



# UCKFIELD TOWN COUNCIL

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**Town Clerk – Holly Goring**

A meeting of the **FINANCE SUB-COMMITTEE** to be held on  
**Tuesday 9 January 2024 at 7.00pm**  
**Martlets Room, Civic Centre**

## AGENDA

### 1.0 DECLARATIONS OF INTEREST

Members and Officers are reminded to make any declarations of personal and/or prejudicial interests that they may have in relation to items on this agenda.

Notice should be given at this part of the meeting of any intended declaration. The nature of the interest should then be declared later at the commencement of the item or when the interest becomes apparent. A record of such interests and any dispensations given in advance will be available at the meeting.

### 2.0 APOLOGIES FOR ABSENCE

### 3.0 MINUTES

3.1 Minutes of the meeting of the Finance Sub-Committee held on the 22 February 2023.

### 4.0 REVIEW OF DRAFT BUDGET PAPERS FOR 2024/2025

### 5.0 TO NOTE THE INTERNAL AUDITOR'S RECOMMENDATIONS

### 6.0 TO CONSIDER ADDITIONAL COVER WITHIN THE TOWN COUNCIL'S INSURANCE POLICIES

### 7.0 TO INITIALLY REVIEW THE ANNUAL INVESTMENT STRATEGY

### 8.0 MATTERS DEEMED URGENT BY THE CHAIR

**Town Clerk**  
3 January 2024

# UCKFIELD TOWN COUNCIL



Minutes of the meeting of the **Finance Sub-Committee**,  
on Wednesday 22 February 2023 at 6.30 pm  
in the Council Chamber, Civic Centre, Uckfield.

**PRESENT:** Cllr. B. Cox (Chair) Cllr. P. Sparks  
Cllr. J. Edwards Cllr. D. Ward  
Cllr. C. Macve (Vice-Chair)

**IN ATTENDANCE:**

32 members of the public

Sarah D'Alessio – Assistant Town Clerk & Responsible Financial Officer  
Holly Goring – Town Clerk

Minutes taken by Sarah D'Alessio

The Chairman welcomed all those present and set out the order of the meeting. Applicants were invited to speak and were advised that they could speak for up to two minutes and questions may be asked by members to clarify details of their application.

**1.0 DECLARATIONS OF INTERESTS**

Members and officers were reminded to make any declarations of personal and/or prejudicial interests that they may have in relation to items on this agenda.

Councillor J. Edwards arrived at 6.34pm.

The Town Clerk read out the various declarations of interest submitted by members of the Finance Sub-Committee, and advised where they could speak but not vote, or not participate at all. This part of the meeting also set out the dispensations that had been given in respect of certain applications, in particular where members were aware that other Town Councillors held the role of Chair in organisations such as Manor Park & Hempstead Fields Residents' Association, Uckfield Theatre Guild, Uckfield Bonfire & Carnival Society, The Luxford Centre, Uckfield Green Partnership, Ridgewood Village Hall Committee. Dispensations would allow the members to

participate fully in both the discussion and vote, and for the meeting to be able to continue where possible.

**2.0 APOLOGIES FOR ABSENCE**

None received.

**3.0. MINUTES**

Minutes of the meeting of the Finance Sub-Committee held on the 20 April 2022.

**FS.03.02.23**

It was **RESOLVED** that the minutes of the Finance Sub-Committee of the 20 April 2022 be taken as read, confirmed as a correct record and signed by the Chairman.

**4.0 TO REVIEW THE POSITION OF THE UCKFIELD FESTIVAL ASSOCIATION**

The Uckfield Festival Association had taken the difficult decision to bring the festival to a close with the current association standing down and the associated accounts and affairs being closed. In order to put their finances in order, they wished to clarify that the grant funding they were awarded in 2022 was spent in line with their application and no funding was required to be returned to Uckfield Town Council. Uckfield Festival Association were awarded £3,500 in 2022/23 for the July 2022 Festival. The purpose of the grant was *‘to partially offset the costs of the annual Festival in 2022, in particular the Children’s Parade and insurance.’*

Members were provided with a copy of the application, the association’s project costs, accounts and associated information to review the way in which the funding was utilised.

**FS.04.02.23**

On reviewing the purpose of the grant application, the funding spent by the Association on the Children’s Parade, as well as the Uckfield Festival Association’s account with the Town Council, for the hire of the Civic Centre or sports facilities, members of Finance Sub-Committee **RESOLVED** that there were no monies outstanding or due to be returned. They therefore confirmed that their account with the Town Council could close, and the funds remaining in their bank account could be distributed within the town for the benefit of the community.

**5.0 RECEIVE INFORMATION FROM APPLICANTS FOR THE COMMUNITY GRANTS PROGRAMME 2023/24**

**FS.05.02.23**

Members of Finance Sub-Committee **RESOLVED** to suspend Standing Orders to allow grant applicants to speak.

The various representatives attending the meeting were asked to provide a summary of their application and any additional information which might support their application.

Committee members asked a number of questions to which the representatives responded during this part of the meeting.

Following the presentations from those attending and questions from Committee members, the Chairman reminded the representatives of the subsequent format of the meeting, and advised that they could leave if they wished to, once they had spoken.

**FS.06.02.23**

The meeting then resumed and it was **RESOLVED** to reinstate Standing Orders.

The Chairman advised that the meeting would now move into confidential business to enable members of Finance Sub-Committee to discuss the applications in detail and recommend the allocation of grant funding. These recommendations would be presented to General Purposes Committee on 27 February 2023 for review and ratification.

