

Cyber Liability Insurance

Policy Number CBR2014V1

Issued to clients of VMIA

For the period 30 June 2014 to 30 June 2015

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In consideration of the payment of the **Premium** and **Subject** to all the provisions of this policy, **VMIA** agrees as follows.

1. Insuring Clauses

1.1 Personal Data Liability

VMIA will pay on behalf of any **Insured** all **Loss** from any **Claim** arising out of an actual or alleged **Breach of Personal Information** against the **Insured**.

1.2 Corporate Data Liability

VMIA will pay on behalf of any **Insured** all **Loss** from any **Claim** arising out of an actual or alleged **Breach of Corporate Information** against the **Insured**.

1.3 Outsourcing Liability

VMIA will pay on behalf of any **Insured** all **Loss** from any **Claim** arising out of an actual or alleged **Breach of Personal Information** or **Breach of Corporate Information** which gives rise to a **Claim** against an **Outsourcer** and for which an **Insured** is liable.

1.4 Data Security Liability

VMIA will pay on behalf of any **Insured** all **Loss** from any **Claim** arising out of an actual or alleged act, error or omission that results in:

- (i) contamination of **Third Party Data** or **Corporate Information** by any unauthorised software, computer code or virus specifically designed to damage any **Computer System**;
- (ii) an improper or wrongful denial of access of an authorised **Third Party** to **Data** or **Corporate Information**;
- (iii) the theft of an access code from the **Insured's** premises, **Computer System**, or **Employees** by electronic or non-electronic means;
- (iv) the destruction, modification, corruption, damage or deletion of **Data** or **Corporate Information** stored on any **Computer System** due to a **Breach of Data Security**;
- (v) the physical theft of the **Insured's** hardware by a **Third Party**;
- (vi) a disclosure of **Data** or **Corporate Information** due to a **Breach of Data Security**; or
- (vii) any unauthorised access, unauthorised use or transmission of a malicious code against a **Third Party's Computer System** due to a **Breach of Data Security**.

1.5 Defence Costs

VMIA has the right to defend any **Claim** which this policy may respond to under its Covers or Extensions. **VMIA** shall pay **Defence Costs** incurred in defending such **Claim**.

VMIA is under no obligation to pay **Loss**, or make any payment under this policy, unless the actual or alleged **Breach of Personal Information**, **Breach of Corporation Information**, **Breach of Data Security**, **Investigation**, **Security Failure**, **Security Threat**, act, error or omission first takes place on or after the **Retroactive Date** and prior to the expiration of the policy period.

2. Policy Extensions

2.1 Data Administrative Fines

VMIA will pay on behalf of any **Insured** any **Data Administrative Fines** that the **Insured** is legally obligated to pay in connection with an **Investigation**.

2.2 Data Administrative Investigation

VMIA will pay on behalf of any **Insured** any reasonable fees, costs and expenses for legal advice and representation in connection with an **Investigation**.

2.3 Electronic Data

In the event of a **Breach of Data Security, Breach of Personal Information, Breach of Corporation Information** or **Security Failure** which first occurs and is reported during the policy period, **VMIA** will pay on behalf of any **Insured** any reasonable costs and expenses associated with:

- (i) determining whether **Electronic Data** can or cannot be restored, recollected, or recreated; and
- (ii) restoring, recreating or recollecting **Electronic Data**, where possible.

2.4 Extended Reporting Period

If **VMIA** cancels or does not renew this policy, other than for non-payment of **Premium** or any other breach of the terms of this policy by an **Insured**, the **Policyholder** shall have the right to a period of 30 days following the date of cancellation or expiry in which to give notice or any covered **Claim** first made against the **Insured**. That extended reporting period shall not apply if this policy or its cover has been replaced.

2.5 Forensic Services

VMIA will pay on behalf of the **Insured** any **Forensic Services Fees** in the event of an actual or suspected **Breach of Data Security, Breach of Personal Information, Breach of Corporate Information** or **Security Failure** provided that the **Policyholder** shall notify **VMIA** within twenty four (24) hours after contacting the **Forensic Services Adviser**.

2.6 Repair of the Policyholder's Reputation

VMIA will pay on behalf of any **Insured** any reasonable fees, costs and expenses for advice and support by an independent public relations firm incurred, with the prior written consent of **VMIA**, by the **Policyholder** or a **Subsidiary** in order to mitigate damage to the **Policyholder** or **Subsidiaries** reputation due to a **Claim**, a **Breach of Personal Information**, a **Breach of Corporate Information**, or a **Breach of Data Security** or a **System Failure**.

2.7 Repair of Individual Reputation

VMIA will pay on behalf of any **Insured** any reasonable fees, costs and expenses for advice and support by an independent public relations firm incurred, with the prior written consent of **VMIA**, by a director, chief compliance officer, **Data Protection Officer** or general counsel of the **Policyholder** or a **Subsidiary** in order to mitigate damage to their individual reputation due to a **Claim**, a **Breach of Personal Information**, a **Breach of Corporate Information**, **Breach of Data Security** or a **Security Failure**.

