY

SECTION A: DEFAMATION

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

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

arising out of **media content** or **user generated content**.

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

SECTION B: INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

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

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

arising out of **media content** or **user generated content**.

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

SECTION C: INVASION OF RIGHTS OF PRIVACY

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

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

arising out of **media content** or **user generated content**.

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

SECTION D: CONTENT LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** (regardless of who caused the **claim**) and notified to **us** during the **period of the policy** for any negligent act, error, omission, advice, misstatement or misrepresentation arising out of **media content** or **user generated content**.

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

INSURING CLAUSE 5: TECHNOLOGY ERRORS AND OMISSIONS

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

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

INSURING CLAUSE 6: COURT ATTENDANCE COSTS

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

INSURING CLAUSE 7: CRISIS COMMUNICATIONS COSTS

We agree to pay costs reasonably incurred, subject to **our** prior written agreement (such agreement not to be unreasonably withheld), for the

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

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

HOW MUCH WE WILL PAY

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

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

Where cover is provided under multiple **SECTIONS** of an **INSURING CLAUSE** or multiple **INSURING CLAUSES** the maximum amount payable by **us** in respect of that **claim** shall be the highest Limit of Liability of the **SECTIONS** or **INSURING CLAUSES** under which cover is provided.

In respect of **INSURING CLAUSES 1 (SECTIONS A and B only), 4 and 5** we may at any time pay to **you** in connection with any **claim** the amount of the **aggregate limit of liability** or **limit of liability** (after deduction of any amounts already paid). Upon such payment being made **we** shall relinquish the conduct and control of the **claim** and be under no further liability in connection with that **claim** except for the payment of **costs and expenses** incurred prior to the date of such payment (unless the **aggregate limit of liability** or **limit of liability** is stated to be inclusive of **costs and expenses**).

Notwithstanding the restrictions contained in the section of the Policy, in the event of a **claim** under **INSURING CLAUSES 1 and 2** that arises from the same original cause or single source or event both **aggregate limits of liability** or **limits of liability** will be available and no aggregation shall apply across these two **INSURING CLAUSES**.

YOUR DEDUCTIBLE

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

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

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

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

DEFINITIONS

1. **“Aggregate limit of liability”**
means the maximum amount payable as stated in the Schedule by **us** in respect of all **claims** and **losses**.
2. **“Claim”**
means:
 - a) a demand for money, services, retraction or correction, including the service of suit or initiation of arbitration or mediation proceedings; or
 - b) a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction) or declaratory relief; or
 - c) a disciplinary action or **regulatory investigation**.
3. **“Client”**
means any **third party** with whom **you** have a contract in place for the supply of **your** business services in return for a fee, or where a fee would normally be expected to be paid.
4. **“Cloud computing provider”**
means a **third party** that provides **you** with hosted computing services accessed across the internet or dedicated network links including infrastructure, platform, file storage and application level services.
5. **“Computer systems”**
means all electronic computers including operating systems, software, hardware and all communication and open system networks and any data or websites wheresoever hosted, including

cloud computing providers, off-line media libraries and data back-ups and mobile devices including, but not limited to smartphones, iphones, tablets or personal digital assistants.

6. **“Contingent period”**
means the period immediately following a **system outage period** that is a direct result of:
 - a) a system outage or a **security breach** covered under **INSURING CLAUSE 1, SECTION B or D** of this Policy for which **you** have purchased cover; or
 - b) a **cyber peril** first discovered during the **period of the policy**.

The maximum **Contingent Period** is as stated in the Schedule.

7. **“Corporate blogging”**
means creating or editing a web log, discussion forum post, online comment, or other associated social media activity where the primary purpose of that activity is to promote **you** or the individual's position within **your** industry even if the nature of the content is not directly associated with **your** business activities.
8. **“Costs and expenses”**
means:
 - a) **your** legal costs and expenses in the defence or settlement of any **claim** made against **you**; and
 - b) **your** costs and expenses incurred as a result of **regulatory investigation**; and

- c) **your** costs and expenses as a result a **third party** forensic audit or information technology security consultants; and
- d) **your** legal costs and expenses incurred in quashing or challenging the scope of any subpoena or witness summons ordering **you** to disclose or produce any information or material which was created, produced or disseminated by **you**; and
- e) interest on that part of any judgment **we** pay that accrues after entry of the judgment and before **we** have paid, offered to pay, or deposited in court the part of the judgment that is within the **limit of liability**; and
- f) **your** costs and expenses to access **our** 24 hour privacy breach hotline.

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

If **costs and expenses** are shown in the Schedule to be in addition to the **aggregate limit of liability** or **limit of liability**, and if a payment in excess of the amount of indemnity available hereunder has to be made to dispose of any **claim**, **our** liability for such **costs and expenses** shall be such proportion thereof as the amount of indemnity available hereunder bears to the amount required to dispose of such **claim**, subject always to the maximum amount of **costs and expenses** shown in the Schedule.

9. **"Cyber peril"**
means any **hacking attack**, **virus** or malicious damage that adversely affects the availability of **your computer systems** or a **cloud computing provider's** systems.
10. **"Employee"**
means any:
a) person employed by the company named as the Insured in the Schedule, or any **subsidiary**; or
b) person undertaking study or work experience or youth training scheme with the company named as the Insured in the Schedule, or any **subsidiary**.
- Employee** does not include any **senior executive officer** of the company named as the Insured in the Schedule, or any **subsidiary**.
11. **"Hacking attack"**
means any malicious or unauthorised electronic attack including but not limited to any fraudulent electronic signature, brute force attack, phishing, denial of service attack, that has been initiated by any **third party** or by any **employee** and that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of **computer systems**.
12. **"Limit of liability"**
means the maximum amount payable by **us** as stated in the Schedule in respect of each **claim** or **loss**.
13. **"Loss"**
means direct financial loss sustained by **you**.
14. **"Media content"**
means any content including but not limited to **your** website, chat rooms, tweets, bulletin boards, databases, software and any posting through a social media channel.
- Media content** does not include any:
a) tangible product design; or
b) industrial design; or
c) architectural design or architectural services; or
d) any advertisement created by **you** for a **third party**; or
e) business, company, product or trading name; or
f) product packaging or labelling.
15. **"Period of the policy"**
means:
a) the period between the Inception Date shown in the Schedule and the Expiry Date shown in the Schedule; or
b) the period between the Inception Date shown in the Schedule and the date on which the Policy is cancelled in accordance with the cancellation **CONDITION**.

16. **"Rectification costs"**
means those costs that **you** incur as a result of the use of external consultants, contractors or advisers or any additional costs that **you** incur to pay **your employees**.
- For the avoidance of doubt, **rectification costs** do not include any hardware costs, basic salaries of **your employees** or **your** office expenses or any payments that **you** have paid or agreed to pay as part of any service or maintenance contract.
17. **"Reduction in profit"**
means **your** reasonably forecasted income before tax for the Indemnity Period, less:
a) actual income less sales tax for the Indemnity Period; and
b) any saving in costs as a result of the reduction in income; as determined by an independent expert appointed by the Claims Managers.
18. **"Regulatory investigation"**
means a formal hearing, official investigation, examination, inquiry or any other similar proceeding initiated by a governmental, regulatory, law enforcement, professional or statutory body.
19. **"Security breach"**
means an actual or suspected breach of data security where information is unintentionally revealed whether by electronic means or in paper format.
- "Security breach"** does not mean a situation where information is deliberately shared with or sold to a **third party** with the knowledge and consent of a **senior executive officer**.
20. **"Senior executive officer"**
means board members, executive officers, in-house lawyers, risk managers, chief operating officers, chief technology officers, chief information officers, and chief privacy officers of the company named as the Insured in the Schedule, or any **subsidiary**.
21. **"Subsidiary"**
means any company which the company named as the Insured in the Schedule controls through:
a) holding 50% or more of the voting rights; or
b) having the right to appoint or remove 50% or more of its board of directors; or
c) controlling alone, pursuant to a written agreement with other shareholders or members, 50% or more of the voting rights therein.
22. **"System outage period"**
means the period during which **your computer systems** or a **cloud computing provider's** systems are unavailable or operating at less than full operational capacity as a direct result of the **cyber peril**. In the event of an intermittent problem causing repeated unavailability of systems as a direct result of the same proximate cause this will be deemed to be one continuous period.
- The maximum **system outage period** is as stated in the Schedule.
23. **"Technology services"**
means the supply by **you** of technology services to **your client**, including but not limited to hardware, software, data processing, internet services, data and application hosting, computer systems analysis, consulting, training, programming, installation, integration, support and network management.
24. **"Third party"**
means:
a) any person who is not a **senior executive officer** or **employee** of the company named as the Insured in the Schedule or any **subsidiary**; or
b) a company other than the company named as the Insured in the Schedule, or any **subsidiary**.
25. **"User generated content"**
means any content including, but not limited to, content disseminated through websites, social networks, chat rooms, bulletin boards, databases, blogs or mobile phones which is not created by **you** or on **your** behalf.

26. **“Virus”**
means any malicious software code including but not limited to any logic bomb, Trojan horse or worm that has been introduced by any **third parties** or by any **employees** and that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of **computer systems**.
27. **“We/our/us”**
means the Underwriters named in the Schedule.
28. **“You/your”**
means:
a) the company named as the Insured in the Schedule, or any **subsidiary**; and
b) any past, present or future **senior executive officer** or **employee** of the company named as the Insured in the Schedule, or any **subsidiary**.

EXCLUSIONS

We will not:

- a) make any payment on **your** behalf for any **claim**; or
 - b) incur any **costs and expenses**; or
 - c) reimburse **you** for any **loss, rectification costs, fees** or other costs sustained by **you**:
1. **Antitrust**
for or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive advertising other than:
 - a) where specifically covered under **INSURING CLAUSE I** for which **you** have purchased coverage; or
 - b) any covered portion of any **claim** based on **your** alleged unauthorised use of a **third party's** trademark.
 2. **Associated companies**
 - a) in respect of any **claim** made by any company, firm or partnership in which the company named as the Insured in the Schedule has greater than a 10% executive or financial interest, unless such **claim** emanates from an independent **third party**; or
 - b) in respect of any **claim** made by any company, firm, partnership or individual which has greater than a 10% executive or financial interest in the company named as the Insured in the Schedule or any **subsidiary**, unless such **claim** emanates from an independent **third party**; or
 - c) arising out of or as a result of any of **your** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organisation, corporation, company or business other than that of the company named as the Insured in the Schedule or any **subsidiary**; or
 - d) in respect of any **claim** made by or on behalf of the company named as the Insured in the Schedule or any **subsidiary**.
 3. **Betterment**
where **our** payment on **your** behalf in respect of the **claim** or reimbursement of the **loss** would result in **you** being in a better financial position, or having better computer systems than would have been the case in the absence of the act, error or omission which gave rise to the **claim** or the event which gave rise to the **loss**.
 4. **Chargebacks**
any credit card company or bank, wholly or partially reversing or preventing a payment transaction, unless specifically covered under **INSURING CLAUSE I, SECTION B** for which **you** have purchased cover.
 5. **Claims and circumstances known at inception**
arising out of any **security breach, crime, hacking attack** or **virus** of which a **senior executive officer** was aware, or ought reasonably to have been aware, prior to the Inception Date of this Policy, whether notified under any other insurance or not.

In respect of **INSURING CLAUSES 4** and **5** only, arising out of any circumstances which could give rise to a **claim** or **loss** under this Policy of which a **senior executive officer** was aware, or ought reasonably to have been aware, prior to the Inception Date of this Policy, whether notified under any other insurance or not.
 6. **Core internet infrastructure failure**
in respect of **INSURING CLAUSE I, SECTIONS C** and **D** only, arising directly from a failure of any core element of the internet infrastructure that results in a countrywide or global outage of the internet, including a failure of the core DNS root servers or the IP addressing system.
 7. **ERISA**
based upon the Employment Retirement Income Security Act of 1974 and any amendment thereto, or any rules or regulations promulgated thereunder.
 8. **Insolvency**
arising out of or relating directly or indirectly to **your** insolvency or bankruptcy, or the insolvency or bankruptcy of any **third party**. Furthermore, no coverage is provided under **INSURING CLAUSE I, SECTIONS D** or **E** if **you** become insolvent or bankrupt.

However, your insolvency shall not relieve us of any of our legal obligations under this contract of insurance where this insolvency does not give rise to a claim.
 9. **Liquidated damages, service credits and penalty clauses**
in respect of **INSURING CLAUSE 5** only, for liquidated damages or service credits, or arising out of penalty clauses unless **you** would have been liable in the absence of any contract stipulating the liquidated damages or service credits or penalty clauses.
 10. **Minimum outage period**
in respect of **INSURING CLAUSE I, SECTION D** only, arising out of any **system outage period** lasting less than the Minimum Outage Period stated in the Schedule.
 11. **Misleading advertising**
arising directly or indirectly from any actual or alleged advertisement which is false or misleading.
 12. **Nuclear**
arising directly or indirectly from or contributed to by:
 - a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
 - b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
 13. **Patents**
arising out of the actual or alleged infringement of any patent or inducing the infringement of any patent.
 14. **Personal liability**
made against any past, present or future **senior executive officer** or **employee** of the company named as the Insured in the Schedule or any **subsidiary**; unless:
 - a) that **claim** would have been covered under this Policy if it had been made solely against the company named as the Insured in the Schedule or any **subsidiary**; and
 - b) the act or event which gave rise to the **claim** was committed by a **senior executive officer** or **employee** acting within the scope of their duties as a **senior executive officer** or **employee** including **corporate blogging**, when the act or event was committed.

15. **Professional liability**
arising directly out of any negligent advice or professional services provided to a **client** for a fee.
- However, this **EXCLUSION** shall not apply to **INSURING CLAUSE 5**.
16. **RICO**
for any actual or alleged violations of the Racketeer Influenced and Corrupt Organisation Act 18 USC Sections 1961 et seq and any amendments thereto, or any rules and regulations promulgated thereunder.
17. **SEC**
for any actual or alleged violation of any of the provisions of the Securities Act of 1933, the Securities Exchange Act 1934 or any similar regional, provincial, territorial, federal or state law or any common law relating thereto.
18. **Uninsurable fines**
for fines, penalties, civil or criminal sanctions, multiple, punitive or exemplary damages, unless insurable by law.
19. **Unlawful surveillance**
in respect of any actual or alleged:
a) eavesdropping; or

- b) wiretapping; or
c) unauthorised audio or video recording; committed by **you** with the knowledge and consent of **your senior executive officers**.
20. **Unsolicited communications**
arising directly or indirectly from any actual or alleged violation of:
a) the CAN-SPAM Act of 2003 or any subsequent amendments to that Act; or
b) the Telephone Consumer Protection Act (TCPA) of 1991 or any subsequent amendments to that Act; or
c) any other law, regulation or statute relating to unsolicited communication, distribution, sending or transmitting of any communication via telephone or any other electronic or telecommunications device.
21. **Wilful or dishonest acts of senior executive officers**
arising out of any wilful, malicious, reckless or dishonest act or omission by any **senior executive officer**, unless the person had already ceased to be a **senior executive officer** of the company named as the Insured in the Schedule and all **subsidiaries** at the time of their first wilful, malicious, reckless or dishonest act or omission. Furthermore **we** will not provide any cover for any **senior executive officer** who condones or ignores any dishonesty.

CONDITIONS

1. **What you must do in the event of a claim or loss**
Should a **senior executive officer** become aware of any **claim or loss** the following obligations must be complied with by **you**:
- a) **You** must not admit liability for or settle or make or promise any payment in respect of any **claim or loss** which may be covered under this Policy. Neither must **you** incur any **costs and expenses** in connection with the **claim or loss** without **our** written agreement.
- b) The Claims Managers, as specified in the Schedule, must be notified as soon as is reasonably practical if during the **period of the policy**:
- i) **you** suffer any **loss** that could be covered by this Policy or a **senior executive officer** becomes aware that a **claim** has been made against **you**, whether verbal or made in writing; or
- ii) a **senior executive officer** discovers reasonable cause for suspicion of fraud or dishonesty whether this could give rise to a **claim** under this Policy or not and **we** shall not be liable under this Policy for any **claim or loss** sustained in consequence of any fraudulent or dishonest act or omission committed after the date of such discovery.
- We** have nominated Claims Managers to accept notice on **our** behalf. Due to the nature of the coverage offered by this Policy, any unreasonable delay by **you** in notifying the Claims Managers of (i) or (ii) above could lead to the size of the **claim or loss** increasing or to **our** rights being restricted. **We** shall not be liable for that portion of any **claim** that is due to any unreasonable delay in **you** notifying the Claims Managers of any **claim or loss** in accordance with this clause.
- c) **We** will expect **you** to provide **us** with full and accurate information about any matter that **you** notify to **us** under **your** obligations set out above. Once notice has been made **you** must give the Claims Managers all the assistance and information that is reasonably required. **You** must follow their advice and do anything that they reasonably require **you** to do to avoid, minimise, settle or defend any **claim or loss**.
- If **you** think a crime has been committed **you** must report it to the appropriate law enforcement authorities. **You** must also permit the Claims Managers and any other parties that are appointed by the Claims Managers to notify the appropriate law enforcement authorities of any **claim or loss** where this action is deemed necessary, and **you** must comply with the advice given by these authorities.

2. **What you must do in the event of a circumstance which may give rise to a claim**
Should a **senior executive officer** become aware of:
- a) a situation that could give rise to a **claim**; or
b) an allegation or complaint made or intimated against **you**;
- then **you** have the option of whether to report this circumstance to **us** or not. However, if **you** choose not to report this circumstance **we** shall not be liable for that portion of any **claim** that is greater than it would have been had **you** reported this circumstance.
- If **you** choose to report this circumstance, **you** must do so within the **period of the policy**, or the period of any applicable Extended Reporting Period, for it to be considered under this Policy and **we** will require **you** to provide full details of the circumstance, including but not limited to:
- a) the time, place and nature of the circumstance; and
b) the manner in which **you** first became aware of this circumstance; and
c) the reasons why **you** believe that this circumstance is likely to result in a **claim**; and
d) the identity of the potential claimant; and
e) an indication as to the size of the **claim** that could result from this circumstance.
- Any subsequent **claim** arising directly from this circumstance shall be deemed to have been made at the time this circumstance was notified to **us** and we will regard this **claim** as being notified under this Policy.
3. **Cease and desist notices and blocking orders**
The receipt by **you** of any cease and desist notice or blocking order does not constitute a **claim or loss** under this Policy or, for the purpose of **CONDITION 2**, a circumstance that may give rise to a **claim**. However, **you** must provide **us** with a full list of such notices upon **our** request and provide this list within 30 days of any such request.
4. **Continuous cover**
If **you** have neglected, through error or oversight only, to report a **claim** made against **you** during the period of a previous renewal of this Policy issued to **you** by **us**, then provided that **you** have maintained uninterrupted insurance of the same type with **us** since the expiry of that earlier Policy, then, notwithstanding **EXCLUSION 5**, **we** will permit the matter to be reported under this Policy and will indemnify **you**, provided that:
- a) the indemnity will be subject to the applicable **aggregate limit of liability** or **limit of liability** of the earlier Policy

under which the matter should have been reported or the **aggregate limit of liability** or **limit of liability** of the current Policy, whichever is the lower;

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

5. **Fraudulent claims**

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

6. **Agreement to pay claims (duty to defend)**

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

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

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

7. **Innocent non-disclosure**

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

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

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

However, where more than one company is named as the Insured in the Schedule **we** agree that in the event that **we** seek to reject any claim on the basis of this **CONDITION** because of the actions or inactions of one of the companies named as the Insured in the Schedule it shall not prejudice the right of any other company named as the Insured in the Schedule to indemnity under this Policy; provided always that such other Insured shall:

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

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

8. **Our rights of recovery**

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

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

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

9. **Cancellation**

This Policy may be cancelled:

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

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

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

10. **Additional insureds**

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

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

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

- i) they shall prove to **our** satisfaction that the **claim** arose solely out of an act, error or omission committed by **you**; and
- ii) they shall fully comply with **CONDITION 1(a)** above as if they were **you**.

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

11. **Prior subsidiaries**

In respect of **INSURING CLAUSES 1 (SECTIONS A and B only), 4 and 5**, should an entity cease to be a **subsidiary** after the Inception Date of this Policy, cover in respect of this entity shall continue as if it was still a **subsidiary**, until the termination of this Policy, but only in respect of any **claim** or **loss** that arises out of any act, error or omission committed by that entity prior to the date that it ceased to be a **subsidiary**.

12. **Mergers and acquisitions**

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

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

then **you** shall have no coverage under this Policy for any **claim** or **loss** that arises directly or indirectly out of the purchased or

acquired entity unless the company named as the Insured in the Schedule gives **us** written notice prior to the purchase or acquisition, obtains **our** written agreement to extend coverage to such additional entities, assets or exposures, and agrees to pay any additional premium required by **us**.

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

13. Extended reporting period

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

14. Optional extended reporting period

If **we** or **you** decline to renew or cancel this Policy then **you** shall have the right, upon payment of the Optional Extended Reporting Period Premium shown in the Schedule in full and not proportionally or otherwise in part, to have issued an endorsement providing a 365 day Optional Extended Reporting Period which shall be effective from the cancellation or non-renewal date. This Optional Extended Reporting Period shall cover **claims** first made against the company named as the Insured in the Schedule or any **subsidiary** and notified to **us** during this Optional Extended Reporting Period but only in respect of any **claim** arising out of any act, error or omission committed prior to the date of cancellation or non-renewal, and subject to all other terms, conditions and exclusions of the policy.

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

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

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

- a) Cancellation or non-renewal by **us** is due to non-payment of premium, or

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

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

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

16. Disputes resolution

This Policy does not comply with the Insurance Council of Australia's General Insurance Code of Practice. Any enquiry or complaint relating to this insurance should be referred to:

The Managing Director
CFC Underwriting Ltd
85 Gracechurch Street
London EC3V 0AA
United Kingdom
Telephone Number: +44 207 220 8500
Facsimile Number: +44 207 220 8501
Email: enquiries@cfcunderwriting.com

in the first instance. If this does not resolve the matter or **you** are not satisfied with the way a complaint has been dealt with, **you** should contact:

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21
Angel Place
123 Pitt Street
Sydney NSW 2000
Telephone Number: (02) 9223 1433
Facsimile Number: (02) 9223 1466

If **your** dispute remains unresolved **you** may be referred to the Financial Ombudsman Service Limited under the terms of the General Insurance Code of Practice. For other disputes **you** will be referred to other proceedings for resolution. Details are available from Lloyd's Underwriters' General Representative in Australia at the address above.

Notwithstanding the above, at **your** request **we** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia and the dispute shall be determined in accordance with the law and practice applicable in such Court. Any summons, notice or process to be served upon **us** may be served upon Lloyd's General Representative in Australia, at the address above, who has authority to accept service and to enter an appearance on **our** behalf, and who is directed at **your** request to give a written undertaking to **you** that he will enter an appearance on **our** behalf.

CPM



INSURANCE FOR CYBER, PRIVACY AND MEDIA RISKS



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