**6.0**  
**FS.07.02.23**

**CONFIDENTIAL BUSINESS**

It was **RESOLVED** that pursuant to Section 1 (2) of the Public Bodies (Admission to Meetings) Act 1960, because of the confidential nature of the business to be transacted it was advisable in the public interest that the public be temporarily excluded and they were instructed to withdraw.

6.1

To consider the allocation of grants

Committee members worked through and considered each individual grant application on its own merits to consider whether funding should be provided, and if provided, to what amount. The figures and recommendations of the Finance Sub-Committee would be reviewed and ratified by General Purposes Committee at their next meeting on 27 February 2023.

**FS.08.02.23**

Members of the Finance Sub-Committee worked through the allocation of grant funding and **RESOLVED** to recommend to the General Purposes Committee that the following grants be awarded:

| <b>Community Grant Funding under the General Power of Competence</b> |           |
|--|-----------|
| 1. Family Support Work   | £2,000    |
| 2. Children with Cancer Fund   | £591.30   |
| 3. St Peter & St James Hospice                                       | TBC       |
| 4. Ashdown Radio Limited   | £1,500    |
| 5. Uckfield & District Preservation Society                          | £1,100    |
| 6. Uckfield Community Orchestra                                      | £400      |
| 7. Uckfield Allotment Bee Club                                       | £1,224.80 |
| 8. Manor Park & Hempstead Fields RA                                  | £250      |

|   |                   |
|---|-------------------|
| 9. Uckfield Housebound & Friendship Club      | £224              |
| 10. Royal British Legion – Uckfield Branch    | £300              |
| 11. Uckfield Foodbank                         | £2,160            |
| 12. Uckfield Theatre Guild                    | £1,000            |
| 13. Uckfield Bonfire & Carnival Society       | £3,000            |
| 14. The Luxford Centre                        | TBC               |
| 15. Brighter Uckfield                         | £1,500            |
| 16. Uckfield College Counselling Service      | TBC               |
| 17. Uckfield Rotary Club (Kit Car Grand Prix) | £1,800            |
| 18. Uckfield Green Partnership                | £500              |
| 19. Ridgewood Village Hall Committee          | £1,250.96         |
| 20. Sussex Support Service CIC                | £1,500            |
| 21. Uckfield Millennium Green Trust           | £800              |
| 22. Proms on the Pitch                        | £2,500            |
| <b><u>TOTAL</u></b>                           | <b>£23,601.06</b> |

Funding provided to the Wealden Citizens Advice and Uckfield Volunteer Centre is now provided in association with a service level agreement. The amounts were agreed through the Town Council's budget setting process and approved on 23 January 2023 at Full Council:

Wealden Citizens Advice: £19,000 for 2023-24 (Section 142 funding)  
Uckfield Volunteer Centre £8,000 for 2023-24 (SLA)

The meeting closed at 9.37pm.

### Follow up outstanding recommendations from 2022-23 audit

| Matter Arising  | Recommendation  | Council Response   |
|---|---|--|
| The process of producing the annual return is complex, as the nominal code structure is not currently aligned with the requirements of the annual return. | I recommend that nominal codes are reviewed in the course of 23-24 with the aim of: <ul style="list-style-type: none"> <li>- Reducing the number of nominal codes to ensure that only those needed for management accounting reports are maintained</li> <li>- Aligning the nominal code structure to the AGAR statement of accounts requirements, to reduce the level of manual intervention required to produce accounting statements.</li> </ul> | This is underway – we have hidden all inactive nominal codes on SAGE.<br>We plan to prepare a totally new SAGE account for Uckfield Town Council in line with how the accountant prepares the figures for the AGAR form. |
| Member audits   | I recommend that this check should be completed within 28 days of each month end to any matters identified are rectified on a timely basis .  | The October 2023 member audit was presented to GP Committee on 4 December 2023. The next GP Committee takes place on 5 February so both Nov and Dec 23 will be reported to that meeting.                                 |
| Standing Orders and Direct Debits   | Payments made by direct debit and standing order should be approved in an advance at a Council meeting.   | Reports for Q1 and Q2 presented to Full Council in 2023. Details of payments made to form part of Member Audit process moving forward.   |
| Utility meters are not always read in advance of direct debit payments leaving the Council's bank account.  | All meters should be read monthly by council officers, and readings sent to the RFO ready to be checked against bills   | Now being read each month.   |
| The Council should add the purchase orders module to the Sage accounting system.  | Purchase orders should then be completed online by budget managers as goods or services are ordered, and sent to suppliers by email. This will improve budget monitoring (by enabling commitment accounting) and will link all purchases to the accounting system at the point of ordering  | Still to be done, but RFO and Clerk intend to action this point in time for new financial year.  |