2.8 Notification & Monitoring

VMIA will pay on behalf of any **Insured** any **Notification and Monitoring Costs** in the event of a **Breach of Personal information, Breach of Corporate Information, Breach of Data Security** or **Security Failure** which first occurs and is reported during the policy period.

2.9 Media Content Liability

VMIA will pay on behalf of any **Insured** all **Damages** arising out of an actual or alleged act, error, misstatement, misleading statement or omission by an **Insured** in connection with the collection, creation, release, printing, broadcasting, or distribution of **Material** that results in:

- (i) an infringement of copyright, title, slogan, trademark, trade name, infringement of domain name;
- (ii) plagiarism, piracy or misappropriation or theft of ideas;
- (iii) any false light, public disclosure of private facts, libel or slander committed without malice by reason of words written, spoken or broadcasted, including without limitation, emotional distress or mental anguish in connection with such conduct; or
- (iv) an intrusion, invasion of privacy, wrongful entry or eviction, trespassing, or eavesdropping.

2.10 Cyber Extortion Liability

VMIA will pay on behalf of any **Insured** any **Extortion Loss** that an **Insured** incurs solely as a result of a **Security Threat**. Any payment made under this **Extension** shall be conducted in accordance with local legal requirements, and in cooperation with and under the direction of any appropriate criminal enforcement or other authority where required.

2.11 Network Interruption Insurance

VMIA will pay the **Insured** any **Network Loss** that an **Insured** incurs after the **Waiting Hours Period**, solely as a result of a **Security Failure**.

3. Definitions

Wherever used in this Policy, the following terms shall be deemed to have the meanings ascribed to them below:

3.1 Breach of Corporate Information

means the public disclosure of **Corporate Information** in an **Insured's** care which is otherwise confidential.

3.2 Breach of Data Security

means using or gaining access to the **Computer System** without authorisation from the **Insured** or use or access of the **Computer System** outside of the scope of the authority granted by the **Policyholder** or a **Subsidiary**.

3.3 Breach of Personal Information

means the public disclosure of any non-public **Data** in an **Insured's** care for which the **Insured** is responsible.

3.4 Claim

means any:

- (i) service of an **Enforcement Notice**;
- (ii) written demand seeking legal remedy;
- (iii) civil, regulatory, administrative or criminal proceedings seeking legal remedy, compliance or other sanction; or
- (iv) an **Investigation**.

Claim shall not include any (i) **Data Subject Access Request**; or (ii) allegation brought by or on behalf of any director, chief compliance officer, **Data Protection Officer** or general counsel of the **Policyholder** or a **Subsidiary**.

3.5 Computer System

means any networked computer hardware or software under the operation or ownership, or that is leased by, the **Policyholder** or a **Subsidiary**

3.6 Corporate Information

means:

- (i) any **Third Party's** business secrets, including but not limited to any budgets, customer lists, share prospectus, marketing plans and other information the release of which would be advantageous to a competitor or information which is otherwise not available to the general public; or
- (ii) any **Third Party's** professional information, including but not limited to any, information supplied to a solicitor, accountant or other professional advisor in the course of his or her professional duties, which is otherwise not available to the general public.

3.7 Cyber Terrorism

means the premeditated use of disruptive activities against any **Computer System** or network, with the explicit threat to use such activities, that results in causing harm, furthering social, ideological, religious, political, or similar objective, or intimidating any person(s) in furtherance of such objectives.

3.8 Damages

means any amount that an **Insured** shall be legally liable to pay to a **Third Party** in respect of judgments rendered against an **Insured**, or for settlements which conform with the consent requirements set out in the **Claims Conditions**, subject to the limitations of **Loss**.

3.9 Data

means any personal data or corporate information which relates to any **Data Subject** held by the **Insured** which is collected for a legitimate and specific purpose and that enables the **Data Subject's** identification.

3.10 Data Administrative Fines

means any fines and penalties the **Insured** is legally obligated to pay to a government authority, regulator or **Data Protection Authority** for a breach of data protection laws or regulations provided that **VMIA** is not prohibited by law from paying.

3.11 Data Protection Authority

means any data protection authority, government authority, regulator or other public body authorised to investigate, prosecute or otherwise enforce applicable laws or regulations relating to the collection, storage or processing of **Data**.

3.12 Data Protection Officer

means any employee who is responsible within the **Policyholder** or a **Subsidiary** to implement, monitor, supervise, report upon and disclose the **Policyholder** or a **Subsidiary's** regulatory compliance standards with respect to data collection, data processing and delegation of data processing.

3.13 Data Subject

means any natural person whose **Data** has been collected or processed by or on behalf of the **Insured**.

