



# CyberCare Liability and Privacy Insurance

## Important notice

This is a Claims-Made and Reported Policy. *Claims* must first be made against the *insured* and reported in writing to Zurich (applicable to Insuring clauses 1.3 & 1.5) during the *policy period* unless an extended reporting period applies. The payment of *defense expenses* or *claim* payments reduces the limits of insurance.

## Duty of disclosure

Before entering into a contract of general insurance, the *insured* has a duty to disclose to Zurich every matter that they know, or could reasonably be expected to know, are relevant to our decision whether to accept the risk of the insurance and if so, on what terms.

The same duty to disclose these matters to Zurich before the *insured* renew, extend, vary or reinstate a contract of general insurance.

## Non-disclosure or misrepresentation

If the *insured* fails to comply with the duty of disclosure, we may be entitled to reduce our liability in respect of a *claim* or may cancel the contract.

If the non-disclosure is fraudulent, we may also have the option of avoiding the contract from the beginning.

## Our contract with you

Your policy is a contract of insurance between you and Zurich and contains all the details of the cover that we provide. Your policy is made up of:

- the policy wording. It tells you what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the *submission*, which is the information you provide to us when applying for insurance cover;
- your most current policy *schedule* issued by us. The policy *schedule* is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in your policy *schedule* are insured. Please read this policy carefully upon receipt and promptly request for any necessary amendments. If you would like a copy of this policy in large print, please contact our Customer Care Centre at 2968 2288.

This document is used for any offer of renewal we may make, unless we tell you otherwise. Please keep your policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

**Subject to payment of the premium set out in the *schedule*, we agree to provide insurance on the terms set out in this policy. The policy consists of this policy wording, the *submission*, the *schedule* and endorsements.**

The coverage applies only to *loss* from *claims* first made and reported to Zurich (applicable to Insuring clauses 1.3 & 1.5) during the *policy period* or *extended reporting period*, if applicable, for *wrongful acts* occurring on or after the *retroactive date* and before the end of the *policy period*. *Defense expenses* will reduce and may exhaust the applicable Limits of Liability and apply to the *deductible*.

## Section 1 - Insuring clauses

### 1.1 Privacy breach costs

We will reimburse the *company* for the *privacy breach costs* the *company* incurs that directly result from a *privacy event*, provided such *privacy event* first occurs and is reported to us during the *policy period*.

### 1.2 Digital asset replacement expense

We will reimburse the *company* for any *digital asset replacement expenses* the *company* incurs due to the corruption or destruction of *digital assets* caused by a *security event*, provided such *security event* first occurs during the *policy period*.

### 1.3 Security and privacy liability

We will pay on behalf of the *insured* all *loss* which the *insured* becomes legally obligated to pay on account of any *claim* first made against the *insured* and reported to us during the *policy period* or any *extended reporting period*, if applicable, for a *wrongful act*, provided such *wrongful act* first occurs on or after the applicable *retroactive date* and before the end of the *policy period*.

We will reimburse the *insured* for all *loss* the *insured* incurs in responding to any *regulatory proceeding* first made against the *insured* and reported to us during the *policy period* or any *extended reporting period*, if applicable, for a *privacy wrongful act* or *security wrongful act* concerning a *privacy event*, provided such *privacy wrongful act* or *privacy event* or *security wrongful act* first occurs on or after the applicable *retroactive date* and before the end of the *policy period*.

### 1.4 Cyber extortion threat and reward payments

We will reimburse the *company* for any *extortion expenses* and *extortion payments* actually paid by the *company* that directly result from a *cyber extortion threat*, provided the *company* first receives such *cyber extortion threat* during the *policy period*.

We will reimburse the *company* for any reward the *company* pays to any person or entity, other than an external auditor of the *company* or an *insured person* who is an internal auditor of the *company* or who supervises or manages an external auditor of the *company*, for information leading to the arrest and conviction of any person who is making or has made any *cyber extortion threat*, provided the *company* first receives such *cyber extortion threat* during the *policy period* and we consent in offering such reward prior to it being offered.

### 1.5 Internet media liability

We will pay on behalf of the *insured* all *loss* which the *insured* becomes legally obligated to pay on account of any *claim* first made against the *insured* and reported to us during the *policy period* or any *extended reporting period*, if applicable, for an *electronic publishing wrongful act*, provided such *electronic publishing wrongful act* first occurs on or after the applicable *retroactive date* shown in the *schedule* and before the end of the *policy period*.

## Section 2 – Definitions

When used in this policy, its *schedule* and its Endorsements, the following definitions shall apply:

### 2.1 Claim

*Claim* means:

- 2.1.1 a written demand against the *insured* for monetary damages or non-monetary or injunctive relief, including a written demand that the *insured* toll or waive a statutory limitation period;
- 2.1.2 a civil proceeding against the *insured* for monetary damages or non-monetary or injunctive relief, commenced by the service upon the *insured* of a complaint or similar pleading, including any appeal thereof; or
- 2.1.3 an arbitration or other alternative dispute resolution proceeding against the *insured* for monetary damages or non-monetary or injunctive relief, commenced by the *insured's* receipt of a request or demand for such proceeding, including any appeal thereof.

Solely with respect to *loss* reimbursement coverage afforded under the second paragraph of Insuring Clause 1.3, *claim* includes a *regulatory proceeding*.

### 2.2 Company

*Company* means, singularly or collectively, the *policyholder* and its *subsidiaries*.

### 2.3 Company's computer system

*Company's computer system* means a *computer system*:

- 2.3.1 the *company* leases, owns or operates;
- 2.3.2 that a *service provider* operates; or
- 2.3.3 owned by employees of the *company* or *service provider*, but only while such *computer system* is operated:
  - 2.3.3.1 on behalf of such *company* or *service provider*; and
  - 2.3.3.2 in compliance with published security policies of such *company* or *service provider*, to provide services to the *company*.

### 2.4 Computer system

*Computer system* means computer hardware and *software*, and the *electronic data* stored thereon, as well as associated input and output devices, data storage devices, networking equipment, components, firmware and electronic backup facilities, including systems accessible through the internet, intranets, extranets or virtual private networks.

### 2.5 Cyber extortion threat

*Cyber extortion threat* means a credible threat or connected series of threats made by someone other than the *company's* directors, officers or employees to:

- 2.5.1 introduce *malicious code* into the *company's computer system*;
- 2.5.2 interrupt the *company's computer system* through a *denial of service attack*; or
- 2.5.3 disseminate, divulge, or improperly utilize any *personal information* or any other corporate information in the care, custody or control of any *insured* that is specifically identified as confidential and protected under a nondisclosure agreement or similar contract, taken as a result of the *unauthorized use* of or the *unauthorized access* to the *company's computer system*.

### 2.6 Damages

*Damages* means any amount, including judgements and settlements, pre and post judgement interest, the *insured* is legally obligated to pay as the result of a *claim* against the *insured*. *Damages* include punitive, exemplary, or multiple damages to the extent such damages, fines or penalties are insurable under the internal laws of any applicable jurisdiction most favorable to the *insured*, including without limitation the jurisdiction in which the *company*, the *insured persons*, Zurich, this policy or such *claim* is located.

*Damages* do not include:

- defense expenses*;
- the loss, offset or return of fees, commissions, royalties, bonuses or profits by the *insured* or the cost to re-perform any services;
- the cost to comply with any injunctive or other non-monetary relief;
- the cost to design, upgrade, maintain, or improve a *computer system*, including correcting any deficiencies or problems;
- principal, interest or other moneys paid or due as the result of any loan, lease or extension of credit;
- taxes, sanctions, fines or penalties, unless such fines or penalties are imposed pursuant to *privacy regulations* or result from a *regulatory proceeding*; or
- privacy breach costs*.