# April Skies

## Accounting

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|--|--|--|
| <p>Fidelity cover may not be sufficient, this is set at £1 million.</p>  | <p>Given that Council bank balances regularly exceed this amount, I recommend that the insurer is contacted. The Council can then decide if it wishes to increase insurance cover</p>  | <p>See next agenda item of Finance Sub-Committee. This will be added to insurance in Jan 2024.</p>   |
| <p>I checked earmarked reserves back to the Sage balance sheet, as at 31.3.23. This check showed there are significant differences between the earmarked reserves on the spreadsheet reported to Council and the sage accounting system.</p> | <p>I therefore recommend</p> <ul style="list-style-type: none"> <li>- Earmarked reserves on Sage are reviewed and journals posted to bring the reserve balances to levels reported to Council at 31.3.23</li> <li>- Reserves are managed on the Sage accounting system going forward, and all reporting of reserves to Council should be based on Sage reports.</li> </ul> | <p>Now being managed on SAGE. A report will be presented to Full Council alongside the budget papers on 15 January 2024.</p>   |
| <p>I have two recommendations relating to budget monitoring:</p>   | <ul style="list-style-type: none"> <li>- The overall Council budget and balance sheet position should be reviewed by a Council committee (Full Council or Finance) on a quarterly basis.</li> <li>- The Council should move away from using spreadsheets for budget monitoring and should make use of budget monitoring modules in Sage.</li> </ul>                        | <p>Presented both Q1 and Q2 to Full Council. Will continue this procedure.</p> <p>This is a longer-term project. RFO will explore additional modules available on SAGE in due course.</p>                        |
| <p>I recommend that pay/scale point and contracted hours are confirmed by notification from the RFO, issued from the payroll system, whenever these are changed.</p>   | <p>This ensures that there is a clear record of pay for each officer on the payroll.</p>   | <p>At the point of the pay increase in November 2023 for 1 April 2023 NJC agreed pay scales, we sent a letter to all members of staff confirming their pay scales, existing rate of pay and new rate of pay,</p> |

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# April Skies

## Accounting

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| Bank reconciliations | It is recommended that monthly member audits should cover all bank account and deposit balances, with all bank reconciliations reviewed and signed off as reviewed on the face on the reconciliations and bank statement. This is a requirement of financial regulations. | This test has been added to member audit schedule. We now need to get the members who carried out the June and September member audits to review the quarterly period leading up to their audit, and sign the reconciliations accordingly. |
|----------------------|---|--|



## MATTERS ARISING 23-24 - FIRST INTERIM AUDIT

| Matter Arising  | Recommendation  | Council Response  |
|---|---|---|
| At the time of my audit, (November 2023), no member audit had been completed since July. I remind members that checks of this nature are only meaningful if they are completed on a timely basis. | I therefore recommend that member audits should be completed within 4-6 weeks of the month end under review.  | The audits were booked in. We are now up to speed with this process.                  |
| There has been no review of VAT arrangements for some time.   | It may be beneficial to commission a VAT review from a sector expert to <ul style="list-style-type: none"> <li>- Review VAT accounting arrangements, to ensure Council is accounting for VAT efficiently</li> <li>- Review any partial exemption and option to tax arrangements in place for Council assets to ensure these are properly documented and understood by Council officers</li> </ul> | To be discussed...  |
| Finance Improvement Plan  | The RFO should consider developing a Finance Improvement Plan, with realistic targets for implementation of recommendations identified in my audit reports, together with other opportunities identified by the RFO and Town Clerk  | To be progressed.   |
| The Council does not have any cyber insurance in place at present.  | I recommend that cyber risk is added to the Council's risk assessment. The Council should work with the Council's ICT provider to assess whether cyber insurance should be purchased.   | A quote has been obtained and being presented to Finance Sub-Committee on 9 Jan 2024. |

# April Skies

## Accounting

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|---|--|--|
| <p><b>Luxfords</b><br/>There is no documented till procedure.</p>   | <p>Whilst simple instructions are in place, a properly documented till process setting out what staff need to do at the start of the shift, during shift and at cashing up should be drawn up and used to train staff.</p>   | <p>The instructions are currently in two places. We will therefore collate these into one booklet/document.</p>  |
| <p><b>Luxfords</b><br/>All staff log into the till using a single fob. This means there is no audit trail as to who is accessing the till.</p>  | <p>All staff should use individual key fobs when accessing the till.</p>   | <p>The Hospitality is looking into this.</p>   |
| <p><b>Luxfords</b><br/>The end of shift count is completed by a member of bar/restaurant staff, then reperformed by the Clerk or RFO at a later date, before banking. It is best practice to ensure that all cash counts are completed with 2 people present, and that this is evidenced.</p> | <p>For efficiency, it is recommended that the shift end cash count should be carried out in the main council office, the count can then be completed by a Luxfords officer and counter signed by the RFO or Clerk. Cash should then be held in the safe until banked</p> | <p>This used to be completed in this way prior to the pandemic, and the division of the office and restaurant teams to reduce contact. We will refer back to original procedures as of Jan 2024.</p> |
| <p><b>Luxfords</b><br/>The RFO banks cash at the post office once a week. This is time consuming, and it is not sensible for a council officer to be carrying cash across town.</p>   | <p>I recommend that the Council should employ a cash collection company to bank cash.</p>  | <p>The RFO will explore the costs associated with this option.</p>   |
| <p>I note that the general reserve account is only paying 1.7% at present, and the Council has £1million+ in this account .</p>   | <p>I recommend that the Council explores other options as part of the review of the investment strategy,</p>   | <p>Members of Finance Sub-Committee will investigate as part of the review of the Annual Investment Strategy.</p>  |
| <p>The Council has not received a bank statement for the Lloyds bank account, which holds £21,067, since March 23</p>   | <p>It is recommended that a statement is obtained each quarter for this bank account whilst it is open, but it would appear sensible to close this account, as it serves no specific purpose.</p>  | <p>The RFO has an appt with a Councillor at the bank on 4 Jan 2024 to obtain easier access to the bank statements.</p> <p>Members of Finance Sub Committee to consider.</p>                          |



## **Meeting of the Finance-Sub Committee**

**Tuesday 9 January 2024**

### **Agenda Item 6.0**

#### **TO CONSIDER ADDITIONAL COVER WITHIN THE TOWN COUNCIL'S INSURANCE POLICIES**

##### **1.0 Background**

- 1.1 The Internal Auditor at their visit in June 2023 and November 2023, suggested a couple of additions to our insurance cover:
- (i) to increase the Fidelity Guarantee from £1million to £2million, and;
  - (ii) consider the addition of cyber cover;

##### **2.0 Quotations**

- 2.1 At present the Fidelity Guarantee forms part of the insurance cover provided by Zurich (*responsible for providing cover for parish and town councils and in particular our public and employers liability*). This insurance policy is reviewed each June, and in June 2024 we are required to fully review the contract we have in place. The Assistant Town Clerk & RFO and Town Clerk are due to meet with the account manager for Uckfield Town Council on 4 January 2024 to discuss the current policies in place and what areas we might wish to review before June.
- 2.2 As the pro rata charge for making a change to the Fidelity Guarantee fell below their minimum, the increase of the guarantee could be included in our current schedule and the Town Clerk approved this change on 19 December 2023.
- 2.3 Zurich do not provide an option for cyber cover, but the insurance brokers we use to review our annual buildings insurance have been able to obtain a quotation. The report that was due to be considered by members at Full Council on 11 December 2023, has been attached in appendix A for members to consider. Please note that this quotation may alter slightly due to the delay in taking a decision.

##### **3.0 Recommendations**

- 3.1 Members are asked to consider the quotation received for cyber cover and advise the Town Clerk accordingly.

Contact Officers: Sarah D'Alessio and Holly Goring

Ms Holly Goring  
Uckfield Town Council  
Uckfield Civic Centre  
Bell Farm Lane  
Uckfield  
East Sussex  
TN22 1AE

1<sup>st</sup> December 2023

Dear Holly,

### Your insurance quotation, reference 21774670

Thank you for this opportunity to present our Report on Cyber Liability insurance. Please find enclosed details of your quotation which will be valid for 30 days from 8th December 2023. This is based on the information you have provided, please let me know if you require any amendments, or if any of the information is unclear or incorrect.

### Your price(s) including tax, fees and optional products\*

|                |                      |           |
|----------------|----------------------|-----------|
| Cyber Package  | CFC Underwriting Ltd | £1,680.00 |
| Commission fee |                      | £500.00   |



#### Payment Options / Total to Pay

|   |                  |
|---|------------------|
| 10 monthly instalments via Close Premium Finance              | £233.94          |
| <b>Total amount payable if paid by 10 monthly instalments</b> | <b>£2,339.36</b> |
| <b>In full by debit/credit card / BACS / online</b>           | <b>£2,180.00</b> |

\*See your [price summary](#) / how to pay for further payment options including monthly instalments by 3 or 6 months, and details of the interest charges payable.

### Documents included



- Your quotation pack
- [Terms of Business](#)
- Insurer schedule
- Policy wording
- CFC Critical Cyber Risk Management Tools and Services

### What you need to do next



It's important that you read and understand [our recommendation](#), and ensure that it meets your requirements. We would like to draw your attention to the sections on significant [warranties, conditions and exclusions](#) as well as your [duty of disclosure](#).

If you would like to proceed with the insurance cover then please provide your

instructions to me. Further details and the available payment methods including information on your options to pay by monthly instalments are included in the [How to pay](#) section.

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Please take your time to read this report, if you would like to discuss anything in more detail, or if any of the information is unclear or incorrect, please do get in touch.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J McGowan', is positioned above a dotted line. The signature is written in a cursive style with a horizontal line above the first letter.

**James McGowan Cert CII**  
**Account Manager**

# 1. Understanding Uckfield Town Council

## Your profile

Thank you for giving us this opportunity to demonstrate how we can help Uckfield Town Council. We believe that businesses like yours are the backbone of our society. A diverse community of people that together, keeps us moving forwards. That's why we're here to help you and your community thrive. With genuine expertise and understanding, you can expect something of real value.

This report is prepared for:

|  |  |
|--|--|
| <b>Insured</b>   | Uckfield Town Council                                    |
| <b>Your business description (please refer to the "<u>Your Responsibilities</u>" section of this report)</b> | Town Council including Venue Operators and Restaurateurs |

Based on this information our recommendations for each policy are set out on in the effective programme section of this report. Please let us know if you think anything above is incorrect, as it may affect the advice we give you.

## Uckfield Town Council key colleagues

Our records indicate that the following people are our key contacts for your business and we have the directors' permission to take instructions from them in respect of your insurance portfolio. Please let us know if any changes are required.

| <b>Name</b>              | <b>Position</b>              | <b>Telephone</b> | <b>Email</b>                | <b>Policies authorised</b> |
|--------------------------|------------------------------|------------------|-----------------------------|----------------------------|
| <b>Holly Goring</b>      | Town Clerk                   | 01825 762774     | townclerk@uckfieldtc.gov.uk | ALL                        |
| <b>James Hollingdale</b> | Estates & Facilities Manager | 01825 762 774    | james@uckfieldtc.gov.uk     | ALL                        |
| <b>Sarah D'Alessio</b>   | Assistant Town Clerk         | 01825 747 774    | sarah@uckfieldtc.gov.uk     | ALL                        |

## 2. Effective Programme

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### Cyber Package

|  |                          |
|--|--------------------------|
| <b>Policyholder</b>  | Uckfield Town Council    |
| <b>Insurer</b>   | CFC Underwriting Ltd     |
| <b>Period of cover</b>   | 08/12/2023 to 07/12/2024 |
| <b>Cost (including Insurance Tax, VAT and fees where applicable)</b> | £1,680.00                |

We understand that you require:

A policy that provides cover against risks connected with operating on-line including: negligent acts, errors and omissions, breach of confidentiality, libel and slander, infringement of third party copyright, downloading of virus to third parties, and liability arising out of data protection legislation and damage to your computer network.