3.14 Data Subject Access Request

means a written request from a **Data Subject** to the **Policyholder** or a **Subsidiary** regarding the mandatory production of:

- (i) **Data** held which identifies such individual person;
- (ii) the reason such **Data** has been collected or processed;
- (iii) the recipients or classes of recipients to whom such **Data** has been or may be disclosed; or
- (iv) the source of such **Data**.

3.15 Deductible

means the amount specified as such in the Schedule.

3.16 Defence Costs

means reasonable fees, costs and expenses incurred by or on behalf of the **Insured** in the investigation, defence, adjustment, settlement or appeal of any **Claim**. **Defence Costs** shall not mean any internal or overhead expenses of any **Insured** or the costs of any **Insured's** time.

3.17 Electronic Data

means any software or **Data**, digitised information or media stored electronically on a **Computer System**.

3.18 Employee

means any natural person who is or has been expressly engaged as an **Employee** under a contract of employment with the **Policyholder** or any **Subsidiary**. **Employee** shall not mean any: (i) principal, partner or director; or (ii) temporary contract labour, self-employed person or labour-only sub-contractor.

3.19 Enforcement Notice

means a notice from a **Data Protection Authority** requiring the **Policyholder** or a **Subsidiary** to:

- (i) confirm compliance with the applicable data protection and/or privacy law or regulations;
- (ii) take specific measures to comply with the applicable data protection and/or privacy law or regulations; or
- (iii) refrain from processing any specified **Data**; within a specified time period.

3.20 Extortion Loss

means any:

- (i) monies paid by an **Insured** in accordance with local legal requirements, and with **VMIA's** written consent (including negotiation, mediation and crisis management costs), to terminate or end a **Security Threat** that might otherwise result in the harm of the **Insured** or to avoid a **Breach of Personal Information** or a **Breach of Corporate Information**; or
- (ii) the cost to conduct an **Investigation** to determine the cause of a **Security Threat**.

3.21 Forensic Services Fees

means the reasonable and necessary fees, costs and expenses of the **Forensic Services Advisor** incurred by the **Insured** for the purpose of:

- (i) substantiating whether a **Breach of Data Security**, **Breach of Personal Information**, **Breach of Corporate Information** or **Security Failure** has occurred;
- (ii) identifying the cause of the breach; and
- (iii) making recommendations as to how this may be prevented or mitigated.

3.22 Forensic Services Advisor

means such information technology and/or fraud investigation professional advisors as may from time to time be appointed by **VMIA**.

3.23 Insured

means:

- (i) the **Policyholder** or any **Subsidiary**;
- (ii) any natural person who is or has been a director, principal or partner of the **Policyholder** or any **Subsidiary**;
- (iii) any **Employee** of the **Policyholder** or any **Subsidiary** (including but not limited to any chief compliance officer, **Data Protection Officer** or general counsel of the **Policyholder**); and
- (iv) any estates or legal representatives of any **Insured** described in (ii) and (iii) of this definition.

3.24 Investigation

means any formal or official action, investigation, inquiry or audit by a **Data Protection Authority** into the **Insured's** procedures for data collection, data processing or delegation of data processing to a **Third Party**, but shall not include any inquiry or action that is industry-wide or otherwise not specific to the **Insured**.

3.25 Loss

means **Damages** and **Defence Costs**. **Loss** shall not mean and this policy shall not cover any:

- (i) any internal or overhead expenses of any **Insured** (including wages, salary or other remuneration) or the cost of any **Insured's** time;
- (ii) non-compensatory damages, including punitive, multiple, exemplary or liquidated damages;
- (iii) fines or penalties, other than those provided by **Data Administrative Fines**;
- (iv) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief; or
- (v) any matters which may be deemed uninsurable under the law governing this policy or the jurisdiction in which a **Claim** is brought.

3.26 Material

means media content, advertising and written, printed, video, electronic, digital or digitised content, of:

- (i) broadcasts, including, broadcasts via television, motion picture, cable, satellite television, radio, wireless devices or the internet;
- (ii) publications, including, publications via newspaper, newsletter, magazine, book and other literary, monograph, brochure, directory, music, directories, electronic, screen play, film script, playwright and video publications publishing including the researching, preparation, serialisation, exhibition or distribution of publishing materials; or

- (iii) advertising, graphic design, design of logos or trademarks, purchasing of advertising time and space, market research, public relations, direct mailing, design of games, competitions or special offers.

3.27 Material Interruption

means the actual and measurable interruption or suspension of an **Insured's** business directly caused by a **Security Failure**.

3.28 Network Loss

means the following costs incurred within 120 days from the commencement of a **Material Interruption**:

- (i) costs that would not have been incurred but for a **Material Interruption**;
- (ii) the sum of the following, which shall be calculated on an hourly basis:
 - a. reduction in net income (net profit or loss before income taxes), that would have been earned; and
 - b. continuing normal operating expenses incurred, including payroll.

3.29 Notification and Monitoring Costs

means:

- (i) reasonable fees, costs and expenses incurred by or on behalf of any **Insured**, with **VMIA's** prior written consent, for the disclosure of a **Breach of Personal Information, Breach of Corporate Information, Breach of Data Security or Security Failure** to applicable **Data Subjects**;
- (ii) reasonable costs and expenses associated with identity theft education and credit file or identity monitoring arising from a **Breach of Personal Information or Breach of Data Security**; and
- (iii) reasonable fees, costs and expenses, incurred by or on behalf of any **Insured**, with **VMIA's** prior written consent, for notifying a **Breach of Personal Information** to a **Data Protection Authority**.

3.30 Outsourcer

means a natural person or entity which collects, stores or processes **Data** on behalf of the **Insured** based on an express contractual agreement.

3.31 Policyholder

means the entity specified as such in the Schedule.

3.32 Premium

means the amount specified as such in the Schedule.

3.33 Security Failure

means a failure or violation of the security of a **Computer System**, including, without limitation, that which results in or fails to mitigate any unauthorised access, unauthorised use, denial of service attack or receipt or transmission of a malicious code. **Security Failure** includes any such failure or violation resulting from the theft of a password or access code from an **Insured's** premises, a **Computer System**, or an officer, director or **Employee** of the **Insured** by non-electronic means in direct violation of the **Insured's** specific written security policies or procedures.

3.34 Security Threat

means any threat or connected series of threats to commit a local, cross border or multi-country attack against a **Computer System** for the purpose of demanding money, securities or other tangible or intangible property of value from the **Insured**.

3.35 Subsidiary

means any companies in which the **Policyholder**, either directly or indirectly through one or more of its **Subsidiaries**:

- (i) controls the composition of the board of directors;
- (ii) controls more than half of the voting power; or
- (iii) holds more than half of the issued share capital.

For any **Subsidiary** or any **Insured** thereof, cover under this policy shall only apply while such entity is, or was, a **Subsidiary** of the **Policyholder**.

3.36 Third Party

means any entity or natural person; provided, however, a **Third Party** does not mean:

- (i) any **Insured**, other than an **Employee**; or
- (ii) any other natural person or entity having a financial interest or executive role in the operation of the **Policyholder** or any **Subsidiary**.

3.37 Waiting Hours Period

means the number of hours set forth in the Schedule that must elapse once a **Material Interruption** has begun.

4. Exclusions

This policy shall not cover **Loss** or make any payment in connection with any **Claim**:

4.1 Anti-Competitive Conduct

arising out of, based upon or attributable to any actual or alleged restrictive trade practices, restraint of trade or unfair competition.

4.2 Bodily Injury and Property Damage

arising out of, based upon or attributable to any:

- (i) physical injury, sickness, disease or death; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury, other than mental anguish or mental injury arising from a **Claim** for any breach of data protection laws or regulations by the **Insured** and/or the Media Content Liability Extension; or
- (ii) **Loss** or destruction of tangible property, other than **Data**, or loss of use thereof.

4.3 Contractual Liability

arising out of, based upon or attributable to any guarantee, warranty or liability assumed or accepted by an **Insured** under any contract or agreement except to the extent such liability would have attached to the **Insured** in the absence of such contract or agreement.

4.4 Employers' Duties

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

- (i) employment related practices; or
- (ii) violation of any responsibilities, obligations or duties protecting or regulating:
 - a. any employee pension plans, employee welfare plans, employee retirement savings plans, employee profit sharing or employee benefits programme;
 - b. social security benefits; or
 - c. workplace health or safety;

unless arising from a **Claim** for any breach of data protection laws or regulations against the **Insured**.

4.5 Enforcement Notice

arising out of, based upon or attributable to any failure to respond to or comply with an **Enforcement Notice** in the required time period.

4.6 Infrastructure or Security Failure

arising out of, based upon or attributable to any:

- (i) mechanical failure;
- (ii) electrical failure, including any electrical power interruption, surge, brown out or black out; or
- (iii) telecommunications or satellite systems failure.

Unless resulting in a **Breach of Personal Information, Breach of Corporate Information, Breach of Data Security** or **Security Failure** when the above mentioned are under the **Insured's** direct control.

4.7 Intellectual Property

arising out of, based upon or attributable to any breach of any intellectual property rights including patents and trade secrets.

This Exclusion shall not apply to the Media Content Liability Extension.

4.8 Intentional Act

arising out of, based upon or attributable to any intentional, deliberate or reckless act that would reasonably be expected to give rise to a **Claim** against an **Insured**; provided, however, that this Exclusion shall not apply to Data Security Liability Cover or an intentional, reckless, or deliberate act by an **Employee** acting independently of any directors, chief compliance officer, **Data Protection Officer** or general counsel of the **Insured**.