## 2.7 Deductible

*Deductible* means the amount stated in the *schedule* that shall be the responsibility of the *company*, as applicable, to pay in respect of each *claim* under Insuring Clauses 1.1 and/or 1.2 and/or 1.3 and/or 1.4 and/or 1.5 of the policy for *loss*.

## 2.8 Defense expenses

*Defense expenses* means the reasonable and necessary legal advisor fees, costs, charges and expenses incurred by or on behalf of the *insured* in the defense or appeal of a *claim*. *Defense expenses* do not include salaries, wages, overhead or benefit expenses associated with the *company's* directors, officers or employees or any amount paid by us or any other insurer pursuant to any policy or policies of insurance, other than this policy, under which there is a duty to defend.

## 2.9 Denial of service attack

*Denial of service attack* means a malicious attack by a third party which is designed to slow or completely interrupt access to a *computer system* or website by other third parties authorized to gain access to that *computer system* or website.

## 2.10 Digital assets

*Digital assets* means *electronic data*, *software*, audio files, and image files stored on the *company's computer system*, and the capacity of such *computer system*. *Digital assets* do not include accounts, bills, evidences of debts, money, valuable papers, records, abstracts, deeds, manuscripts or other documents, except if they have been converted to *electronic data*, and then only in that form.

## 2.11 Digital asset replacement expenses

*Digital asset replacement expenses* means the reasonable and necessary expenses the *company* incurs to replace, restore or recollect *digital assets* from written records or partially or fully matching *electronic data* due to their corruption or destruction from a *security event*, including any disaster recovery or computer forensic investigation efforts, subject to Clause 8.7.2.

*Digital asset replacement expenses* do not include:

- i. any expense incurred to update, replace, restore, or otherwise improve *digital assets* to a level beyond that which existed prior to the *loss event*;
- ii. any expense incurred to identify or remediate software program errors or vulnerabilities, or costs to update, replace, upgrade, restore, maintain or improve any *computer system*;
- iii. any expense incurred to research and develop *digital assets*, including trade secrets;
- iv. the economic or market value of *digital assets*, including trade secrets;
- v. any other consequential loss or damage; or
- vi. any costs incurred without our consent.

## 2.12 Electronic data

*Electronic data* means information that exists in electronic form, including *personal information*. *Electronic data* does not include *software*.

## 2.13 Electronic publishing

*Electronic publishing* means the reproduction, publication, dissemination, transmission or release of information, including *electronic data*, image files, audio files or text, on the *insured's* internet website; provided that such information must have been developed by or for the *insured* or acquired by the *insured* for its use.

## 2.14 Electronic publishing wrongful act

*Electronic publishing wrongful act* means any actual or alleged:

- 2.14.1 libel, slander, trade libel or disparagement resulting from the *electronic publishing* of material that defames a person or organization or disparages a person's or organization's goods, products or services;
- 2.14.2 plagiarism, false light or false advertising resulting from *electronic publishing* activities;
- 2.14.3 violation of the right of privacy or seclusion or right of publicity of any person other than an *insured person* resulting from the *electronic publishing* of material that publicly discloses private facts relating to such person or commercially appropriates such person's name or likeness;
- 2.14.4 infringement of a copyright, title, slogan, trademark, trade name, trade dress, mark, service mark or service name including, without limitation, infringement of domain name, deep-linking or framing, resulting from *electronic publishing* activities; or
- 2.14.5 unauthorized use of titles, formats, performances, style, characters, plots or other protected material resulting from *electronic publishing* activities.

## 2.15 Extended reporting period

*Extended reporting period* means that period described in Section 6.

## 2.16 Extortion payments

*Extortion payments* means monies paid to a third party whom the *company* reasonably believes to be responsible for *cyber extortion threat*, provided that:

- 2.16.1 our consent is obtained prior to making such *extortion payments*;
- 2.16.2 such *extortion payments* are made to terminate the *cyber extortion threat*; and
- 2.16.3 such *extortion payments* do not exceed the amount of business income loss we reasonably believes would have been incurred had such *extortion payments* not been made.

## 2.17 Extortion expenses

*Extortion expenses* means the reasonable and necessary expenses incurred by the *company*, with our prior consent, that are directly attributable to a *cyber extortion threat*.

## 2.18 Insured

*Insured* means the *company* and the *insured persons*.

## 2.19 Insured person

*Insured person* means any natural person who has been, now is, or shall be:

- 2.19.1 a director, officer, or employee of the *company* acting in such capacity or the functional equivalent of a director, officer or employee acting in such capacity;
- 2.19.2 an independent contractor of the *company*, other than a *service provider*, but solely with respect to a *wrongful act* committed within the scope of such person's duties on behalf of the *company* performed pursuant to a written contract with the *company*; or
- 2.19.3 a spouse or domestic partner (under any applicable law or formal program established by the *company*) of any person identified in 2.19.1 above, but solely if a *claim* made against such person identified in 2.19.1 is also made against such spouse or domestic partner due to:
  - 2.19.3.1 such spouse's or domestic partner's status as a spouse or domestic partner of the *insured person*; or
  - 2.19.3.2 such spouse's or domestic partner's ownership interest in property that the claimant seeks as recovery for alleged *wrongful acts* of the *insured person*,provided the *insured person* shall not include a lawful spouse or domestic partner with respect to a *claim* against that spouse or domestic partner for his or her own *wrongful acts*.

*Insured person* shall also include the estates, heirs, legal representatives or assigns of any person identified above who is deceased, incompetent, insolvent or bankrupt.

## 2.20 Interrelated security events

*Interrelated security events* means all *security events* which are based upon, arising from or in consequence of the same or related facts, circumstance or events or series of related facts, circumstances or events.

## 2.21 Interrelated wrongful acts

*Interrelated wrongful acts* means all *wrongful acts* that are based upon, arising from or in consequence of the same or related facts, circumstance or events or a series of the same or related facts, circumstances or events.

## 2.22 Interruption of service

*Interruption of service* means the actual and measurable interruption, suspension, failure, degradation or delay in the performance of the *company's computer system*, if directly caused by a *security event*.

## 2.23 Loss

*Loss* means *damages* and *defense expenses*.

## 2.24 Malicious code

*Malicious code* means unauthorized, corrupting, or harmful *software* designed to damage a *computer system*, including but not limited to computer viruses, trojan horses, keystroke loggers, cookies, spyware, adware, worms, and logic bombs.

## 2.25 Named parent

*Named parent* means the legal entity designated in the *schedule* under the Master Policy if applicable.

## 2.26 Network security

*Network security* means the use of hardware, *software*, firmware and written security policies and procedures by *insureds*, or by others on behalf of the *company*, to protect against *unauthorized access* to or the *unauthorized use* of the *company's computer system* including the use of the *company's computer system* in a *denial of service attack*.

## 2.27 Personal information

*Personal information* means any information from which a living individual may be uniquely and reliably identified, including an individual's name, telephone number, email address, Hong Kong Identity Card number, medicare number, medical or healthcare data or other protected health information, driver's license number or account number, credit card number, debit card number, access code or password that would permit access to that individual's financial account or any other non-public personal information as defined in *privacy regulations*. *Personal information* does not include information lawfully available to the general public for any reason, including information from foreign or local government records.

## 2.28 Policyholder

*Policyholder* means the legal entity stated in the policy *schedule*, and who is the contracting party to this policy.

## 2.29 Policy period

*Policy period* means the period of time shown in the *schedule*, subject to any prior termination of the policy.

## 2.30 Pollutants

*Pollutants* means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued under legislation, regulations or by an environmental protection authority (including but not limited to any such legislation, regulations or authority in Hong Kong, in Australia, the United Kingdom, the United States of America or the European Union). *Pollutants* shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, noise, fungus (including mold, mildew and any mycotoxins, spores, scents or by-products produced or released by fungi, but not any fungi intended by the *insured* for consumption) and electric or magnetic or electromagnetic field. Such matters shall include, without limitation, solids, liquids, gaseous, thermal, biological, nuclear or radiological irritants, contaminants or smoke, soot, fumes, acids, alkalis, chemicals or waste materials.

### 2.31 Privacy breach costs

*Privacy breach costs* means, incurred with our consent, the reasonable and necessary fees, costs, charges and expenses incurred by the *company* (whether voluntarily or otherwise) within twenty-four (24) months of the *insured* first having knowledge of a *privacy event* for the purposes of retaining an accountant, legal advisor, public relations consultant or other third party to:

- 2.31.1 conduct a computer forensic analysis to investigate the *company's computer system* to determine:
  - 2.31.1.1 the cause and extent of such *privacy event*; or
  - 2.31.1.2 whether a *security wrongful act* may be the cause of such *privacy event*;
- 2.31.2 determine indemnification obligations under any written contract with respect to a *wrongful act* by a *service provider* in connection with such *privacy event*;
- 2.31.3 determine if the *company* is obligated to notify affected individuals or applicable regulatory agencies of such *privacy event*;
- 2.31.4 effect compliance with any *privacy regulation* under the applicable *privacy regulation* most favorable to the affected individuals;
- 2.31.5 notify the affected individuals or applicable regulatory agencies of such *privacy event* and establish new account numbers for the affected individuals;
- 2.31.6 plan, implement, execute and manage a public relations campaign to counter or minimize any actual or anticipated adverse effects of negative publicity from such *privacy event* or to protect or restore the *company's* business reputation in response to negative publicity following such *privacy event*;
- 2.31.7 procure credit monitoring services and identification theft insurance for the affected individuals in responding to such *privacy event*; or
- 2.31.8 procure call center services to handle inquiries for the affected individuals in responding to such *privacy event*. *Privacy breach costs* do not include:
  - i. regular or overtime wages, salaries or fees of the *company's* directors, officers or employees;
  - ii. the cost to comply with any injunctive or other non-monetary relief;
  - iii. principal, interest or other moneys paid or due as the result of any loan, lease or extension of credit; or
  - iv. taxes, fines, sanctions or penalties.

### 2.32 Privacy event

*Privacy event* means:

- 2.32.1 an unauthorized disclosure, loss or theft of:
  - 2.32.1.1 *personal information* in the care, custody or control of any *insured* or *service provider*; or
  - 2.32.1.2 corporate information in the care, custody or control of any *insured* or *service provider* that is specifically identified as confidential and protected under a nondisclosure agreement or similar contract; or
- 2.32.2 a violation of any *privacy regulation*.

### 2.33 Privacy regulation

*Privacy regulation* means any legislation, regulation or by-law, including any amendments thereto, associated with the control and use of personally identifiable financial, medical or other sensitive information, or any other legislation, regulation or by-law associated with identity theft or privacy.

### 2.34 Privacy wrongful act

*Privacy wrongful act* means any actual or alleged act, error, omission, neglect or breach of duty by an *insured*, someone for whom the *company* is legally responsible, or a *service provider*, that results in a *privacy event*.

### 2.35 Professional services

*Professional services* means those acts or services requiring specialized knowledge, skill or professional judgement, which the *insured* renders to others pursuant to a written agreement and for a fee or other consideration.

### 2.36 Property damage

*Property damage* means physical damage to tangible property, including all resulting loss of use of that property, or loss of use of tangible property that has not been physically injured. *Property damage* does not mean physical injury to, loss or destruction of *electronic data*.

### 2.37 Regulatory proceeding

*Regulatory proceeding* means:

- 2.37.1 a formal investigation of an *insured* by an administrative or regulatory agency or similar governmental body concerning a *privacy event*; or
  - 2.37.2 an administrative adjudicative proceeding against an *insured* by an administrative or regulatory agency or similar governmental body for a *privacy wrongful act* or *security wrongful act*, including an appeal thereof,
- commenced by the *insured's* receipt of a subpoena, investigative demand, complaint or similar document.

### 2.38 Retroactive date

*Retroactive date* means the Retroactive Date specified in the *schedule*.

### 2.39 Schedule

*Schedule* means the Schedule attaching to and forming part of this policy, including any policy Schedule substituted for the original Schedule, duly signed, stamped and dated by our authorized officer.

### 2.40 Security event

*Security event* means any *unauthorized access* to, *unauthorized use* of, introduction of *malicious code* into, or *denial of service attack* upon, the *company's computer system*, that results in:

- 2.40.1 an *interruption of service*; or
- 2.40.2 the alteration, corruption or destruction of *digital assets* or other corporate information in the care, custody or control of any *insured* that is specifically identified as confidential and protected under a nondisclosure agreement or similar contract.

### 2.41 Security wrongful act

*Security wrongful act* means any actual or alleged act, error, omission, neglect, or breach of duty by an *insured*, someone for whom the *company* is legally responsible, or a *service provider*, which causes a breach of the *company's network security* that results in:

- 2.41.1 the theft, alteration, or destruction of *electronic data* on the *company's computer system*;
- 2.41.2 the *unauthorized access* to or *unauthorized use* of the *company's computer system*;
- 2.41.3 the denial of an authorized user's access to the *company's computer system*, unless such denial of access is caused by a mechanical or electrical failure outside the control of the *insured*;
- 2.41.4 the participation by the *company's computer system* in a *denial of service attack* directed against a third party's *computer system*; or
- 2.41.5 the transmission of *malicious code* from the *company's computer system* to a third party's *computer system*.

### 2.42 Service provider

*Service provider* means a business the *company* does not own, operate, or control, but that the *company* hires for a fee pursuant to a written contract to perform services related to the conduct of the *company's* business, including but not limited to:

- 2.42.1 maintaining, managing, or controlling *computer systems*;
- 2.42.2 hosting or facilitating the *company's* internet website; or
- 2.42.3 providing other services to the *company* including but not limited to administrative functions, human relations, marketing or other outsourced services.

### 2.43 Software

*Software* means operations and applications, codes and programs by which *electronic data* is electronically collected, transmitted, processed, stored or received. *Software* does not include *electronic data*.

### 2.44 Subsidiary

*Subsidiary*, either in the singular or plural, means, subject to Clause 8.9, any organization while more than 50% of the outstanding voting securities or voting rights representing the present right to vote for election of directors or equivalent executives of such organization is owned or controlled, directly or indirectly, in any combination, by the *policyholder*.

### 2.45 Submission

*Submission* means:

- 2.45.1 any information and/or statements or materials; and/or
  - 2.45.2 any proposal form completed and signed by any *insured* (including any attachments thereto, information included therewith or incorporated therein),
- requested by or supplied to us by or on behalf of the *policyholder* in connection with this policy.

### 2.46 Unauthorized access

*Unauthorized access* means the gaining of access to a *computer system* by an unauthorized person or persons, or by an authorized person or persons in an unauthorized manner.

### 2.47 Unauthorized use

*Unauthorized use* means the use of a *computer system* by an unauthorized person or persons or by an authorized person or persons in an unauthorized manner.

### 2.48 Wrongful act

*Wrongful act* means a *security wrongful act* or a *privacy wrongful act* or an *electronic publishing wrongful act*.

## Section 3 – Limits of liability

- 3.1 The maximum liability of Zurich for all payments under all Insuring Clauses purchased under this policy is the amount shown in the *schedule* as the Maximum Policy Aggregate Limit of Liability.
- 3.2 Subject to 3.1 above, the maximum liability of Zurich for all *privacy breach costs* from each *privacy event* and from all *privacy events* in the aggregate under Insuring Clause 1.1, if purchased, is the amount shown in the *schedule*.
- 3.3 Subject to 3.1 above, the maximum liability of Zurich for all *digital asset replacement expenses* from each *security event* and from all *security events* in the aggregate under Insuring Clause 1.2, if purchased is the amount shown in the *schedule*.
- 3.4 Subject to 3.1 above, the maximum liability of Zurich for all *loss* from each *claim* and all *claims* in the aggregate under Insuring Clause 1.3, if purchased is the amount shown in the *schedule*.

The maximum liability of Zurich for all *loss* from each *regulatory proceeding* and from all *regulatory proceedings* in the aggregate under Insuring Clause 1.3 is the amount shown in the *schedule* for *loss*, each *regulatory proceeding* and all *regulatory proceedings* in the aggregate and shall be part of and not in addition to the Limit of Liability.

- 3.5 Subject to 3.1 above, the maximum liability of Zurich for all *extortion expenses* and *extortion payments* in any one *cyber extortion threat* and in the aggregate under Insuring Clause 1.4, if purchased is the amount shown in the *schedule*.
- The maximum liability of Zurich for all reward payments for each *cyber extortion threat* under Insuring Clause 1.4 is the amount shown in the *schedule* for reward payments, which amount shall be part of and not in addition to the Limit of Liability.
- 3.6 Subject to 3.1 above, the maximum liability of Zurich for all *loss* resulting from each *claim* and all *claims* in the aggregate under Insuring Clause 1.5, if purchased is the amount shown in the *schedule*.
- 3.7 The Limit of Liability available during the *extended reporting period*, if exercised shall be part of, and not in addition to, the amount shown in the *schedule* as the Maximum Policy Aggregate Limit of Liability.

#### Section 4 – Deductible and single claim

- 4.1 We will only pay *loss* in excess of the applicable *deductible* for each *claim*, up to the applicable Limit of Liability. We will pay *defense expenses* from each *regulatory proceeding* and from all *regulatory proceedings* in the aggregate in excess of the applicable *deductible* for each *regulatory proceeding*, up to the Limit of Liability for Regulatory Proceeding Defense. We may, however, elect to pay all or any part of the *deductible* to effect a settlement of any matter covered hereunder and, upon notice of such action by us, the *insured* must promptly reimburse Zurich for the *deductible* paid by us.
- 4.2 We will only pay *privacy breach costs* in excess of the applicable *deductible* for each *privacy event*, up to the applicable Limit of Liability.
- 4.3 We will pay *digital asset replacement expenses* resulting from any one *security event* in excess of the applicable *deductible* up to the applicable Limit of Liability.
- 4.4 We will pay *extortion expenses* and *extortion payments* resulting from any one *cyber extortion threat* in excess of the applicable *deductible* up to the applicable Limit of Liability. We will pay reward payments resulting from any one *cyber extortion threat* up to the Limit of Liability for reward payments, which is subject to the Limit of Liability. No *deductible* applies to reward payments.
- 4.5 All *interrelated security events* shall be deemed one *security event* and shall be deemed to first occur at the time the earliest *security event* of the *interrelated security events* first occurs. In the event any one *security event* triggers more than one Insuring Clause, the highest applicable *deductible* shall apply to such *security event* and the amount payable by us with respect to such *security event* shall be limited to the amount of the Limit of Liability of that Insuring Clause corresponding to the highest *deductible*.
- 4.6 All *claims* arising out of the same *wrongful act* and all *interrelated wrongful acts* shall be deemed one *claim*, and such *claim* shall be deemed to be first made on the date the earliest of such *claims* is first made, regardless of whether such date is before or during the *policy period*. All such *claims* arising out of the same *wrongful act* and all *interrelated wrongful acts* shall be subject to a single *deductible*, the applicable each *claim* Limit of Liability and the Maximum Policy Aggregate Limit of Liability.

#### Section 5 – Defense and settlement

- 5.1 It shall be the duty of Zurich and not the *insured* to take all reasonable steps to defend any *claim*.
- 5.2 The *insured* may not incur any *defense expenses* in or settle any such *claim*, or otherwise admit or assume any liability or obligation, without our consent, such consent not to be unreasonably withheld. Zurich will not be liable for any *defense expenses*, settlement, liability or obligation to which it has not consented.
- We may investigate any such *claim* as we deem necessary and make any settlement or compromise of such *claim* as we deem expedient with the *insured's* consent, such consent not to be unreasonably withheld. Zurich's right and duty to defend ends when the applicable Limit of Liability is exhausted by payment of *loss*.
- 5.3 If we recommend a settlement in any such *claim* acceptable to the claimant and the *insured* refuses to consent to such settlement then, subject to the applicable Limit of Liability, our liability for such *claim* will not exceed the amount for which such *claim* could have been settled by Zurich plus *defense expenses* up to the date the *insured* refused to settle such *claim*.
- 5.4 We shall have the right, to defend any *regulatory proceeding*. The *insured* may not incur any *defense expenses* in any *regulatory proceeding* without our consent, such consent not to be unreasonably withheld. Zurich will not be liable for any *defense expenses* to which we have not consented. Zurich has the right to associate in the defense of, and may investigate any such *regulatory proceeding* as it deems necessary.

#### Section 6 – Extended reporting period

##### 6.1 Automatic extended reporting period

If Zurich or the *policyholder* cancels or does not renew this policy, other than for non-payment of premium, we will provide an automatic extension of coverage for a period of 60 days immediately after the termination of the *policy period* with respect to any *claim* first made against any *insured* and reported to us in writing within such 60 day period ('Automatic Extended Reporting Period'), but only with respect to any *wrongful act* committed on or after the applicable *retroactive date* and before the earlier of a Takeover as defined in Clause 8.9.3, if applicable, or the termination of the *policy period*. No additional premium shall be payable for such Automatic Extended Reporting Period.

##### 6.2 Extended reporting period

The Automatic Extended Reporting Period shall be referred to this policy as the *extended reporting period*. Any *claim* first made during the *extended reporting period*, if applicable, shall be considered made during the *policy period*. The *extended reporting period* does not reinstate or increase the Limits of Liability, nor extend the *policy period*. A change in policy terms, conditions, exclusions or premiums shall not be considered a non-renewal for purposes of triggering the rights to the *extended reporting period*.

#### Section 7 – Exclusions

Zurich will not pay any *loss* or any *privacy breach costs* resulting from any *claim* made against any *insured*, any *privacy breach costs* the *company* incurs resulting from a *privacy event* or any *digital asset replacement expenses*, *extortion expenses*, *extortion payments* or reward or any other amount claimed under any Insuring Clauses of this policy:

##### 7.1 Malicious act by employee

based upon, arising out of or attributable to:

- 7.1.1 any dishonest, fraudulent, criminal, or malicious *wrongful act* committed by an *insured*;
- 7.1.2 any intentional or knowing violation of law committed by an *insured*; or
- 7.1.3 any gaining of any profit, remuneration, or financial or non-financial advantage by an *insured* to which the *insured* was not legally entitled.

However, we will pay *defense expenses* and defend such *claim* until there is a final judgement, binding arbitration decision or finding of fact against such *insured* or an adverse admission under oath or plea of nolo contendere or no contest by such *insured* which establishes such dishonest, fraudulent, criminal or malicious *wrongful act*, intentional or knowing violation of law or profit, remuneration, or advantage. In this event, the *insured* shall reimburse us for any *defense expenses* paid by us on behalf of such *insured* resulting from such *claim*. In applying this exclusion, no *wrongful act* of, or knowledge possessed by, an *insured person* shall be imputed to any other *insured person*, however the *wrongful act* of, or knowledge possessed by, the Chief Executive Officer, Chief Financial Officer, General Counsel or risk manager of the *company*, or any *insured person* in a functionally equivalent position, shall be imputed to the *company*.

Notwithstanding anything above to the contrary, we will not pay any *digital asset replacement expenses* based upon, arising out of or attributable to any dishonest, fraudulent, criminal, or malicious act, error or omission, or any intentional or knowing violation of law committed with the knowledge of any of the Chief Executive Officer, Chief Financial Officer, General Counsel or risk manager of the *company*, or any other *insured person* in a functionally equivalent position.

##### 7.2 Bodily injury

based upon, arising out of or attributable to any actual or alleged bodily injury, mental anguish, emotional distress, pain and suffering, shock, humiliation, sickness, disease or death of any person or *property damage*.

However this exclusion does not apply to mental anguish, emotional distress, pain and suffering, or shock resulting from a *privacy event*.

##### 7.3 Insured vs Insured

by or on behalf of, or at the behest or for the benefit of any *insured*.

However this exclusion shall not apply to any *claim* brought by:

- 7.3.1 any *insured person* in his or her capacity:
- 7.3.1.1 as a customer or client of the *company*; or
- 7.3.1.2 as an employee of the *company* for a *privacy event* relating to the unauthorized disclosure of such employee's *personal information*; or
- 7.3.2 an entity other than the *company* if any *insured person* served as a director or officer of such entity at the time the *wrongful act* took place.

Provided this exclusion does not apply to any *digital asset replacement expenses*.

##### 7.4 Contractual liability

based upon, arising out of or attributable to any contractual liability or obligation or any breach of any contract, including any liability of others assumed by any *insured*.

However this exclusion shall not apply:

- 7.4.1 if such liability would have attached to the *insured* even in the absence of such contract; or
- 7.4.2 to any obligation to maintain the confidentiality or security of *personal information* or corporate information that is specifically identified as confidential and protected under a non-disclosure agreement or similar contract solely if such liability arises out of a *privacy wrongful act* or a *security wrongful act*.

##### 7.5 Warranties

based upon, arising out of or attributable to any actual or alleged:

- 7.5.1 breach of any warranty, guarantee, or promise of fitness or suitability, whether express, implied, constructive, oral or written; or
- 7.5.2 inaccurate, inadequate, or incomplete description of the price of the *company's* goods, products or services; or
- 7.5.3 failure of any goods, products or services to conform with an advertised quality or performance.

However in respect to 7.5.1 above, this exclusion shall not apply to any *loss* or any *privacy breach costs* resulting from any *claim* made against any *insured*, any *privacy breach costs* the *company* incurs resulting from a *privacy event* or any other amount claimed under any other coverage in the absence of such warranty, guarantee, or promise.

##### 7.6 Cost estimation

based upon, arising out of or attributable to:

- 7.6.1 incomplete disclosure of the *insured's* fees; or
- 7.6.2 any guarantee, representation or promise the *insured* makes relating to contract price, costs, cost savings, return on investment or profitability, including the *insured's* failure to meet cost guarantees, representations, or contract price.

##### 7.7 Intellectual property

based upon, arising out of or attributable to any actual or alleged theft, infringement, dilution, violation or misappropriation of any patent, display or publication of any trade secret, or any infringement of copyright, service mark, trade name, trade mark or other intellectual property of any third party.

However this exclusion shall not apply to the extent any *claim* alleges an inadvertent disclosure of a trade secret that constitutes a *privacy event*.

##### 7.8 Failure of utilities

based upon, arising out of or attributable to any mechanical or electrical failure, interruption or outage, however caused, including any electrical power interruption or surge, brownout, blackout, short circuit, over voltage, or power fluctuation or outage to gas, water, telephone, cable, satellite, telecommunications, the internet or any component thereof including hardware or *software* or any other infrastructure, provided however;

- 7.8.1 in respect of any *loss or privacy breach costs*, this exclusion shall not apply to any failure, interruption, or outage of telephone, cable or telecommunications under the *insured's* direct control which is the result of an *insured's wrongful act* or a *denial of service attack* directed against the *company's computer systems*.
- 7.8.2 in respect of any *digital asset replacement expenses*, this exclusion shall not apply to any failure, interruption, or outage of telephone, cable or telecommunications under the *company's* direct control.

## 7.9 Prior and pending

based upon, arising out of or attributable to:

- 7.9.1 any fact, circumstance, or situation which has been the subject of any written notice given under any insurance policy or any policy of which this policy is a direct or indirect renewal or replacement, or any policy expiring prior to the inception date of this policy;
- 7.9.2 any act, error or omission or *wrongful act* or fact, circumstance or situation occurring prior to:
- 7.9.2.1 the inception date of this policy;
- 7.9.2.2 the inception date of the first policy in an uninterrupted series of privacy and security liability insurance policies continuously issued by Zurich to the *company* of which this policy is a renewal, whichever inception date is earlier; or
- 7.9.2.3 the *retroactive date*, if on or before such earlier inception date or *retroactive date* the *insured* knew or could have reasonably foreseen that such *wrongful act*, *cyber extortion threat*, fact, circumstance or situation would give rise to a *claim or privacy event*; or
- 7.9.3 any written demand, suit or proceeding pending, or order, decree or judgement entered, against any *insured* on or prior to the effective date of this policy or the effective date of any policy issued by Zurich of which this policy is a continuous renewal, replacement, or is alleging or derived from the same or substantially the same *wrongful act*, *interrelated wrongful acts*, *interrelated security events*, fact, circumstance or situation underlying or alleged therein.

## 7.10 Pollution

based upon, arising out of or attributable to:

- 7.10.1 the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of *pollutants* into or on real or personal property, water or the atmosphere; or
- 7.10.2 any direction or request that any *insured* test for, monitor, clean up, remove, contain, treat, detoxify or neutralize *pollutants*, or any voluntary decision to do so.

## 7.11 Deceptive practices

based upon, arising out of or attributable to:

- 7.11.1 the actual or alleged inaccurate or misleading description of the price or quality or fitness or purpose of the *insured's* products, including *software*; or
- 7.11.2 the rendering of or failure to render *professional services*.

## 7.12 Government action

based upon, arising out of or attributable to seizure, confiscation, expropriation, nationalization, or destruction of a *computer system* by order of any governmental authority.

## 7.13 Illegal data mining

based upon, arising out of or attributable to:

- 7.13.1 the illegal, unauthorized or *wrongful* collection of *personal information*, including the collection of *personal information* using cookies or *malicious code*; or
- 7.13.2 the failure to provide adequate notice that such *personal information* is being collected.

However this exclusion shall not apply if the collection of *personal information* is by an *insured person* acting without the knowledge or approval of the *company's* directors or officers, or of any other *insured person* serving in a functionally equivalent position.

## 7.14 Wear and tear

based upon, arising out of or attributable to the ordinary wear and tear or gradual deterioration of any *computer system* or *digital assets*.

## 7.15 Spam

based upon, arising out of or attributable to any unsolicited electronic dissemination of faxes, emails, or other communications to multiple actual or prospective customers by the *insured* or any other third party, including actual or alleged violations of any anti-spam statute or statute, law, ordinance or regulation relating to a person's or entity's right of seclusion or that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

## 7.16 Theft of digital rewards

based upon, arising out of or attributable to the theft of computer or video game points, earnings awards or other intangible property, in respect to Insuring Clause 1.5 'Internet Media liability' only.

## 7.17 Unauthorized file sharing

based upon, arising out of or attributable to the uploading or downloading of digitized music, movies, software or video games by persons who allegedly or actually failed to obtain valid licenses with respect to such music, movies, software or video games, in respect to Insuring Clause 1.5 'Internet Media liability' only.

## 7.18 Failure to comply

based upon, arising out of or attributable to licensing fees or royalties ordered, directed

or agreed to be paid by the *insured* pursuant to a judgement, arbitration award, settlement agreement or similar order or agreement, for the continued use of a person or entity's copyright, slogan, trademark, trade name, trade dress, service mark, service name, or other protected intellectual property, in respect to Insuring Clause 1.5 'Internet Media liability' only.

## 7.19 Third party advertising services

based upon, arising out of attributable to advertising services performed by the *insured* on the *insured's* internet website on behalf of others, in respect to Insuring Clause 1.5 'Internet Media liability' only.

## Section 8 – General conditions

### 8.1 Alteration and assignment

No change in, modification of, or assignment of interest under this policy shall be effective except when made by an endorsement issued by Zurich and made a part of this policy.

### 8.2 Arbitration

In the event of a dispute arising out of this policy, the parties may settle the dispute through mediation in good faith in accordance with the relevant Practice Direction on civil mediation issued by the Judiciary of Hong Kong and applicable at the time of dispute. If the parties are unable to settle the dispute through mediation within ninety (90) days, the parties shall refer the dispute to arbitration administered by the Hong Kong International Arbitration Centre ('HKIAC') under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted. The law of this arbitration clause shall be Hong Kong law and the seat of arbitration shall be Hong Kong. The number of arbitrators shall be one and the arbitration proceedings shall be conducted in English.

It is expressly stated that the obtaining of an arbitral award is a condition precedent to any right of legal action arising out of this policy. Irrespective of the status or outcome of any form of alternative dispute resolution, if Zurich denies or rejects liability for any claim under this policy and the Insured does not commence arbitration in the aforesaid manner within twelve (12) calendar months from the date of Zurich's disclaimer, the insured's claim shall then for all purposes be deemed to have been withdrawn or abandoned and shall not thereafter be recoverable under this policy.

### 8.3 Authorization

By acceptance of this policy, the *policyholder* agrees to act on behalf of the *insureds* with respect to the payment of premiums and the receiving of any return premiums that may become due under this policy; the agreement to and acceptance of endorsements; and the giving or receiving of any notice provided for in this policy, including the giving of notice for any Extended Reporting Period, and the *insureds* agree that the *policyholder* shall act on their behalf.

### 8.4 Bankruptcy

Bankruptcy or insolvency of the *insured* or of the *insured's* estate will not relieve Zurich of our obligations under this policy nor deprive us of our rights or defenses under this policy.

In the event a liquidation or reorganization proceeding is commenced by or against a *company* pursuant to the Bankruptcy Ordinance/Bankruptcy Rules, as amended or any similar foreign, state or local law, the *company* and the *insured persons* hereby:

- 8.4.1 waive and release any automatic stay or injunction which may apply in such proceeding to this policy or its proceeds under such bankruptcy law, and
- 8.4.2 agree not to oppose or object to any efforts by Zurich, the *company*, or any *insured person* to obtain relief from any such stay or injunction.

### 8.5 Confidentiality

The existence and terms of the policy shall be confidential as between the *insured* and us and shall not be published, disclosed or otherwise communicated except where:

- 8.5.1 the law requires disclosure in the financial statements or annual reports of the payment of premium by the *policyholder*; or
- 8.5.2 Zurich consents in writing to the disclosure of the existence and/or terms of this policy.

### 8.6 Co-operation

8.6.1 The *insured* agrees to provide Zurich with all information, assistance and co-operation as we and our defense counsel may reasonably request concerning any *claim* or circumstance, *privacy event*, or any other amount claimed under this policy, including attending hearings and trials and otherwise assisting in securing and giving documentation and evidence and obtaining the attendance of witnesses. The *insured* agrees to do nothing that may prejudice Zurich or our actual or potential rights of recovery.

8.6.2 As soon as practicable after the *insured* gives us notice of any *claim*, circumstance, *privacy event*, *security event* or any other amount claimed under this policy, the *insured* must also give us copies of reports, photographs, investigations, pleadings and all other papers in connection therewith.

### 8.7 Insured's duty and valuation

8.7.1 Maintenance of insured property

The *company* agrees that any protection provided for the safety of any insured property shall be maintained in good order during the *policy period* and shall be in use at all relevant times, and such protection shall not be withdrawn or altered to the detriment of our interests without our consent.

It is a condition precedent that the *insured* will take all reasonable measures to maintain the security and controls of the *company's computer system* to no lesser standard than disclosed in the *submission*.

8.7.2 Valuation of digital asset replacement expenses

8.7.2.1 If the *insured* cannot restore *digital assets* but can recollect such *digital assets*, then *digital assets replacement expenses* shall be limited to the actual cost the *company* incurs to recollect such *digital assets*.

8.7.2.2 If the *company* cannot restore or recollect *digital assets*, then *digital assets replacement expenses* shall be limited to the actual cost the *company* incurs to reach this determination.

## 8.8 Jurisdiction and governing law

This policy shall be governed by and interpreted in accordance with the laws and regulations of Hong Kong. Subject to the Arbitration clause herein, the parties agree to submit to the exclusive jurisdiction of the Hong Kong courts.

## 8.9 Material changes to the company

### 8.9.1 Acquisition or formation of subsidiary

8.9.1.1 If, during the *policy period*, the *policyholder* acquires or forms any *subsidiary*, then the coverage of this policy shall automatically apply to such organization and its *insured persons* from the date of such acquisition or formation, unless such organization has revenues representing more than ten percent (10%) of the *company's* revenues respectively.

8.9.1.2 If the *policyholder* acquires or forms any *subsidiary* as described in 8.9.1.1 above, coverage for such organization shall be conditional upon:

- a. the *policyholder* notifying us in writing within ninety (90) days of the acquisition or formation of such organization;
- b. Zurich receiving full information including a proposal which we deem necessary;
- c. the *policyholder's* agreement to any modification and/or premium adjustment to this policy which we may require with respect to such organization;
- d. our agreement in writing to provide such coverage; and
- e. the *policyholder's* payment of any additional premium when due.

8.9.1.3 Coverage under this policy for any *subsidiary* formed or acquired during the *policy period* and its *insured persons* will apply only to *wrongful acts, privacy events or regulatory proceedings* occurring after the *policyholder's* acquisition or formation of such *subsidiary*.

### 8.9.2 Cessation of subsidiaries

If any organization ceases to be a *subsidiary* at any time prior to or during the *policy period*, then cover under this policy shall continue in respect of such *subsidiary* and any *insured person* thereof but only in respect of *wrongful acts* or conduct for any *wrongful act* by any such organization or persons, any *privacy event* or *regulatory proceeding* involving such organization or persons or any other amount claimed under any other Insuring Clause incurred or sustained by any such organization or persons prior to the date such entity ceased to be a *subsidiary* and during the time such entity was a *subsidiary* and otherwise covered under this policy.

### 8.9.3 Acquisition or bankruptcy of policyholder

If during the *policy period* any of the following events occur:

- 8.9.3.1 the acquisition by any person or entity or affiliated group of persons or entities of fifty percent (50%) or more of the *policyholder's* issued and outstanding voting securities representing the present right to vote for the election of the *policyholder's* directors;
- 8.9.3.2 the acquisition, divestiture or sale of more than fifty percent (50%) of the *company's* assets or liabilities (as reflected in the *policyholder's* most recent consolidated financial statement) by or to any person or entity or affiliated group of persons or entities;
- 8.9.3.3 the appointment of a receiver, conservator, trustee, liquidator, rehabilitator or any similar official for or with respect to the *policyholder*; or
- 8.9.3.4 the *policyholder's* merger with or consolidation into any other entity such that the *policyholder* is not the surviving entity;

(such events referred to herein as a "Takeover") then such coverage as existed under this policy before such Takeover will continue in full force and effect for any *wrongful act, privacy events or regulatory proceedings* occurring before such Takeover, but coverage will cease with respect to any *wrongful act* occurring after such Takeover.

The occurrence of a Takeover will not affect the *insured's* right to purchase an *extended reporting period* unless all premium due for the remainder of the *policy period* has not been fully paid within thirty (30) days of the effective date of such event.

## 8.10 Notices

### 8.10.1. Notice of claim

The *insured* must give us written notice of any *claim* made against the *insured* as soon as practicable after it is made, but in no event later than:

- 8.10.1.1 sixty (60) days after the termination of the *policy period*; or
- 8.10.1.2 the termination of the *extended reporting period*, if exercised.

### 8.10.2 Notice of circumstances

If, during the *policy period*, the *insured* becomes aware of any specific *wrongful act* which may reasonably give rise to a future *claim* covered under this policy and gives written notice to us during the *policy period* of:

- 8.10.2.1 the identity of the potential claimants;
  - 8.10.2.2 a description of the anticipated *wrongful act* allegations;
  - 8.10.2.3 the identity of the *insureds* allegedly involved;
  - 8.10.2.4 the circumstances by which the *insureds* first became aware of the *wrongful act*;
  - 8.10.2.5 the consequences which have resulted or may result; and
  - 8.10.2.6 the nature of the potential damages;
- then any *claim* which arises out of such *wrongful act* shall be deemed to have been first made at the time such written notice was first received by us.

### 8.10.3 Notice of a *privacy event* and *insured's* duties

8.10.3.1 The *insured* must give us written notice of any *privacy event* during the *policy period* as soon as practicable after it occurs, but in no event later than thirty (30) days after the *insured* first becomes aware of such *privacy event*. Any notice to us of a *privacy event* shall not constitute notice of a *claim* or circumstance, unless such notice expressly states it also is a notice under 8.10.1 or 8.10.2 above.

8.10.3.2 In the event of a *privacy event* or any claim for coverage under any other endorsement to this policy, the *insured* must:

- a. take all reasonable steps to protect *computer systems, personal information, or confidential corporate information* from further loss or damage;
- b. cooperate with us in our investigation; and
- c. allow us to question the *insureds* regarding the *insured's* books, records, and any other matters relating to such claim for coverage.

### 8.10.4 Notice of a *security event* and *insured's* duties

8.10.4.1 Following a *security event*, the *company* must provide us with prompt written notice as soon as practicable of such *security event*, but in no event later than sixty (60) days after the occurrence of such *security event*.

Within six (6) months after the occurrence of any such *security event*, the *insured* must furnish us with a written proof of the *company's* claimed loss, duly sworn to, with full particulars.

8.10.4.2 No legal proceedings for the recovery of any amount may be brought prior to the expiration of sixty (60) days after the *insured's* original proof of loss is submitted to us or more than twenty-four (24) months after the occurrence of the *security event* in question.

### 8.10.5 Notice of a *cyber extortion threat* and *insured's* duties

Following a *cyber extortion threat*, the *company* must provide us with prompt written notice as soon as practicable of such *cyber extortion threat*, but in no event later than thirty (30) days after the *company* first receives such *cyber extortion threat*.

### 8.10.6 General notice provisions

Except as otherwise provided in this policy, all notices under any provision of this policy shall be in writing and given by prepaid express courier, certified mail, email or fax properly addressed to the appropriate party. Notice to the *insured* may be given to the *policyholder* at the address as shown in the *schedule*. Notice to Zurich shall be given to the applicable address shown in the *schedule*. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one (1) day following the date such notice is sent, whichever is earlier, subject to proof of transmittal.

## 8.11 Other insurance

To the extent that any *loss (damages and defense expenses)* is insured under:

- 8.11.1 those policies listed in the *submission*, or endorsements to, any policy; or
- 8.11.2 any other policy entered into by the *insured*; or
- 8.11.3 any other policy effected on behalf of the *insured* or under which any *insured* is a beneficiary (but not a policy to which paragraph 8.11.2 applies), then to the extent to which it is permitted by the Insurance Contracts Act 1984, as amended, coverage is only provided under this policy subject to its limitations, conditions, provisions and terms for such *loss* excess of the coverage provided by any of the policies referred to in 8.11.1, 8.11.2 and 8.11.3.

## 8.12 Policy interpretation

- 8.12.1 Titles of paragraphs or clauses in this policy are merely for reference purposes and will not limit, expand, or otherwise affect the provisions to which they relate;
- 8.12.2 Words and expressions in the singular include references to the plural and vice versa;
- 8.12.3 Words in italics have specific meaning and are defined in Section 2 of this policy;
- 8.12.4 Words that are not specifically defined in this policy have the meaning ordinarily attributed to them.

## 8.13 Policy termination and non-renewal

This policy, including all purchased Insuring Clauses, shall terminate at the earliest of the following times, subject to any applicable laws:

- 8.13.1 Upon expiration of the *policy period* as set out in the *schedule*;
- 8.13.2 At such other time as may be agreed upon by Zurich and the *policyholder*;
- 8.13.3 Cancellation:
  - 8.13.3.1 This policy may be cancelled by the *policyholder* by surrender thereof to Zurich or any of our authorized representatives, or by mailing to us written notice stating when, thereafter, cancellation shall be effective.
  - 8.13.3.2 If this policy has been in effect for sixty (60) days or more or is a renewal of a policy issued by Zurich, this policy may not be cancelled except for 8.13.3.1 above or for the following reasons:
    - a. nonpayment of premium; or
    - b. fraud or material misrepresentation affecting the policy.
  - 8.13.3.3 Written notice of cancellation shall be mailed or delivered by us to the *policyholder* at least:
    - a. ten (10) days prior to the effective date of cancellation, if this policy is cancelled for nonpayment of premium; or
    - b. sixty (60) days prior to the effective date of cancellation, if this policy is cancelled for any other reason.
  - 8.13.3.4 If the *policyholder* cancels the policy, a refund of premium will be allowed pro rata of eighty percent (80%) of the premium for the unexpired *policy period*. Under any other circumstances, the refund shall be computed pro rata.

8.13.4 Non-renewal. If Zurich elects not to renew this policy, we shall mail to the *policyholder* written notice thereof at least sixty (60) days prior to the expiration of the *policy period*.

#### 8.14 Sanctions regulation

Notwithstanding any other terms or conditions under this policy, Zurich shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to any *insured* or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of the *insured* would violate any applicable trade or economic sanctions, law or regulation.

#### 8.15 Severability and non imputation

In granting coverage under this policy, Zurich has relied upon the declarations, representations and warranties in the *submission*. All such declarations, representations and warranties are the basis of coverage under this policy and are incorporated into and constitute part of this policy. The *submission* shall be construed as a separate *submission* by each of the *insured persons*. No statement in the *submission* or knowledge possessed by any of the *insured persons* shall be imputed to any other *insured person* for the purpose of determining if coverage is available. The declarations, representations, and warranties in the *submission* and knowledge possessed by any director, officer, risk manager, general counsel of the *company*, or any *insured person* serving in a functionally equivalent position, shall be imputed to the *company* for the purpose of determining if coverage is available for the *company*. This policy is void in any case of fraud by the *company* or any other *insured* at any time before or after a *loss*. It is also void if the *company* or any other *insured*, at any time before or after a *loss*, intentionally conceals or misrepresents a material fact concerning the insurance provided by, property protected within, or any *claim* submitted under this policy.

#### 8.16 Subrogation and recoveries

In the event of any payment under this policy, Zurich shall be subrogated to the extent of such payment to all of the *insured's* rights of recovery, and the *insureds* shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable us effectively to bring suit in the name of the *insureds*.

Zurich will waive its right to be subrogated to all of the *insureds* rights of recovery, provided the *insured* has waived their rights of recovery in a written contract or written agreement which is executed prior to a *loss*.

All recoveries (except from sureties, insurance, reinsurance or indemnity taken by or for our benefit) obtained after any payment under this policy, less the actual cost of recovery, will be applied and distributed as follows:

- 8.16.1 first, to satisfy the *company's* liability for amounts which would have otherwise been paid under this policy but for being in excess of the applicable Limit of Liability;
- 8.16.2 second, to reimburse us for any amounts we paid; and
- 8.16.3 third, to the *company* to satisfy any *deductible* the *company* incurred.

#### 8.17 Territory limit

This policy applies to *wrongful acts* occurring, *claims* made, *privacy events* and *security events* occurring, and any other *loss*, cost, expense or damage claimed under any Insuring Clause, purchased under this policy anywhere in the world, to the extent permitted by the local applicable law.

#### 8.18 Payment of premium

The insurance cover of this policy is provided subject to the due payment of all required premiums as they fall due. If the premium for this policy is payable by instalments, it is a condition precedent to the liability of Zurich hereunder that each instalment shall be paid when due, otherwise all benefit under this policy shall be forfeited from the date when such instalment was due.

#### 8.19 Joint responsibility and liability

Any and all *insureds* and any persons deriving benefit under this insurance are jointly liable and responsible for any breach of any terms and conditions of this policy and/or misrepresentation and/or non-disclosure and/or fraud. For the avoidance of doubt this clause survives avoidance of this policy.

#### 8.20 Sole agent

The named *policyholder* set forth in this policy shall act on behalf of all insureds for all purposes, including but not limited to the payment of deductible (if any), payment or return of premium, receipt and acceptance of any extension issued to form a part of this policy, giving and receiving notice of cancellation or non-renewable.

#### 8.21 Change in risk

Every change materially affecting the facts or circumstances existing at the commencement of or during the course of this policy, or at any subsequent renewal date, shall be notified to Zurich as soon as such change comes to the notice of the *insured*. Zurich reserves the right to

accept or deny coverage at the time of such notification and to establish a separate rate and premium for any such coverage.

#### 8.22 Fraud

If any claim upon this policy be in any respect fraudulent, or if any fraudulent means or devices be used by the *insured*, or if any damage be occasioned by a willful act of the *insured* or with their connivance, all benefit under this policy shall be forfeited and the policy void.

#### 8.23 Misrepresentation and non-disclosure

Zurich will:

- a. not exercise its right to avoid this policy or seek to deny cover or seek damages or recovery from the *insured(s)* in respect of a *loss* paid where there has been non-disclosure, misrepresentation of the facts or untrue statements; or
- b. waive its right to treat this policy as repudiated as from the date of breach in relation to any breach caused by a non-disclosure, misrepresentation or untrue statement, provided that
  - i. such non-disclosure, misrepresentation or untrue statement was free of any fraud, fraudulent misrepresentation, intent to deceive or other dishonesty by the *insured* claiming under this policy; and
  - ii. such non-disclosure, misrepresentation or untrue statement was made after due and careful enquiry by the *insured* claiming under this policy.

In the event of any innocent material non-disclosure or misrepresentation which increases the risk assumed by Zurich and where a reasonable underwriter would have assumed that increased risk by

- a. an increase in the premium, or
- b. failing that, by a change in the terms and conditions of this policy, or
- c. both,

then Zurich may change the premium and/or the terms of this policy to the same extent as a reasonable underwriter would have done, and this change shall then constitute the sole remedy of Zurich in respect of such non-disclosure or misrepresentation.

#### 8.24 Action against Zurich

Zurich shall not be liable unless the *insured* has complied fully with all provisions of this policy nor until the amount of compensation has been finally determined, either by judgement against the *insured* or by written agreement with the *insured*, the claimant and Zurich. The *insured* shall make a definite claim for which Zurich may be liable within a reasonable time after such final determination.

#### 8.25 Data protection

All personal data collected and held by Zurich will be used in accordance with its privacy policy, as notified to customers from time to time and available on this website: <https://www.zurich.com.hk/en/services/privacy>.

The *policyholder* and/or *insured* shall, and shall procure all other insured persons covered under this policy to, authorize Zurich to use and transfer data (within or outside Hong Kong), including sensitive personal data as defined in the Personal Data (Privacy) Ordinance (Cap.486), Laws of Hong Kong, for the obligatory purposes as set out in Zurich's privacy policy as applicable from time to time.

When information about a third party is provided by the *policyholder/insured* to Zurich, the *policyholder/insured* warrants that proper consents from the relevant data subjects have been obtained before the personal data are provided to Zurich, enabling Zurich to assess, process, issue and administer this policy, including without limitation, conducting any due diligence, compliance and sanction checks on such data subjects.

#### 8.26 Rights of third parties

Other than the *policyholder* or the *insured* or as expressly provided to the contrary, a person who is not a party to this policy has no right to enforce or to enjoy the benefit of any term of this policy. Any legislation in relation to third parties' rights in a contract shall not be applicable to this policy. Notwithstanding any terms of this policy, the consent of any third party is not required for any variation (including any release or compromise of any liability under) or termination of this policy.

#### 8.27 Valuation and foreign currency

All premiums, limits of liability, sub limits, *deductibles*, retentions, *losses* and other amounts under this policy are expressed and payable in Hong Kong currency. Except as otherwise provided, if judgement is rendered, settlement is denominated or another element of loss under this policy is stated in a currency other than Hong Kong dollar, payment under this policy shall be made in Hong Kong dollar at the cash rate of exchange for the purchase of Hong Kong dollar in accordance with the Hong Kong Monetary Authority on the date the final judgement is reached, the amount of the settlement is agreed upon or the other element of *loss* is due, respectively.

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