If this is incorrect please let us know as it may affect our advice.

### Our recommendation

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- As discussed, in preparing your terms we have approached only one insurer to quote/renew this insurance for you. There are a number of insurers we can approach for a quotation based on your stated requirements. A list of these insurers can be found by going to this website <https://www.marshcommercial.co.uk/info/idd-disclosures/>

- We recommend a Cyber Package policy with CFC Underwriting Ltd, our recommendation considers the following:

This insurer is one of the few able to provide the cover you require as you are a local government institution.

- In sourcing and placing your insurance(s) for you and in the event of a claim we act as your agent.

### Features and benefits

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- As per your insurance policy wording and schedule.

### Requirements we have not met

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- As per our recommendation above we believe that we have met your needs, however if you have any concerns that we have not met your requirements please contact us.



## Additional cover recommendations not taken up

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- None

## Actions required / points of note

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- This policy can be cancelled mid-term, and the insurer will usually provide a proportionate refund of your premium, unless you have already claimed against the policy.

## Your price summary

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| <b>Policy</b>             | <b>Premium (£)</b> |
|---------------------------|--------------------|
| <b>Cyber Package</b>      | £1,366.07          |
| <b>Premium total</b>      | £1,366.07          |
| <b>IPT total</b>          | £163.93            |
| <b>Insurer Policy Fee</b> | £150.00            |
| <b>Commission fee</b>     | £500.00            |
| <b>Total</b>              | £2,180.00          |

Our services are paid for by the fee shown in the above premium summary. We reserve the right to increase the Commission Fee at the next renewal. This increase will be (as a minimum) in line with the current Retail Price Index percentage.

Please be advised that in addition to the agreed remuneration, in connection with your Cyber Package policy we will also receive commission from your insurer for handling your insurance.

At any time, you can request information on any remuneration we may have received when arranging your insurance.

## How to Pay

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### Payment options

If you have already made payment either online or over the telephone please disregard this information.

The following payment options are available:

|                            |  |
|----------------------------|--|
| <b>Monthly instalments</b> | A premium finance quotation is included in the Finance Quote section of this report. It may also be possible to pay by an insurer instalment facility. Please contact us to discuss either of these payment options. |
| <b>Bacs bank payment</b>   | Account name: <b>Marsh Ltd</b><br>Account number: <b>40625590</b><br>Sort code: <b>20-43-56</b><br><br>Please quote Your Reference: <b>21774670</b> when making a payment.   |
| <b>Card payments</b>       | Please contact us to make a card payment.<br>Unfortunately, we are not able to take American Express payments.   |

### Finance Quote

One option to help you pay for your insurance is premium finance. This is a loan that enables you to spread the cost across regular instalments. We have approached one provider of insurance premium finance, Close Brothers Premium Finance, to obtain a quotation for you.

How premium finance could benefit you / your business:

- **Supports financial efficiency:** a competitive interest rate with no hidden charges. You may be able to receive corporation tax relief on your finance payments.
- **Improves cash flow:** by keeping capital in your business instead of paying the full premium amount upfront.
- **Spreads the cost:** over a flexible payment period making budgeting easier.
- **Reduces paperwork:** by having, a single credit agreement and direct debit for a number of policies, saving you time and hassle.
- **Opens a new line of credit:** you can get premium finance in addition to any existing credit arrangements.

To help you decide whether premium finance could benefit your business, a quote is provided (based on all policies and recommended additional covers):

|  | <b>Payment over<br/>3 months</b> | <b>Payment over<br/>6 months</b> | <b>Payment over<br/>10 months</b> |
|--|----------------------------------|----------------------------------|-----------------------------------|
| Amount if paid in full   | £2,180.00                        | £2,180.00                        | £2,180.00                         |
| Number of monthly instalments  | 3                                | 6                                | 10                                |
| Variable service charge  | 3.49%                            | 4.32%                            | 7.31%                             |
| Indicative APR   | 43.47%                           | 20.29%                           | 19.01%                            |
| The total charge for credit  | £76.08                           | £94.18                           | £159.36                           |
| Initial instalment amount  | £752.03                          | £379.03                          | £233.94                           |
| Subsequent monthly instalments of                                    | <b>£752.03</b>                   | <b>£379.03</b>                   | <b>£233.94</b>                    |
| Total amount payable (total amount of credit) if paid by instalments | £2,256.08                        | £2,274.18                        | £2,339.36                         |

Should you opt to pay for your insurance by premium finance, please ensure that you read the terms and conditions of the premium finance arrangement before signing it. Please be aware that as a condition of the agreement you assign all rights, title and interest to any policy finance through the above arrangement to Close Brothers Premium Finance, along with any sums payable to you by virtue of that policy.

If you are interested in premium finance, please see the information in the ['Premium finance information'](#) section and **call us on the above number**.

## 3. Service delivery

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### How to make a claim

We'll always be there when it matters most. We're part of a global group, but proud to be a community broker. That means we're big enough to keep you safe, but small enough to care.

- Our claims team have an extensive range of expertise to cover all of your needs.
- By your side – we will provide the best solution to support you and manage your claim.
- Before, during and after — this isn't a transaction to us. We'll give you the consultation you need, to manage risk, minimise claim costs, and reduce business impact.
- There's no time to waste. We know what's important to you — getting on with business. So we'll work with you to make the claims process as simple, solution focused, and swift as humanly possible.

If you are in the unfortunate position of needing to report a claim you should do so immediately, our claims advisers will be on hand to guide you through the next steps.

### In the event of a claim

Please call our claims team on **+44 (0)3330 151 540** or email [south.claims@marshcommercial.co.uk](mailto:south.claims@marshcommercial.co.uk) where one of our advisers will be on hand to guide you through the next steps.

If you need to report a claim outside of our usual business hours, you can find emergency numbers for your insurer [here](#).

### How to make changes and/or cancel your policy

If at any time, you wish to make changes, update or amend or cancel your policy to meet your changing needs please contact your usual Marsh Commercial contact who will be able to help and guide you through the process.

Further information on your cancellation rights is contained in the [Important Information for Marsh Commercial Clients](#) section of this document

### How to make a complaint

We hope that you will not need to make a complaint, but should you find yourself in that position, your advisor will be able to assist you.

Alternatively please contact our Complaints Department by telephone on 020 7357 1000, by email at [UKComplaints@marsh.com](mailto:UKComplaints@marsh.com) or write to us at Complaints Department, Marsh Ltd, Tower Place, London, EC3R 5BU.

Further information on your Complaints and Access rights are contained in the [Important Information for Marsh Commercial Clients](#) section of this document

## Delivering extra value

### Understand and managing your risks

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- [Cyber Liability Insurance](#)
- [Management Liability Insurance](#)
- [Risk management](#)
- [Business continuity](#)
- [Health & Safety](#)
- [Employment law](#)

### Look after your staff with support from our colleagues in Mercer (a business of Marsh McLennan)

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- [Keep your employees healthy](#)
- [Create a rewards and retention package](#)
- [Plan for the future](#)

### Protect you and your family

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- [Private health and wellbeing](#)
- [Prestige homes and estates](#)
- [Fine art, jewellery and collections](#)
- [Prestige cars](#)
- [Yachts and motorboats](#)

## Marsh Commercial Portal

### Delivering digital solutions to meet your needs

The **Marsh Commercial Portal** is our new secure, online platform. It gives you the option to view policy documentation, request changes to cover, update us on changes to circumstances and make payments - all online.

As a user, clients will be able to self-serve on a number of common tasks online, without needing to pick up the phone.

With the **Marsh Commercial Portal**, you can:

- View documentation
- Contact us to make changes
- Upload documents and evidence
- Pay outstanding invoices

### Benefits to you

- Online access to key documents
- On demand access to proof of insurance documents
- Ability to make online payments
- Secure communication channel
- Ability to upload documents
- View products and services held
- More choice on how to contact us, make payments, ease of access to your documents

If you don't already have access to the portal then setting up access is easy – simply provide specific email addresses for persons requiring access and we will do the rest. (Generic email addresses aren't acceptable as the email address is used as the username for each individual).

Users will then receive a welcome email and simply need to confirm some details and create a password and the portal is ready for use.

Please let your advisor know if you wish to benefit from this facility.

## 4. Your responsibilities

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We want to help your business thrive and have recommended an insurance programme to support this desire. We see our relationship as an ongoing commitment where we work together. Within this report we have detailed our commitment to you; below we have outlined your responsibilities.

### Business description

Your business description must fully describe all business activities undertaken. Your business description has been declared to insurers as detailed in the [Your profile](#) section of this report.

Please let us know immediately:

- If the description detailed in this report is incorrect or incomplete
- If there has been an acquisition or changes in activity during the period of insurance

If your business undertakes any other activities not currently listed in your business description then your business may not be covered.

### Duty of disclosure / Fair presentation of risk

If you are a business and your insurance policy is governed by English law, you must, at all times, act with utmost good faith towards your insurer. Before your policy is placed, at renewal, and when varying or extending the policy, you have a duty under the Insurance Act 2015 to make a “fair presentation” of the risk and you must disclose to your insurer all information, facts, and circumstances which are, or ought to be, known to you and which are material to the risk. In addition, if your policy contains a particular clause stating that any change in circumstances must be advised to your insurer, you will also have to disclose certain information during the policy period.

When providing information or completing a proposal form or otherwise confirming any information to your insurer, you should take care to ensure that the details provided are complete and accurate. Further information is detailed in the [Insurance Act](#) section of this pack.

### Important information about warranties, conditions and exclusions

An insurance policy is a legal contract between you and the insurer, so we strongly recommend that you read the full terms and conditions of the cover offered by the insurer as detailed in the enclosed policy wording(s), schedule(s) and / or quotation summary before making a decision to accept the policy offered.

The policy wording will include **conditions** that you must meet so that cover applies if a claim occurs. The insurer can refuse to pay out if policy **conditions** aren't met.

The policy may also include **warranties**. A **warranty** is a condition you must comply with precisely. If a **warranty** is not fulfilled, the insurer can suspend cover or cancel it.



The insurer may also add an **excess** or **exclusion**. An **excess** is the amount paid, or the insurer holds back, in the event of a claim. An **exclusion** is a clause in the policy that states which risks the insurance will not cover. Failure to adhere to these requirements can invalidate your policy, compromise your cover, and prevent claims being paid. It is vital that you are clear about what is expected of you.

**Please read these documents carefully.** If you do not understand or cannot see how your policy will work for you, please contact your advisor who will be able to explain to you.

Where your policy provides cover for property, business interruption, liability or motor covers the following guidance applies.

### **Maintaining adequate levels of cover**

It is important that you get your building sum insured right, as **this is the maximum your insurer will pay out if you claim**. Your building should be insured for the re-building cost (not what you paid for the property or current market value).

The general consensus from the Insurance Market, Royal Institute of Chartered Surveyors and Rebuild Cost Assessment Limited (RCAL) is that 80% of buildings in the UK do not have the correct building sum insured. RCAL's research also suggests that on average buildings are covered for just 68% of what they should be. In the event of a claim, if the insurer finds the sum insured to be less than the value at risk, settlement of that claim will be reduced proportionately, for example:

|                |            |
|----------------|------------|
| Sum insured    | £ 500,000  |
| Correct values | £1,000,000 |
| Claim value    | £ 200,000  |

In this example, you would be under-insured, so the average condition would apply as follows:

$$\begin{array}{l} \text{£ 500,000} \\ \text{£1,000,000} \end{array} \times \text{£ 200,000} = \text{£ 100,000 maximum claim payment}$$

If you have not recently updated your Building Sum Insured, please speak to your advisor. We can also arrange a desktop rebuild cost assessment for any Commercial or Residential Property (including ancillary outbuildings, pool, walls and hardstanding) up to a current building sum insured of £10m (Commercial) and £5m (Residential), for buildings over this value, a site visit survey is available. The desktop valuation will cost £150 +VAT and provide you with a comprehensive report.

### **Buildings insurance**

The buildings declared value should be the rebuild figure and not the market value, and needs to include items as described in the Policy Definition of "Buildings" – for example, any car park, hardstanding, fencing, gates, roadways and professional fees. As an insurance broker we cannot advise on the rebuild value.

It is widely recommended by insurance companies that the reinstatement value of a building should be re-valued every 3 years to ensure the rebuilding sum insured is set correctly, allowing for current pricing and costs. If the buildings have not been valued recently then please let me know so I can provide some options

for you. Please remember your premises are a significant asset and should be adequately protected alongside which you may have specific responsibilities to any lender with an interest in them.

## **Business interruption insurance**

With regard to business interruption losses, it is important you consider the following:

**Indemnity period:** Your maximum Indemnity Period must account for worst-case scenarios. This includes considering a vast range of circumstances that can add significant time to an organisation's recovery. It is essential to remember that this is not just the length of time that it might take to rebuild a burnt-out building, for example. It includes the total time during which you think your profit/revenue might take to get back to the same level being achieved before the loss. The current economic climate, along with the impact of Brexit has put longer lead times on UK business recovery. It is vital that you ensure you have the correct indemnity period to protect your business.

**Sum insured:** Your estimated "Gross Profit" or "Gross Revenue or Gross Rental" for that number of years. One factor to consider is that this amount needs to take in account future growth. It is possible a loss could occur at the end of your insurance period.

## **Liability insurance**

Under the Employers Liability (Compulsory Insurance) Act 1969, all employers have a legal requirement to insure against their liability for injury to employees arising out of their employment.

Employers Liability is generally calculated based on the wage roll for your business. Please may we remind you that it is your responsibility to ensure your limit of indemnity is adequate and adheres to any contractual legal and / or regulatory requirements that you may be subject to, and also that you have provided details to us of your up to date wage roll figures – these figures must be calculated before deductions and include overtime, commissions, bonus payments National Insurance and pensions contributions. If you are underinsured, in the event of a claim the maximum insurers will pay is up to the limit of liability provided by your policy.

Please contact us immediately if you need to revise your sums insured / limits of indemnity.

## **Motor insurance Database**

### **Update the Motor Insurers Database (MID) with any changes to your vehicles**

The Motor Insurers Information Centre requires that you provide details of any vehicle changes, including deletions, within 14 days of the occurrence. How you will notify these changes will depend on your insurer. Details of which can be found in your Insurance documentation.

You also have an obligation to keep records of any vehicles you have in your possession for less than 14 days. Although you don't need to add these to the MID, you will need to keep records of these vehicles for seven years.

Failure to follow the legislation can lead to prosecution and a potential fine of £5,000.

**Please note that we are unable to update the MID on your behalf.**

If you are unclear or unsure about any of your responsibilities, please get in touch.

## 5. Terms of Business

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### Important legal and regulatory information

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This document should be read in conjunction with our insurance correspondence and your policy documents. Insurance is an important decision, and we want to help you make the right one by being upfront with any legal information or terms and conditions.

In this document you will find information regarding:

#### The Duty of Disclosure and Fair Presentation of Risk

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- The Insurance Act 2015 aims to make insurance fairer for policyholders. However, to benefit from the Act you will need to comply with your duty of "fair presentation". Make sure you are in the know by reviewing the Duty of Disclosure and Fair presentation section of this report.

#### Regulations

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- If your placement requires cover for military goods, or you transact business with any country, person, or legal entity subject to trade sanctions, your insurance programme may not be able to provide cover

#### Premium Finance

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- If you are considering paying for your insurance by premium finance, please ensure that you read the terms and conditions of the premium finance arrangement.

#### Our Commercial Terms of Business

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- Please read our Terms of Business as this is our standard client agreement upon which we intend to rely, and also the additional important information relating to the Terms of Business.

#### Important Information for Marsh Commercial Clients

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- Please read the Important Information which contains important regulatory information we are required to give to you.

We believe this information is important. Which is why at Marsh Commercial, it's not hidden away in a small font but clearly presented to help you make an informed decision. If you would like to discuss any aspect of this document, have any questions, queries or concerns, or need assistance in some way, please get in touch with your normal Marsh Commercial contact.

# The Duty of Disclosure and Fair Presentation

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Please read this guidance carefully, as any failure to comply with the duty of fair presentation and disclose material information to your insurer may adversely affect the validity of your insurance policy. If you have any questions, please do not hesitate to contact your usual Marsh Commercial contact in the first instance.

This guidance does not purport to constitute legal advice but it does reflect the law. Your insurance policy may contain clauses which vary the strict legal position. If appropriate you should, in addition to speaking with your usual Marsh Commercial contact, consider taking your own independent legal advice.

Please tell us if the person in your organisation responsible for arranging insurance changes so that we may explain the duty of disclosure/fair presentation to that person.

## Your obligations

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- If you are a business and your insurance policy is governed by English law (all references to English law include the laws of Wales, Scotland, and Northern Ireland), you must, at all times, act with utmost good faith towards your insurer.
- Before your policy is placed, at renewal, and when varying or extending a policy you have a duty to make a 'fair presentation' of the risk, and you must disclose to your insurer all information, facts, and circumstances which are, or ought to be, known to you and which are material to the risk.
- In addition, if your policy contains a particular clause stating that any change in circumstances must be advised to your insurer, you will also have to disclose certain information during the policy period.
- When providing information or completing a proposal form or otherwise confirming any information to your insurer you should take care to ensure that the details provided are complete and accurate.
- Even where a proposal form is not used, you should note that your duty to make a fair presentation is not confined to answering the specific questions listed in the form and/or asked by us or your insurer and that all material circumstances should be disclosed to your insurer, regardless of whether or not your insurer has asked for the information.
- The Insurance Act 2015 gives some guidance as to what a "fair presentation" of the risk means. You must disclose every material circumstance which is known by:
  - your senior management (the Act defines "senior management" as "those individuals who play significant roles in the making of decisions about how the insured's activities are to be managed or organised"); and
  - those individuals responsible for arranging your insurance (which includes risk managers and any employee who assists in the collection of data, or who negotiates the terms of the insurance, such as your individual brokers). If you are an individual taking out a business insurance policy, for example if you are a sole trader or a

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trustee, you must disclose the material information that you know and that is known by the individuals responsible for arranging your insurance.

- You "ought to know" what should reasonably have been revealed by a "reasonable search" of information available to you. This means you must conduct a reasonable search for, and disclose, material information that is available to you.
- It is important to note that this includes not only information held within your organisation but also outside it, including information held by your agents, and also held by persons and entities who are to be covered by the insurance. If you are an individual taking out a business insurance policy, this means that it will not only be information that is known or held by you that may have to be disclosed.
- You must not make any misrepresentations to your insurer.
- You must provide the information to your insurer in a manner which would be "reasonably clear and accessible" to a prudent insurer. This is a new, standalone, duty.

**Remember, you are responsible for the accuracy and completeness of all the information you provide to us and your insurer.**

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#### What is "material"?



- Under English law, every circumstance is material if it would influence the judgement of a prudent insurer in fixing the premium and / or the terms of the insurance and / or whether to accept the risk. This refers to "any" prudent insurer, not just the insurer who has been offered the risk.
- A circumstance may be material even if disclosure would not necessarily lead to an increased premium or declinature of the risk.
- In the context of business insurance policies, insurers are likely to regard matters such as (but not limited to) the following examples as material:
  - Special or unusual facts relating to the risk.
  - Any particular concerns which led you to seek insurance cover for the risk.
  - Anything which would generally be understood as being something that should be disclosed.
- The following are by way of non-exhaustive illustrative examples of material information:
- General information about your business including:
  - Business activity (or change to business activity), including processes, products, and geographic presence
  - New companies, markets, acquisitions, or disposals
  - Additional premises/insurable items
  - Changes to premises
  - Changes to insured values, wage rolls, turnovers etc. (due to inflation, for example)
  - Higher than ordinary degree of risk or liability (specific to your business or industry-specific)
  - Business financial status

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- Loss history/experience, including paid and outstanding claims and potential claims/circumstances/ incidents/losses that were not reported as claims (whether insured or not)
  - Details of criminal charges and convictions of your organisation, its directors or employees; regulatory investigations or enforcement/ health and safety investigations and prosecutions
  - Any insurers' previous declinatures, refusals to renew, imposed terms/ restrictions in cover, mid-term cancellations, etc.
  - Material damage policies
    - Changes in construction and/or purpose
    - New/amended processes
    - Changes to fire protections
    - Increased storage of hazardous materials/attractive stock
    - Any attempted break-in or arson attack
    - Use of temporary/third party premises
  - Liability policies
    - Changes to business activities (including disclosing historic activities that have ceased)
    - The creation or acquisition of new companies for which cover is required
    - Products exported to, or work in, overseas territories (particularly the USA or Canada)
    - Work in or on hazardous locations such as offshore installations
    - