

Liability

Cyber Base

Policy wording



Welcome to NZI.

Thanks for selecting us as your insurer.
This is your Liability Cyber Base policy wording.



Why NZI

NZI is one of New Zealand's largest and most well-known insurance brands. We're proudly backed by IAG (Insurance Australia Group) New Zealand. IAG is Australasia's largest general insurer. At IAG, our purpose is to make your world a safer place.



Get in touch

If you have any questions, or you would like more information on this insurance policy, please contact your broker.

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Introduction

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| Welcome | Welcome to NZI. Thank you for selecting us as your insurer. |
| About this policy | The insured's policy consists of: <ul style="list-style-type: none">(a) this policy document, and(b) the schedule, and(c) any endorsements or warranties that we apply, and(d) the information the insured has provided in the application. |
| Duty of disclosure | <p>When the insured applies for insurance, they have a legal duty of disclosure. This means the insured or anyone acting on the insured's behalf must tell us everything they know (or could be reasonably expected to know) that a prudent insurer would want to take into account in deciding:</p> <ul style="list-style-type: none">(a) to accept or decline the insurance, and/or(b) the cost or terms of the insurance, including the excess. <p>The insured also has this duty every time their insurance renews and when they make any changes to it.</p> <p>If the insured or anyone acting on the insured's behalf breaches this duty, we may treat this policy as being of no effect and to have never existed. Please ask us if you are not sure whether you need to tell us about something.</p> |
| Defined words | If a word is shown in bold , it has a specific meaning. There is a list of these words and what they mean in Section 8 – 'Definitions'. |
| Examples | We have used examples and comments to make parts of this policy document easier to understand. These examples and comments, which appear in <i>italics</i> , do not affect or limit the meaning of the section they refer to. |
| Headings | The headings in this policy document are for reference only and do not form part of it. They must not be used when interpreting the policy document. |

Section 1 – Insurance agreement

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| 1.1 Our agreement | The insured agrees to pay us the premium and comply with this policy. In exchange, we agree to provide cover to the insured as set out in this policy. |
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Section 2 – The cover we provide

The provisions of Section 2 apply to all Sections of this policy unless stated to the contrary.

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| 2.1 Privacy | <p>We will pay, on behalf of the insured, all sums which the insured becomes legally obliged to pay (including liability for claimants' costs and expenses) and defence costs resulting from any claim first made against the insured and notified to us in writing as soon as reasonably possible during the period of insurance as a direct result of:</p> <ul style="list-style-type: none">(a) Personal information The breach, by or on behalf of the policyholder, in respect of any natural person, of any privacy obligations.(b) Commercially confidential information Any actual or alleged unauthorised disclosure, loss or theft of commercially confidential information, by or on behalf of the policyholder.(c) Employee information The breach, by or on behalf of the policyholder, of any privacy obligations relating to any employee as a direct result of the insured's failure to maintain the confidentiality and/or security of any:<ul style="list-style-type: none">(i) computer records pertaining to such employee; and/or(ii) data or information pertaining to such employee stored on the policyholder's computer systems. |
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(d) **Breach of personal and/or commercially confidential information outsourced by the policyholder**

any actual or alleged unauthorised disclosure, loss or theft of:

- (i) **personal information**; or
- (ii) **commercially confidential information**,

in the care, custody or control of any **service provider** where such information is authorised to be in the care, custody or control of the **service provider** by the **policyholder** pursuant to a written contract.

2.2 System damage

(a) **We will pay rectification costs** incurred:

- (i) in retrieving, repairing, restoring or replacing any of the **policyholder's computer records** (or any other **computer records** for which the **policyholder** is responsible) that have been destroyed, damaged, lost, altered, distorted, erased or mislaid (and which after diligent search cannot be found);
- (ii) in repairing, restoring or replacing any of the **policyholder's computer systems** that have been destroyed, damaged, altered, distorted, erased or mislaid (and which after diligent search cannot be found),

as a direct result of any **cyber event** first discovered by an **insured** and notified to **us** in writing as soon as reasonably possible during the **period of insurance**.

(b) The **sub-limit** with respect to the cover provided in (a) above is specified in the **schedule**.

2.3 Computer virus transmission and hacking

We will pay, on behalf of the **insured**, all sums which the **insured** becomes legally obliged to pay (including liability for claimants' costs and expenses) and **defence costs** resulting from any **claim** first made against the **insured** and notified to **us** in writing as soon as reasonably possible during the **period of insurance** as a direct result of any **third party's** financial losses arising directly from:

- (a) a **hacking attack** or **virus** that has emanated from or passed through the **policyholder's computer systems**; or
- (b) a **hacking attack** or **virus** that restricts or prevents access to the **policyholder's computer systems** by **third parties** authorised by the **insured** to gain such access; or
- (c) the loss or theft of the **policyholder's** data or data for which the **policyholder** is responsible or alleged to be responsible for, arising directly from a **hacking attack** or **virus**.

2.4 Multimedia liability

We will pay, on behalf of the **insured**, all sums which the **insured** becomes legally obliged to pay (including liability for claimants' costs and expenses) and **defence costs** resulting from any **claim** first made against the **insured** and notified to **us** in writing as soon as reasonably possible during the **period of insurance** as a direct result of:

- (a) libel, slander or defamation;
- (b) invasion of or interference with the right to privacy, including those of **employees**, or commercial appropriation of names or likeness;
- (c) plagiarism, piracy or misappropriation of ideas;
- (d) infringement of copyright, domain name, commercial title or slogan, the dilution or infringement of trademark, service mark, service name or trade name;

arising directly from:

- (i) the **policyholder's internet and email content**; or
- (ii) the **policyholder's promotional material**; or
- (iii) **third party** digital content downloaded, shared or distributed from the **policyholder's computer systems**.

2.5 Cyber extortion cover

(a) **We agree to pay cyber extortion costs** arising solely from a **security threat** first made against the **insured** and notified to **us** in writing as soon as reasonably possible during the **period of insurance**.

(b) The **sub-limit** with respect to the cover provided in (a) above is specified in the **schedule**.

Any **cyber extortion costs** paid under this Section 2.5 shall be subject to local legal requirements and in cooperation with and under the direction of any appropriate criminal enforcement or other **authority** where required.

Exclusion 5.17 (d) and 5.17 (e) do not apply to this Section 2.5.

Section 3 – Automatic policy extensions

The following Automatic policy extensions are included automatically and are subject to the policy terms, unless otherwise stated.

- 3.1 Privacy fines and investigations**
- (a) **We** will also pay, to the extent **we** are permitted to by law any:
- (i) **fine or penalty** payable by the **policyholder** as a direct result of a breach by the **insured** of its **privacy obligations**; and/or
 - (ii) **regulatory investigation costs** into such breach.
- Exclusion 5.14 'Fines and penalties' does not apply to this extension.
- (b) Notice of the **regulatory investigation** into the breach specified in (a) above is first received by the **insured** and is notified to **us** in writing as soon as reasonably possible during the **period of insurance**.
- (c) The **sub-limit** with respect to the cover provided in (a) above is specified in the **schedule**.
- 3.2 Privacy breach notification and loss mitigation**
- (a) **We** agree to pay or reimburse **privacy breach costs** incurred as a direct result of a **cyber event**, provided that the **insured** incurred such costs in order to:
- (i) fulfil a legal obligation; or
 - (ii) mitigate the effects of a **cyber event** for which the **insured** would be entitled to cover under Section 2.1.
- (b) The limit with respect to the cover provided in (a) above is \$25,000 per **claim** unless **our** prior written consent has been obtained in which case the **sub-limit** specified in the **schedule** will apply.
- 3.3 Advancement of defence costs**
- (a) If **we** elect not to take over and conduct the defence or settlement of any **claim**, then **we** will pay all **defence costs** provided that:
- (i) **we** have not denied cover under the policy and where cover is denied, only up to the point of any denial of cover; and
 - (ii) **our** written consent is obtained prior to the **policyholder** incurring such **defence costs** (such consent shall not be unreasonably delayed or withheld).
- (b) The **insured** on whose behalf or for whose benefit **defence costs** were paid, shall repay to **us**, and **we** reserve the right to recover all such **defence costs**, in the event and to the extent that:
- (i) an express admission is made by the **insured** or any person authorised to make such an admission on behalf of the **insured**, of any of the conduct as set out in Section 5.11; or
 - (ii) it is subsequently established, directly or indirectly, by judgment or other final adjudication, that conduct of the type as set out in Section 5.11 occurred.
- 3.4 Continuous cover**
- (a) **We** cover the **insured** for any **claim** otherwise covered by this extension, arising from a **known circumstance** (notwithstanding Section 5.1 of this policy) if:
- (i) there has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such **known circumstance**;
 - (ii) **we** were the cyber liability insurer of the **insured** when the **insured** first knew of such **known circumstance**;
 - (iii) **we** continued without interruption to be the **insured's** cyber liability insurer up until this policy came into effect;
 - (iv) had **we** been notified of the **known circumstance** when the **insured** first knew of it, the **insured** would have been covered under the policy in force at that time but is not now entitled to be covered by that policy, and the **insured** would (but for Section 5.1 of this policy) otherwise be covered under this policy; and
 - (v) the **known circumstance** has not previously been notified to **us** or to any other insurer.
- (b) If the **insured** was entitled to have given notice of the **known circumstance** under any other policy of insurance with any other insurer, then this extension does not apply to provide cover under this policy.
- (c) **Our** liability under this extension is reduced to the extent of any prejudice **we** suffer as a result of any delayed notification of the **known circumstance** to **us**.
- (d) The **limit of indemnity** or **sub-limit** as applicable of the cover **we** provide under this extension is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph (a) (ii) above, or under this policy. The terms of this policy otherwise apply.

- 3.5 Extended reporting period**
- (a) In the event that this policy is not renewed or is cancelled for any reason other than non payment of premium then the **policyholder** has until such time that the **policyholder** effects another insurance policy which covers substantially the same risk as this policy, either with **us** or any other insurer(s), or a period of thirty (30) days commencing on the day immediately following expiry/cancellation of this policy, whichever is sooner, to notify **us** in writing of any **claims** made against or **losses** discovered by, the **insured** during the **period of insurance**.
- (b) Cover under this extension:
- (i) does not reinstate or increase the **limit of indemnity** or extend the **period of insurance**; and
- (ii) will only apply to acts, errors or omissions committed or alleged to have been committed before the end of the **period of insurance** or the cancellation date of this policy where this policy has been cancelled; and
- (iii) is limited to **claims** and **losses** arising from an act, error or omission which occurred on or after the 'Retroactive date' specified in the **schedule**.
- 3.6 Former subsidiaries run-off cover**
- We** cover any former **subsidiary** of the **policyholder** for **claims**, liabilities, losses or costs of the type and on the basis specified in Sections 2 and 3 of this policy, provided that such cover shall only apply in respect of:
- (a) The conduct of the **insured business**; and
- (b) Acts, errors or omissions which occurred after the 'Retroactive date' specified in the **schedule** and prior to the date on which such **subsidiary** ceased to be a **subsidiary** of the **policyholder**.
- 3.7 Merged and/or newly acquired subsidiaries**
- We** cover entities which are merged with or acquired by the **policyholder** while this policy is in force for **claims**, liabilities losses or costs of the type and on the basis specified in Sections 2 and 3 of this policy, provided that:
- (a) such cover shall only apply in respect of the conduct of substantially the same type of **insured business** as covered by this policy.
- (b) this cover is only for a maximum of thirty days from the date of the merger or acquisition (or until the policy expires if that is sooner).
- (c) **we** may agree to extend this period (subject to additional premium) after receipt of a satisfactory underwriting submission in respect of the merged or acquired entity.
- (d) the retroactive date as specified in the **schedule** for such cover is deemed to be the date of the merger with or acquisition by the **policyholder** unless **we** otherwise agree in writing.
- 3.8 Reward expenses**
- (a) **We** agree to pay **reward expenses** incurred as a direct result of a **cyber event** first discovered and notified to **us** in writing as soon as reasonably possible during the **period of insurance**.
- (b) The **sub-limit** with respect to the cover provided in (a) above is specified in the **schedule**.

Section 4 – Basis of settlement

- 4.1 Limit of indemnity**
- (a) **Limit of indemnity**
The **limit of indemnity** applies to any one **claim** or matter the subject of cover under the policy and, subject to this Section 4, applies in the aggregate to the total of all **claims** or matters, covered by this policy.
- (b) **Defence costs**
Defence costs covered by the policy are payable in addition to the **limit of indemnity**. The most **we** will pay for **defence costs** is the corresponding 'Limit for defence costs' shown in the **schedule**.
- 4.2 Limit if multiple persons and/or entities are covered**
- The limit of indemnity and sub-limits do not increase if there is more than one insured covered under this policy, or if more than one insured causes or contributes to any matter the subject of cover under the policy.**

- 4.3 Sub-limits** If the policy indicates any **sub-limits** for specific types of cover under this policy, then the applicable **sub-limits** and not the **limit of indemnity** applies. The **sub-limits** are included within, and not in addition to, the **limit of indemnity**.
- 4.4 The excess**
- (a) **We** only provide cover (up to the **limit of indemnity** or **sub-limit** as applicable) for that part of the **claim, loss, liability** or cost which exceeds the **excess**.
 - (b) There are different **excesses** that may be applicable, depending on the matter the subject of cover under the policy which the **insured** must pay. The **insured** must also pay this **excess** when **we** provide cover for any costs and expenses incurred with respect to such matter if the **schedule** states 'Costs Inclusive'.
- 4.5 Related claims or losses** Individual **claims, losses, liabilities** or costs arising out of and occasioned by or attributable to:
- (a) one original source or cause; and/or
 - (b) one act, error or omission; and/or
 - (c) a series of related acts, errors or omissions,
- shall be deemed to arise out of one event and only one **limit of indemnity** or **sub-limit** as applicable and one **excess** will apply.

Section 5 – Exclusions

There is no cover under this policy for any **claim, loss, cyber event, liability, cost** or matter otherwise the subject of cover under this policy:

- 5.1 Known claims and circumstances**
- (a) known by the **insured** at the inception of this policy; or
 - (b) based upon, directly or indirectly arising from, or attributable to any **known circumstance**; or
 - (c) disclosed in the **application** or arising from facts or circumstances which may give rise to a **claim, loss, liability, loss** or cost disclosed in the **application**; or
 - (d) if this policy is endorsed or amended midterm, for any **claim, loss, liability, loss** or cost that arose from a **known circumstance** (as at the effective date of the amendment/endorsement) to the extent that the **claim, loss, liability, loss** or cost would not have been covered by the policy before such amendment/endorsement.
- 5.2 Foreign jurisdictions** Subject to the 'Jurisdictional limits' specified in the **schedule**:
- (a) first brought in or determined pursuant to the laws of, the United States of America or Canada, or their territories or protectorates; or
 - (b) arising out of the enforcement of judgments, orders or awards obtained in or determined pursuant to the laws of the United States of America or Canada, or their territories or protectorates; or
 - (c) where the proper law of the United States of America or Canada, or their territories or protectorates is applied to any of the issues in any matter the subject of cover under this policy.
- 5.3 Assumed duty or obligation** Based upon, directly or indirectly arising from, or attributable to:
- (a) a liability under a contractual warranty, guarantee or undertaking (unless such liability would have existed regardless of the contractual warranty, guarantee or undertaking); or
 - (b) circumstances where a right of contribution or indemnity has been given up by an **insured**, but only to the extent of the prejudice suffered by **us** in those circumstances; or
 - (c) circumstances where someone has done work or provided services under an arrangement or agreement with an **insured** which limits any potential right for an **insured** to receive contribution or indemnity, but only to the extent that **we** are prejudiced in those circumstances; or
 - (d) any liability which an **insured** agrees to accept in connection with the **insured business** conducted for or on behalf of the **policyholder** firm or incorporated body which is more onerous than that which the **insured** would otherwise have at common law, but only to the extent of the prejudice **we** suffer because of that agreement; or
 - (e) any business not conducted for or on behalf of the **policyholder** firm or incorporated body.

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| 5.4 Intellectual property rights infringement | Based upon, directly or indirectly arising from the actual or alleged infringement of any intellectual property right except as specifically covered under Sections 2.1(b), 2.1(d) and 2.4 of this policy. |
| 5.5 Breach of professional duty | <p>Based upon, directly or indirectly arising from, or attributable to:</p> <p>(a) the rendering or failure to render professional services and/or professional advice to a third party by an insured; or</p> <p>(b) a breach or alleged breach of any contract for the provision of professional services and/or professional advice to a third party by an insured.</p> <p>This Exclusion shall not apply to loss from any claim arising under Section 2.1 –‘Privacy’ or 2.4 – ‘Multimedia liability’ alleging emotional distress, mental injury, mental tension or mental anguish.</p> |
| 5.6 Charge backs | As a result of any request from the insured’s acquiring bank for funds or fines as a result of fraudulent credit or debit card transactions, although this exclusion shall not apply to any claims covered by Section 2.1 of this policy. |
| 5.7 Enforcement order | Based upon, directly or indirectly arising from, or attributable to any failure to respond to or comply with an enforcement order . |
| 5.8 Failure or fitness of goods or services | Arising out of the failure to supply goods or services or the supply of goods or services of inferior quality in breach of any contractual obligation, whether express or implied by law. |
| 5.9 Internet infrastructure failure | In respect of Section 2.2 only, based upon, directly or indirectly arising from, or attributable to any failure of external networks, cables, or core internet infrastructure servers not in the policyholder’s control. |
| 5.10 Satellite failures or electrical or mechanical failures | Based upon, directly or indirectly arising from, or attributable to any satellite failures, electrical or mechanical failures and/or interruption including, but not limited to, electrical disturbance, spike, brownout or blackout, outages to gas, water, telephone, cable, telecommunications, or other infrastructure, unless such infrastructure is under the policyholder’s operational control and unless such claim is as a direct result of any cyber event. |
| 5.11 Wilful or dishonest acts of principals | <p>(a) based upon, directly or indirectly arising from, or attributable to any dishonest, fraudulent, criminal, malicious or reckless act or omission committed by any:</p> <p>(i) principal; or</p> <p>(ii) employees or any third party with the solicitation, enticement, intervention, participation, assistance, cooperation or knowledge or approval of any principal, unless such principal is a former principal at the time of the wilful, malicious, reckless or dishonest act or omission.</p> <p>(b) for any person committing the wilful, malicious, reckless or dishonest act or omission specified in part (a) above.</p> |
| 5.12 Related parties | <p>Against an insured brought by or on behalf of:</p> <p>(a) any other insured; or</p> <p>(b) any company in respect of which any insured holds (beneficially or otherwise) more than 10% of the voting shares or rights and/or an executive role; or</p> <p>(c) any trust in respect of which any insured is a trustee and/or beneficiary and/or has a direct or indirect financial interest; or</p> <p>(d) any other person, firm or incorporated body having control of over 10% or more of the voting shares or rights or an executive role in the operation of the policyholder.</p> <p>This Exclusion does not apply to Section 2.1(c) ‘Employee Information’.</p> |
| 5.13 Retroactive limitation | Arising out of any act, error or omission occurring before the ‘Retroactive date’ specified in the schedule . |
| 5.14 Fines and penalties | <p>Based upon, directly or indirectly arising from, or attributable to:</p> <p>any fines and penalties, income tax, customs duties, excise duty, stamp duty, sales tax assessed, levied or imposed by law.</p> <p>This Exclusion does not apply to Section 3.1 ‘Privacy fines and investigations’ and Section 3.2 ‘Privacy breach notification and loss mitigation’.</p> |

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| 5.15 Punitive and exemplary damages | Based upon, directly or indirectly arising from, or attributable to punitive, aggravated or exemplary damages. |
| 5.16 Insolvency | Arising directly or indirectly arising out of or in any way connected with an insured's insolvency, bankruptcy or liquidation. |
| 5.17 Pollution, nuclear risks, war and terrorism | Based upon, directly or indirectly arising from, or attributable to: (a) the insured or anyone on behalf of or at the direction of the insured discharging, dispersing, releasing or permitting pollutants to escape into or upon land, the atmosphere, or any water course or body of water; or (b) ionising radiations or contamination by radioactivity from any nuclear material; or the hazardous properties of any nuclear explosive, assembly or component; or (c) war, invasion, acts of foreign enemies, civil or military uprisings, hostilities (even if war is not declared), or government power being taken unlawfully; or property being taken, damaged or destroyed by a government or public or local authority; or (d) any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense; or (e) any action in controlling, preventing, suppressing, retaliating against, or responding to any act of terrorism . This Exclusion shall not apply to an act of terrorism perpetuated electronically, including as a result of spoofing, sniffing, viruses or malware, mapping, hijacking, trojans, DoS (Denial of Service), DDoS (Distributed Denial of Service) or other denial of service attack or social engineering. |
| 5.18 Trade debt | Based upon, directly or indirectly arising from, or attributable to a liability to pay trading debts or the repayment of any loan. |
| 5.19 Profit | Based upon, directly or indirectly arising from, or attributable to a liability to any loss of the insured's profit arising from the loss of any client, account or business, except as specifically covered by Section 2.2 of this policy. |
| 5.20 Asbestos | Based upon, directly or indirectly arising from, or attributable to asbestos. |
| 5.21 Bodily injury and/or property damage | Based upon, directly or indirectly arising from, or attributable to: (a) bodily injury (except emotional distress, mental anguish or humiliation), sickness, disease or death of any person; or (b) destruction of or damage to tangible property (including the loss of use thereof). |
| 5.22 Government confiscation | Based upon, directly or indirectly arising from, or attributable to the confiscation, commandeering, requisition, destruction of or damage to, computer systems by order of a government de jure or de facto, or by any public authority for whatever reason. |
| 5.23 UN sanctions | Based upon, directly or indirectly arising from, or attributable to the provision of cover or a benefit under this Policy to the extent that the provision of such cover or benefit would contravene any sanction, prohibition or restriction under any United Nations resolutions or the trade or economic sanctions, law or regulations of the European Union, United Kingdom or United States of America. |
| 5.24 Unfair trade practices | Based upon, directly or indirectly arising from, or attributable to any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws, or false, deceptive or misleading advertising. |
| 5.25 Discrimination | Based upon, directly or indirectly arising from, or attributable to any actual or alleged discrimination of any kind including, but not limited to, discrimination on the basis of race, colour, religion, age, sex, disability, pregnancy, marital status, political affiliations or ideology, sexual orientation or preference. |
| 5.26 Payment card industry | Based upon, directly or indirectly arising from, attributable to fines or penalties attributable to the insured's failure to comply with the Payment Card Industry Data Security Standard. |

Section 6 – General conditions

6.1 How we administer this policy

A. Assignment

The **insured** may not assign this policy or any interest under this policy without **our** prior written consent.

B. Cancellation

By the insurer

The **insured** may cancel this policy at any time by notifying **us**. If they do, **we** will refund any premium that is due to the **insured** based on the unused portion of the **period of insurance**. The **insured** must pay any outstanding premium due for the expired portion of the **period of insurance**.

By us

We may cancel this policy by giving the **insured**, or their broker, notice in writing or by electronic means, at the **insured's**, or their broker's, last known address. The policy will be cancelled from 4pm on the 30th day after the date of the notice. **We** will refund the **insured** any premium that is due to them based on the unused portion of the **period of insurance**.

C. Change of terms

We may change the terms of this policy (including the **excess**) by giving the **insured**, or their broker, notice in writing or by electronic means, at the **insured's**, or their broker's, last known address. Unless otherwise specified in the notice the change in terms will take effect from 4pm on the 30th day after the date of the notice.

D. Currency

Any amounts shown in this policy or in the **schedule** are in New Zealand dollars, unless otherwise specified in the **schedule**.

E. GST

Where GST is recoverable by **us** under the Goods and Services Tax Act 1985:

- (a) all **limits of indemnity** exclude GST, and
- (b) all **sub-limits** exclude GST, and
- (c) all **excesses** include GST, and
- (d) GST will be added, where applicable, to claim payments.

F. Other insurance

The **insured** must notify **us** as soon as they know of any other insurance policy that covers the **insured** for any of the risks covered under this policy.

If the insured holds other **insurance** cover with any other insurer in respect of any **claim** covered under this policy, then **we** will only pay under this policy once cover under the other policy has been exhausted.

6.2 Laws and acts that govern this policy

A. Disputes about this policy

The law of New Zealand applies to disputes about this policy and the New Zealand Courts have exclusive jurisdiction.

B. Legislation changes

Any reference to any Act of Parliament or subordinate rules referred to in this policy includes any amendments made or substitutions to that law.

C. Insurance Law Reform Acts

The exclusions and conditions in this policy are subject to the **insured's** rights under the Insurance Law Reform Act 1977 and Insurance Law Reform Act 1985.

6.3 Your obligations

A. Comply with the policy

The **insured** (and any other person or entity **we** cover) must comply with the conditions of this policy at all times.

B. Breach of any condition

If:

- (a) the **insured**, or
- (b) any other person or entity **we** cover under this policy, or
- (c) anyone acting on the **insured's** behalf,

breaches any of the terms and/or conditions of this policy, **we** may:

- (i) decline the claim either in whole or in part, and/or
- (ii) declare either this policy or all insurance the **insured** has with **us** to be of no effect and to no longer exist.

C. True Statements and answers

True statements and answers must be given, whether by the **insured** or any other person, when:

- (a) applying for this insurance, and/or
- (b) notifying **us** regarding any change in circumstances, and/or
- (c) making any claim under this policy, and communicating with **us** or providing any further information regarding the claim.

D. Reasonable care

The **insured** must take reasonable care at all times to avoid circumstances that could result in a claim. The **insured's** claim will not be covered if the **insured** is reckless or grossly irresponsible.

E. Change in circumstances

The **insured** must tell **us** immediately if there is a material:

- (a) increase in the risk insured, or
- (b) alteration of the risk insured.

Once the **insured** has told **us** of the change, **we** may then cancel or alter the premium and/or the terms of this policy.

If the **insured** fails to notify **us** about a change in the risk insured, **we** may:

- (a) declare this policy unenforceable, and/or
- (b) decline any subsequent claim either in whole or in part.

These actions will be taken from the date the **insured** knew, or ought to have known, of the increase or alteration in the risk insured.

For avoidance of any doubt, information is 'material' where we would have made different decisions about either:

- (i) *accepting your insurance, or*
- (ii) *setting the terms of your insurance,*

if we had known that information. If in any doubt, notify us anyway.

6.4 Severability and non-imputation

For the sake of determining indemnity under this policy:

- (a) the **application** shall be construed to be a separate application for cover by the **policyholder** and by each natural person covered by the policy, and no statement or representation in or with respect to the **application** by such person shall be imputed to any other natural person covered by the policy; and
- (b) knowledge possessed by and/or conduct of one natural person covered by the policy shall not be imputed to any other natural person who is an **insured**; and
- (c) any knowledge possessed by and/or conduct of any past or present director, company secretary, chief executive officer, chief operating officer, chief financial officer, chief risk officer, in-house general counsel, or any person who signed the declaration or proposal form in connection with this policy or any policy of which this policy is a renewal or replacement, shall be imputed to the **policyholder**.

- 6.5 Authority to accept notices and to give instructions**
- The **policyholders** listed in the **schedule** are appointed individually and jointly as agent of each **insured** in all matters relating to this policy, and to cover provided by the policy.
- In particular (but without limitation) the **policyholders** are agents for the following purposes to:
- (a) give and receive notice of policy cancellation, to pay premiums and to receive any return premiums that may become due under this policy; and
 - (b) accept endorsements or other notices provided for in this policy; and
 - (c) give instructions to solicitors or counsel that **we** appoint or agree to, and to receive advice from them and to act on that advice; and
 - (d) consent to any settlement **we** recommend; and
 - (e) do anything **we** or **our** legal advisers think might help with the procedures set out in this policy for investigating, settling and defending **claims**, liabilities, losses or costs paid for under the policy; and
 - (f) give **us** information relevant to this policy, which **we** can rely on when **we** decide whether to accept the risk, and set the policy terms or the premium.
- 6.6 Territory covered by this policy**
- The cover provided by this policy extends to acts, errors or omissions occurring anywhere in the world.
- 6.7 The insured's duty to comply with additional conditions**
- If we attach any additional conditions to the **insured's** policy regarding any risk survey or risk management timetable or any other conditions then it is a condition of this policy that these conditions are complied with by the deadlines shown.

Section 7 – Investigation, defence and settlement of claims

- 7.1 Insured's obligations**
- A. Do not admit liability**
- The **insured** must not:
- (a) Admit liability, or
 - (b) Do or say anything that may prejudice **our** ability to defend the **claim** against the **insured** or take recovery action in the **insured's** name.
- B. Advise us**
- If the **insured** becomes aware of any event that is likely to give rise to a claim under this policy regardless of the anticipated quantum, they must contact **us** immediately.
- C. Minimise the loss**
- The **insured** must take all reasonable steps to minimise the claim and avoid any further loss or liability arising.
- D. Provide full information**
- When making a claim, the **insured** consents to their personal information in connection with the claim being:
- (a) disclosed to **us**, and
 - (b) transferred to the Insurance Claims Register Limited.
- The **insured** must:
- (a) give **us** free access to examine and assess the claim, and
 - (b) send any relevant correspondence or documents to **us**, and
 - (c) complete a claim form and/or statutory declaration to confirm the claim if **we** request it, and
 - (d) provide any other information, proof of ownership or assistance that **we** may require at any time.
- E. Dishonesty**
- If the **insured's** claim is dishonest or fraudulent in any way, **we** may:
- (a) decline the claim either in whole or in part, and/or
 - (b) declare either this policy or all insurance the **insured** has with **us** to be of no effect and to no longer exist from the date of the dishonest or fraudulent act.
- This is at **our** sole discretion.

F. Do not dispose of property

The **insured** must not destroy or dispose of anything that is or could be part of a claim until **we** have given the **insured** permission to do this.

G. What the insured must obtain our agreement to do

The **insured** must obtain **our** agreement before:

- (a) incurring any expenses in connection with any claim under this policy, or
- (b) negotiating, paying, settling, admitting or denying any **claim** against them, or
- (c) doing anything that may prejudice **our** rights of recovery.

7.2 Managing your claim

A. Allocation of defence costs

If a **claim** is covered only partly by this policy, then **we** will attempt to ensure fair and proper allocation of the **defence costs** for insured and uninsured portions.

If all parties are unable to agree upon the allocation of the **defence costs** then that allocation shall be decided by a lawyer that **we** and the **insured** agree to instruct, whose determination shall be binding upon all parties. The cost of the lawyer's determination is to be taken as part of the **defence costs** covered under this policy.

If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.

B. Apportionment

If **we** pay costs and/or expenses in excess of the maximum amount payable under the policy, then:

- (a) the **insured** must refund to **us** all amounts in excess of the maximum amount payable, or
- (b) **we** can offset that payment against what **we** must pay the **insured** under this policy.

C. Your defence

If the lawyer appointed to defend the **insured** advises that the **claim** should not be defended, then **we** are not required to defend a **claim** against the **insured** unless a second lawyer that **we** and the **insured** agree to instruct, advises that the **claim** should be defended.

If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society. In formulating his or her advice, the lawyer must be instructed to consider the:

- (a) economics of the matter, and
- (b) damages and costs likely to be recovered, and
- (c) likely costs of defence, and
- (d) prospects of successfully defending the **claim**.

The cost of the second lawyer's opinion is to be taken as part of the **defence costs** covered under this policy.

If the second lawyer advises that the **claim** should be settled and if the terms of settlement that **we** recommend are within limits that are reasonable (in the second lawyer's opinion, and in the light of the matters he/she is required to consider), then:

- (i) the **insured** cannot object to the settlement, and
- (ii) the **insured** must immediately pay the **excess** shown in the **schedule**.

D. Subrogation

Once **we** have accepted any part of the **insured's** claim under this policy, **we** may assume the **insured's** legal right of recovery. If **we** initiate a recovery **we** will include the **excess**, and any other uninsured **losses** suffered by the **insured**. Where **we** do this, the **insured** agrees to pay their proportional share of the recovery costs, and subsequently the proceeds of the recovery will be shared on the same proportional basis, except that **we** will reimburse the **insured's excess** first.

The **insured** must fully co-operate with any recovery process. If the **insured** does not, **we** may recover from them the amount paid in relation to the claim.

E. Defence of liability claims

After the **insured** has made a claim under this policy, subject to Section 7.2 C – ‘Your defence’, **we** have the sole right (which shall be a precedent to the **insured’s** right to be covered) to:

- (a) act in the **insured’s** name and on the **insured’s** behalf to defend, negotiate or settle the **claim** as **we** see fit (this will be done at **our** expense), and
- (b) defend or legally represent the **insured**, and
- (c) publish a retraction or apology (in the case of defamation proceedings).

We may appoint **our** own lawyers to represent the **insured**. They will report directly to **us**.

F. Discharge of liability claims

We may elect at any time to pay the **insured**:

- (a) the maximum amount payable under the policy, or
- (b) any lesser sum that the claim against the **insured** can be settled for.

Once **we** have paid this (including any **defence costs** already incurred up to **our** date of election), **our** responsibility to the **insured** under the policy is met in full.

G. Waiver of professional privilege

The solicitors **we** instruct to act on behalf of the **insured** are at liberty to disclose to **us** any information they receive in that capacity, including information they receive from the **insured**.

The **insured** authorises the solicitors to disclose this information to **us**.

7.3 Costs and expenses

- (a) any fees, costs or expenses incurred by **us** (other than to determine **our** liability under this policy) in investigating, defending and settling any matter notified under the policy (in respect of which **we** ultimately confirm cover) will form part of the fees, costs and expenses as otherwise covered by this policy.
- (b) any amount paid by **us** in settlement of a dispute the subject of a matter notified under the policy, shall be deemed for all purposes of the policy to be a payment made under the policy.

Section 8 – Definitions

The definitions apply to the plural and any derivatives of the bolded words.

act of terrorism

Any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- (a) involves violence against one or more persons; or
- (b) involves damage to property; or
- (c) endangers life other than that of the person committing the action; or
- (d) creates a risk to health or safety of the public or a section of the public; or
- (e) is designed to interfere with or to disrupt an electronic system.

application

The information provided by the **insured** or on the **insured’s** behalf to **us** when the **insured** purchased this insurance or requested a quotation for this insurance from **us**. It also includes any subsequent information the **insured** provides **us** with.

authority

Any official regulator, government body or government agency.

claim

Subject to Exclusion 5.1 – ‘Known claims and circumstances’:

- (a) the receipt by an **insured** of any written demand for money or damages, or non-pecuniary relief; or
- (b) any writ, summons, application or other originating legal (criminal, civil or otherwise) or arbitral proceedings, cross claim or counter-claim which is served upon an **insured**.

Liability Cyber Base / Policy wording

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| commercially confidential information | Any information other than personal information : (a) which is not in the public domain or publicly available; and (b) where disclosure may undermine the economic interest or competitive position of the owner of the information. |
| computer records | Electronically stored data including magnetic tape, software or computer programs for or in respect of a computer system used in the course of the conduct of the insured business . |
| computer system | All electronic computers including operating systems, software, hardware, componentry, firmware and all communication and open system networks, websites wheresoever hosted, off-line media libraries and data backups used in the course of the conduct of the insured business . |
| cyber event | Any: (a) hacking attack or virus ; (b) malicious damage to the policyholder's computer systems by an employee ; (c) accidental damage to or destruction of the policyholder's computer records because of an operational error, an error while establishing the parameters, or an involuntary error by an employee or a service provider ; (d) failure of a service provider hosting the policyholder's computer systems as a direct result of (a) to (c) above; (e) failure of a direct or back-up power supply or under/over voltage but only if such power supply is owned, managed or controlled by the policyholder or by a service provider ; (f) electrostatic build-ups or electromagnetic disturbances. |
| cyber extortion costs | (a) any monies (including crypto or virtual currencies) paid by the policyholder in accordance with local legal requirements and with our prior written consent (which shall not be unreasonably delayed or withheld); (b) reasonable and necessary fees, costs and expenses that we incur or the policyholder incurs with our prior written consent (which shall not be unreasonably delayed or withheld): (i) in negotiating, mediating and crisis managing to terminate or end a security threat that might otherwise result in harm to the insured ; or (ii) the cost to conduct an investigation to determine the cause of a security threat . |
| defence costs | All reasonable and necessary legal fees, costs and expenses (including any expert costs where the choice of expert has been approved by us) that we incur or the policyholder incurs with our prior written consent (which shall not be unreasonably delayed or withheld) in the investigation, defence or settlement of any claim made against the insured . |
| employee | A natural person who is not a principal , but who is or was, at the time the relevant act, error or omission occurred, a person who: (a) had entered into a contract of service with the policyholder firm or incorporated body and is or was remunerated by the policyholder for that service; or (b) is neither a party to a contract of service with the policyholder , nor an independent contractor, but a party to a contract for service with the policyholder for the provision of services to or on behalf of the policyholder for reward; or (c) a volunteer worker or student, and in respect of (a), (b) and (c) above is under the policyholder's direction, control and supervision in the conduct of the insured business . |
| enforcement order | Notice or order from any data protection authority, government authority, regulator, court, tribunal or other public body authorised to investigate, prosecute or otherwise enforce applicable laws or regulations relating to the collection, storage or processing of computer records , requiring the insured to: (a) confirm compliance with any data protection and/or privacy law or regulation; (b) take specific measures to comply with any data protection and/or privacy law or regulation; or (c) refrain from processing any specified computer records or using any specified computer system . |

Liability Cyber Base / Policy wording

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| excess | The ' Policy excess ' as applicable as stated in the schedule . |
| fine or penalty | (a) a monetary fine or penalty payable by an insured to an authority ; (b) fine or penalty does not include any amounts payable or calculated by reference to: (i) compensation; (ii) compliance, remedial, reparation or restitution costs; (iii) exemplary or punitive damages; (iv) any consequential economic loss; (v) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost; and (vi) any fine or penalty the insurance of which is prohibited at law. |
| former principal | Person who has been, but is no longer: (a) principal of a policyholder ; or (b) the principal of any corporate entities through which the policyholder previously traded, in the course of the conduct of the insured business . |
| hacking attack | Any malicious or unauthorised electronic attack including, but not limited to, any brute force attack, phishing , denial of service attack, initiated by any third party or by any employee and that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of the policyholder's computer systems or policyholder's computer records . |
| insured | (a) the policyholder ; and (b) any subsidiary of the policyholder ; (c) any person who is or becomes, during the period of insurance , a principal or employee of the policyholder ; and (d) any principal , former principal or employee of the policyholder ; and (e) the estate, spouse, heirs, legal representatives, successors or assigns of any insured . |
| insured business | The 'insured business' specified in the schedule conducted by or on behalf of the policyholder . |
| intellectual property right | Any intellectual property right including but not limited to trademarks, trade secrets, broadcasting rights, domain names, commercial title or slogan, commercial extortion, metatags and copyrights. 'intellectual property right' does not include any patent, trade secret or confidential information that came into the possession of any person prior to the date such person became an employee or principal of the policyholder . |
| internet and email content | Any text, images, video, interactive content or advertising material published on the policyholder's website or contained within an email sent by an insured or any advertising material produced by or on behalf of the policyholder and published on a third party's website. |
| known circumstance | Any fact, situation or circumstance which: (a) an insured was aware of at any time before the period of insurance or any relevant amendment or endorsement of the policy; or (b) a reasonable person in the insured's position would have thought, at any time before the period of insurance or before any relevant amendment or endorsement of the policy, might result in so making an allegation against an insured in respect of a liability, loss or costs, that might be covered by this policy or by any amendment or endorsement to this policy. |
| limit of indemnity | The 'Limit of Indemnity' specified in the schedule which shall be our maximum liability, in the aggregate, payable under this policy, subject to the terms, conditions and exclusions of this policy. |
| loss | Direct loss of money sustained by the policyholder . 'Loss' does not include loss of profits, loss of income, loss of bargain, or other types of consequential loss. |
| money | Any physical or electronic legally acceptable currency (excluding crypto or virtual currencies), coins or bank notes of a generally accepted value. |

Liability Cyber Base / Policy wording

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| period of insurance | The period shown in the schedule , that specifies the start and end dates of this insurance contract. |
| personal information | Information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is: (a) true or not; and (b) in a material form or not. |
| phishing | The fraudulent use of electronic communications or websites to impersonate the insured or its products or services for the purpose of soliciting personal, confidential or commercial information about the insured's clients. |
| policyholder | Each of the following, individually and jointly: (a) each person, firm or incorporated body identified in the schedule as the 'Policyholder', each principal or former principal of any such firm or incorporated body; and (b) any entity which is engaged in the conduct of insured business and which is created and controlled, during the period of insurance , by anyone identified in the schedule as the 'Policyholder'; and (c) anyone who becomes a principal of the 'Policyholder' identified in the schedule , during the period of insurance (but only in respect of the conduct of the insured business for or on behalf of the 'Policyholder' identified in the schedule). |
| pollutant | Any solid, liquid, gases or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkali, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed. |
| principal | A sole practitioner, a partner of a firm, or a director of a company, which practitioner, firm or company is covered by this policy. |
| privacy breach costs | Reasonable and necessary fees, costs and expenses that we incur or the policyholder incurs with our prior written consent (which shall not be unreasonably delayed or withheld) required to be incurred in respect of any privacy obligations to: (a) fulfil any legal or regulatory obligation the policyholder has to notify third parties of an actual or suspected breach of privacy in relation to any personal information ; or (b) establish a credit monitoring service or identity theft helpline; or (c) provide call centre support services; or (d) conduct an independent audit of the policyholder's computer systems to identify the source of such privacy breach. |
| privacy obligations | The insured's legal obligations arising directly from: (a) any privacy statement governing the handling of information on the policyholder's computer systems ; (b) any written contract between the policyholder and a third party governing the processing and storage of credit card information on the policyholder's computer systems ; (c) any implied contractual duty to use reasonable care and skill in the handling of personal information or credit card information (including breaches of the payment card industry data security standard); (d) any legal obligation to notify individuals of an actual or potential breach of their personal information ; (e) statutory data protection regulations in the country or countries where the policyholder operates, including industry specific data protection and security regulations as they currently exist and as amended. |
| promotional material | Any marketing materials or tangible goods produced by or on behalf of the policyholder for the purpose of marketing the insured business . |

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| rectification costs | <p>Reasonable and necessary fees, costs and expenses that we incur or the policyholder incurs with our, or Cunningham Lindsey's prior written consent (which shall not be unreasonably delayed or withheld) as a result of the use of external consultants, contractors or advisers including but not limited to forensic or security consultants or any additional costs that the policyholder incurs to pay its employees.</p> <p>For the avoidance of doubt, rectification costs does not include the basic salaries of employees or the policyholder's office expenses or any payments that the policyholder has paid or agreed to pay as part of any service or maintenance contract.</p> |
| regulatory investigation | <p>Subject to Section 3.2 – 'Privacy breach notification and loss mitigation':</p> <ul style="list-style-type: none">(a) any formal or official civil examination, investigation, inquiry, hearing or other civil proceedings ordered or commissioned by any authority into the privacy obligations of the policyholder during the period of insurance:<ul style="list-style-type: none">(i) requiring attendance before or the production of documents by the policyholder to the authority;(ii) requiring questions to be answered by the policyholder to the authority;(iii) identifying the policyholder in writing as a target of an examination, investigation, inquiry, hearing or other proceeding by an authority.(b) notice of the regulatory investigation specified in (a) above is first received by the insured and notified to us in writing as soon as reasonably possible during the period of insurance;(c) a regulatory investigation shall be deemed to be first made when the policyholder is first required to respond and/or attend or is so identified as a target of the regulatory investigation.(d) regulatory investigation does not include any routine inspection, supervision, compliance or similar reviews or general industry wide violation reviews of the policyholder. |
| regulatory investigation costs | <p>Reasonable and necessary fees, costs and expenses that we incur or the policyholder incurs with our or Cunningham Lindsey's prior written consent (which shall not be unreasonably delayed or withheld) with respect to a fine or penalty or regulatory investigation.</p> |
| revenue | <p>The amount of net profit or loss before income taxes which would have been earned or incurred had no cyber event occurred.</p> |
| reward expenses | <p>Reasonable and necessary property or other consideration paid by us or by the policyholder with our, or Cunningham Lindsey's prior written consent (which shall not be unreasonably delayed or withheld) to a third party (other than a law enforcement professional or authority) for the information leading to a conviction of an indictable offence arising out of a hacking attack covered by this policy.</p> |
| schedule | <p>The latest version of the schedule we issue to the insured for this policy.</p> |
| security threat | <p>Any expressed and documented threat or connected series of threats to commit a local, cross border or multi-country attack against the policyholder's computer system for the purpose of demanding money, securities or other tangible or intangible property of value from the insured.</p> |
| service provider | <p>Any person, partnership, company, corporation, incorporated society or other body corporate or entity 'third party' independent contractor that is not an insured, who provides business process (including call centre, fulfilment and logistical support) and/or information technology services (including hosting, security management, co-location, and collects, stores or processes the policyholder's computer records) for the policyholder in accordance with a written contract.</p> |
| sub-limit | <p>The limit of our insurance cover for each of the matters listed in the schedule under 'Sub-limits' or in Section 2 or 3 of this policy.</p> |

Liability Cyber Base / Policy wording

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| subsidiary | Any company or other incorporated entity which at the commencement of the period of insurance by virtue of New Zealand law was, or is, either directly or indirectly a subsidiary of any incorporated body identified in the schedule as the 'Policyholder'. |
| third party | Any person, partnership, company, corporation, incorporated society or other body corporate or entity who is not an insured , at the time of their acts, errors or omissions. |
| virus | Any 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 the policyholders computer systems or policyholders computer records . |
| we | NZI, a business division of IAG New Zealand Limited. We may also use the words 'us', 'our' or 'company' to describe NZI. |