4.9 Misdeeds

arising out of, based upon or attributable to any act which a court, official tribunal or arbitrator finds, or which an **Insured** admits, to be a criminal, dishonest or fraudulent act, if committed by the **Policyholder's**:

- (i) directors, chief compliance officer, **Data Protection Officer** or general counsel whether acting on their own or in collusion with others; or
- (ii) **Employees** or **Outsourcers** acting in collusion with any of the **Policyholder's** directors, chief compliance officer, **Data Protection Officer** or general counsel.

VMIA will continue to pay on behalf of an **Insured Defence Costs** under this policy until a dishonest, criminal or fraudulent act, error or omission is found by a court, tribunal, arbitrator or regulator to have been committed by an **Insured**. Following such finding **VMIA** shall be entitled to repayment of any amount paid to the **Insured** under this policy.

4.10 Prior Claims and Circumstances

- (i) made prior to or pending at the inception of this policy; or
- (ii) arising out of, based upon or attributable to any circumstance that, as of the inception of this policy, may reasonably have been expected by any **Insured** to give rise to a **Claim**.

4.11 Trading Losses

arising out of, based upon or attributable to any trading losses or trading liabilities; monetary value of any electronic fund transfers or transactions by or on behalf of the **Insured** which is lost, diminished or damaged during transfer from, into or between accounts; or the face value of coupons, price discounts, prizes, awards or any other valuable consideration given in excess of the total contracted or expected amount.

4.12 USA / Canada

made, occurring or pending within; or to enforce a judgment obtained in, the United States of America, Canada, or any of their territories or possessions.

4.13 War/Terrorism

arising out of, based upon or attributable to any war (declared or otherwise), terrorism, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any other political or terrorist organisation; provided, however, that this Exclusion shall not apply to a **Security Threat** under the Cyber Extortion Extension. Provided however that this exclusion shall not apply to actual, alleged or threatened **Cyber Terrorism**.

Additional Exclusions applicable only to Insuring Clause 1.4 Data Security Liability

This policy shall not cover **Loss** in connection with any **Claim**:

4.14 Data Security Liability

arising out of, based upon or attributable to any deliberate commission, aiding, abetting or condoning of or conniving in:

- (i) a dishonest, malicious or fraudulent act; or
- (ii) a criminal breach of law or regulation;

if committed by the **Policyholder's** or **Subsidiary's**:

- (a) directors, chief compliance officer, **Data Protection Officer** or general counsel whether acting on their own or in collusion with others; or
- (b) employees or **Outsourcers** acting in collusion with any of the **Policyholder's** or **Subsidiaries** directors, chief compliance officer, **Data Protection Officer** or general counsel.

Additional Exclusions applicable only to Extension 2.9 Media Content Liability only

4.15 This policy shall not cover **Loss** in connection with any **Claim**:

1. Patents and Trade Secrets

arising out of, based upon or attributable to any actual or alleged infringement of or misappropriation of any patent or trade secret.

Additional Exclusion applicable only to the Extension 2.10 Cyber Extortion only

4.16 This policy shall not cover any:

1. Government Entity or Public Authority

Extortion Loss arising out of, based upon or attributable to any **Security Threat** made by any government entity or public authority.

Additional Exclusions applicable to Extension 2.11 Network Interruption Insurance only

4.17 This policy shall not cover **Loss** in connection with any **Claim**:

1. Government Entity or Public Authority

arising out of, based upon or attributable to any seizure, confiscation, nationalisation, or destruction of a **Computer System** by order of any government entity or public authority.

2. Specific Network Interruption

arising out of, based upon or attributable to any:

- (i) liability to **Third Parties** for whatever reason;
- (ii) legal costs or legal expenses of any type;
- (iii) updating, upgrading, enhancing, or replacing any **Computer System** to a level beyond that which existed prior to sustaining **Network Loss**;
- (iv) unfavourable business conditions; or
- (v) the removal of software program errors or vulnerabilities.

5. Claims

5.1 Notification of Claims

The **Insured** shall, as a condition precedent to the obligations of **VMIA** under this policy, give written notice to **VMIA** of any **Claim**, first made against the **Insured** as soon as practicable and during the **Policy Period**. All notifications must be in writing or by facsimile.

5.2 Continuity

In the absence of fraudulent non-disclosure, where a **Claim** that would otherwise be covered by this policy is excluded by the Prior Claims/Circumstances Exclusion part (ii), then cover is provided under this policy for that **Claim**, provided always that:

- (i) the **Insured** first became aware of the facts that might give rise to the **Claim** after the **Continuity Date**; and
- (ii) the **Claim** shall be dealt with in accordance with all the terms, conditions, exclusions and limitations of the policy under which the **Claim**, or circumstance, could and should have been notified but only where such earlier policy affords no broader cover in respect of the **Claim** than the provisions of this **Policy**; and
- (iii) If **VMIA** is the insurer on risk for the policy in (ii) above, the **Insured** and the **Policyholder** agree to **Claim** on this policy only and to make no **Claim** on such earlier policy.

5.3 Related Claims

If notice of a **Claim** against an **Insured** is given to **VMIA** pursuant to the terms and conditions of this policy, then:

- (i) any subsequent **Claim** alleging, arising out of, based upon or attributable to the facts alleged in that previously notified **Claim**; and
- (ii) any subsequent **Claim** alleging any **Loss** which is the same as or related to any **Loss** alleged in that previously notified **Claim**, shall be considered made against the **Insured** and reported to **VMIA** at the time notice was first given.

Any **Claim** or **Claims** arising out of, based upon or attributable to:

- (i) the same cause; or
 - (ii) a single **Loss**; or
 - (iii) a series of continuous, repeated or related **Losses**;
- shall be considered a single **Claim** for the purposes of this policy.

5.4 For the Network Interruption Insurance Extension only:

5.4.1 Notice

In addition to the applicable terms of Notification of Claims, as a condition precedent to the obligations of **VMIA** under this policy, the **Insured** must also:

- (i) complete and sign a written, detailed and affirmed proof of **Loss** within ninety days after the discovery of any **Loss** (unless this period is otherwise extended in writing by **VMIA**), which will detail a full description of the **Network Loss** and the circumstances of such **Network Loss**. The written proof should also include a detailed calculation of any **Network Loss** and all underlying documents and materials that reasonably relate to or form a part of the basis of the proof of the **Loss**;
- (ii) upon **VMIA**'s request, submit to an examination under oath; and

- (iii) provide **VMIA** with any cooperation and assistance that **VMIA** may request, including assisting **VMIA** in:
 - (a) any investigation of a **Security Failure, Network Loss** or circumstance;
 - (b) enforcing any legal rights an **Insured** or **VMIA** may have against anyone who may be liable to an **Insured**;
 - (c) executing any documents that **VMIA** deems necessary to secure its rights under this policy; and
 - (d) any calculation or appraisal conducted by or on behalf of **VMIA** pursuant to this **Network Interruption Insurance** Extension.

The costs and expenses of establishing or proving an **Insured's Loss** under this Network Interruption Insurance Extension, including, without limitation, those associated with preparing the proof of loss, shall be the obligation of the **Insured** and not covered under this policy.

5.4.2 Net Profit Calculations

In determining the amount of net profit (or net loss) and charges and expenses covered hereunder for the purpose of ascertaining the amount of **Network Loss** (and otherwise) under this Network Interruption Insurance Extension, due consideration shall be given to the prior experience of an **Insured's** business before the beginning of the **Security Failure** and to the probable business an **Insured** could have performed had no **Security Failure** occurred. Provided, however, that such net profit (or net loss) calculations shall not include, and this policy shall not cover, net income that would likely have been earned as a result of an increase in volume of business due to favourable business conditions caused by the impact of **Security Failures** on other businesses. All such net profit (or net loss) and charges and expenses shall be calculated on an hourly basis and based on such an **Insured's** actual net profit (or net loss) and charges and expenses.

5.5 Defence and Settlement

VMIA does not assume any duty to defend, and the **Insured** must defend and contest any **Claim** made against them unless **VMIA**, in its sole and absolute discretion, elects in writing to take over and conduct the defence and settlement of any **Claim**. If **VMIA** does not so elect, it shall be entitled, but not required, to participate fully in such defence and the negotiation of any settlement that involves or appears reasonably likely to involve **VMIA**. **VMIA** has the right at any time after notification of a **Claim** to make a payment to the **Insured** of the unpaid balance of the Limit of Liability, and upon making such payment, all obligations of **VMIA** to the **Insured** under this policy, including, if any, those relating to defence, shall cease.

5.6 Advancement of Defence Costs and Reputational Recovery

VMIA will advance any covered **Defence Costs**, costs for repair of reputation and, the cost of **Cyber Extortion** under each of the applicable **Extensions** incurred on account of the **Claim** prior to its final resolution and as they arise.

VMIA will not, however, advance **Defence Costs**, costs for repair of reputation and, if purchased, cost of **Cyber Extortion** under each of the applicable **Extensions** to the extent that **VMIA** has denied coverage, or if such advancement would exceed the **Limit of Liability** or any applicable sublimits. If the amount of **Defence Costs**, costs for repair of reputation and, if purchased, cost of **Cyber Extortion** under each of the applicable **Extensions** to be advanced cannot be agreed upon between the **Insured** and **VMIA**, then **VMIA** will advance such **Defence Costs**, costs for repair of reputation and, if purchased, cost of **Cyber Extortion** under each of the applicable **Extensions** which **VMIA** determines to be fair and proper until a different amount shall be agreed upon or determined pursuant to this policy. **VMIA** reserves the right to recover such advances if and to the extent the **Insured** is later determined not to be entitled to such payment.

5.7 Insurer's Consent

As a condition precedent to cover under this policy, no **Insured** shall admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any **Defence Costs** without the prior written consent of **VMIA**. Only those settlements, judgments and **Defence Costs** consented to by **VMIA**, and judgments resulting from **Claims** defended in accordance with this policy, shall be recoverable as **Loss** under this policy. **VMIA's** consent shall not be unreasonably withheld, provided that **VMIA** shall be entitled to exercise all of its rights under the policy.

5.8 Insured's Consent

VMIA may make any settlement of any **Claim** it deems expedient with respect to any **Insured**, subject to such **Insured's** written consent. If any **Insured** withholds consent to such settlement, **VMIA's** liability for all **Loss** on account of such **Claim** shall not exceed the amount for which **VMIA** could have settled such **Claim**, plus **Defence Costs** incurred as of the date such settlement was proposed in writing by **VMIA**, less coinsurance (if any) and the applicable **Deductible**.

5.9 Cooperation

The **Insured** shall at its own cost:

- (i) render all reasonable assistance to **VMIA** and co-operate in the defence of any **Claim** and the assertion of indemnification and contribution rights;
- (ii) use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any **Loss** under this policy; and
- (iii) give such information and assistance to **VMIA** as **VMIA** may reasonably require to enable it to investigate any **Loss** or determine **VMIA's** liability under this policy.

Any **Claim** made under the Cyber Extortion Extension shall be conducted in accordance with local legal requirements, and in cooperation with and under the direction of any appropriate criminal enforcement or other authority where required.

5.10 Fraudulent Claims

If any **Insured** shall give notice or **Claim** cover for any **Loss** under this policy knowing such notice or **Claim** to be false or fraudulent as regards amounts or otherwise, such **Loss** shall be excluded from cover under the policy, and **VMIA** shall have the rights to cancel the policy, as allowed by the Insurance Contracts Act 1984 (Cth).

5.11 Allocation

Where any **Loss** is incurred in respect of any **Claim** which arises from both covered matters and matters not covered by this policy, **VMIA's** liability under this policy is limited to the proportion of the **Loss** which represents a fair and equitable allocation between each **Insured** and **VMIA**, taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy. Where **VMIA's** liability under this policy is limited under this clause, the **Insured** and **VMIA** must use their best endeavours to agree upon the allocation to be adopted by them as the fair and equitable allocation.

5.12 Allocation Disputes

If the parties are unable to agree, then the fair and equitable allocation is to be determined by a senior lawyer (to be mutually agreed upon by the **Policyholder** and **VMIA**, or in the absence of agreement, to be appointed by the President of the Law Society, or equivalent organisation in the jurisdiction in which the **Loss** was incurred).

The senior lawyer is to determine the fair and equitable allocation as an expert, not as an arbitrator. The **Policyholder** (or its designee) and **VMIA** may make submissions to the senior lawyer. The senior lawyer is to take account of the parties' submissions, but the senior lawyer is not to be fettered by such submissions and is to determine the fair and equitable allocation in accordance with his or her own judgment and opinion. The senior lawyer's determination shall be final and binding. The costs of the senior lawyer's determination are to be borne by **VMIA**.

For so long as the proportion of **Defence Costs** to be paid under the policy remains unagreed and undetermined, **VMIA** shall pay the proportion of the **Defence Costs** which it considers represents a fair and equitable allocation. The fair and equitable allocation finally agreed or determined shall be applied retrospectively to any **Defence Costs** incurred prior to agreement or determination.

6. Purchase and Administration

6.1 Policy Purchase

In granting cover to the **Insured**, **VMIA** has relied upon the material statements and particulars in the proposal together with its attachments and other information supplied. If **VMIA** becomes entitled to avoid this policy from inception or from the time of any variation in cover, **VMIA** may at its discretion maintain this policy in full force but exclude the consequences of and any **Claim** relating to any matter which ought to have been disclosed before inception or any variation in cover.

6.2 Administration

The **Policyholder** has acted and shall act on behalf of each and every **Insured** with respect to:

- (i) negotiating terms and conditions of, binding and amending cover;
- (ii) exercising rights of **Insureds**;
- (iii) notices;
- (iv) **Premiums**;
- (v) endorsements;
- (vi) dispute resolution;
- (vii) claims management and consent to defence/settlement; and
- (viii) payments to any **Insured**.

7. Limit and Deductible

7.1 Limit of Liability

The total amount payable by **VMIA** under this policy shall not exceed the **Limit of Liability**. Sub-limits of Liability, Extensions and **Defence Costs** are part of that amount and are not payable in addition to the **Limit of Liability**. The inclusion of more than one **Insured** under this policy shall not operate to increase the total amount payable by **VMIA** under this policy.

7.2 Deductible

With respect to all **Claims**, **VMIA** will only pay that amount of any **Loss** which is in excess of the **Deductible** specified in the Schedule. The **Deductible** is to be borne by the **Policyholder** and shall remain uninsured. A single **Deductible** shall apply to **Loss** arising from **Claims** which are considered related **Claims** pursuant to the Related Claims provision.

The **Deductible** may also be referred to as deductible.

8. General Provisions

8.1 Assignment

This policy and any rights under or in respect of it cannot be assigned without the prior written consent of **VMIA**.

8.2 Cancellation

8.2.1 By Policyholder:

This policy may be cancelled by the **Policyholder** at any time only by written prior notice of at least 14 days to **VMIA**. In such case, if no **Claim** has been made and no circumstance has been notified prior to such cancellation; **VMIA** shall retain the pro-rata proportion of the **Premium**. Otherwise, **Premium** shall not be returnable and shall be deemed fully earned at cancellation.

8.2.2 By Insurer:

This policy may be cancelled by **VMIA** only as prescribed by the Insurance Contracts Act 1984 (Cth). In such case, **VMIA** shall be entitled to a pro-rata proportion of the **Premium**. Payment or tender of any unearned **Premium** by **VMIA** shall not be a condition precedent to the effectiveness of cancellation, but such payments shall be made as soon as practicable.

8.3 Insolvency

Insolvency, receivership or bankruptcy of any **Insured** shall not relieve **VMIA** of any of its obligations hereunder.

8.4 Plurals, Headings and Titles

The descriptions in the headings and titles of this policy are solely for reference and convenience and do not lend any meaning to this contract.

Words and expressions in the singular shall include the plural and vice versa. In this policy, words in **bold** typeface have special meaning and are defined or specifically mentioned in the Schedule. Words that are not specifically defined in this policy have the meaning normally attributed to them.

8.5 Scope and Governing Law

Where legally permissible and subject to the USA / Canada Exclusions, this policy shall apply to any **Claim** made against any **Insured** anywhere in the world. Any interpretation of this policy relating to its construction, validity or operation shall be made in accordance with the laws of Australia and in accordance with the English text as it appears in this policy.

8.6 Subrogation

If any payment is to be made under this policy in respect of a **Claim**, **VMIA** shall be subrogated to all rights of recovery of the **Insured** whether or not payment has in fact been made and whether or not the **Insured** has been fully compensated for its actual loss. **VMIA** shall be entitled to pursue and enforce such rights in the name of the **Insured**, who shall provide **VMIA** with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. The **Insured** shall do nothing to prejudice these rights. Any amount recovered in excess of **VMIA's** total payment shall be restored to the **Insured** less the cost to **VMIA** of such recovery. **VMIA** agrees not to exercise

any such rights of recovery against any **Employee** unless the **Claim** is brought about or contributed to by serious or wilful misconduct of the **Employee** in the course of or arising out of the employment. In its sole discretion, **VMIA** may, in writing, waive any of its rights set forth in the Subrogation Clause.

8.7 Validity

This policy is not binding upon **VMIA** unless it is countersigned on the Schedule by an authorised representative of **VMIA**.

9. Endorsements

9.1 PCI Compliance Exclusion

The following Exclusion is added to the **Policy**:

This policy shall not cover **Loss** in connection with a **Claim** alleging, arising out of, based upon or attributable to the failure of any **Insured** to be **PCI Compliant**.

The following **Definitions** are added to the Policy:

PCI Compliant means to adhere to any requirement of Payment Card Industry Data Security Standard in the handling of information in connection with payment card transactions.

All other terms conditions and exclusions remain unchanged.

9.2 Network Loss Deductible

If the **Insured** does not have a business continuity plan in place, that is tested at least annually, at the time of a **Breach of Personal Information, Breach of Corporate Information, Breach of Data Security** or **Security Failure** a **Waiting Hours Period** of 24 hours applies to any **Network Loss**.

For all other **Network Loss** a 12 hour **Waiting Hours Period** applies.

All other terms conditions and exclusions remain unchanged.

10. Privacy Statement

VMIA is committed to protecting your privacy. Any personal information collected, handled, stored or disclosed about you through our services will be managed in accordance with the *Victorian Managed Insurance Act 1996*, *Information Privacy Act 2000* and the *Health Records Act 2001*.

Personal information means information or an opinion that is recorded about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Collection and use of Personal Information

VMIA will only collect and record personal information via its website if it is provided directly to us and is necessary for us to perform our functions or activities; for example VMIA will need to collect personal information, to send requested information, or to act on feedback provided. In particular, personal information is collected in the following situations:

- when you send us an email
- when you use our online services, such as completing a form electronically
- when you register as a site user
- when you provide feedback by email or by using the feedback form on our website.

Access and Correction

If you:

- want to have access to the personal information (if any) that we hold about you
- want to know more about what sort of information we hold, for what purposes and how we deal with that information
- believe that personal information that we hold about you is not accurate, complete and up to date; or
- have concerns about your privacy rights,

please contact VMIA's Information Privacy Officer on 03 9270 6912.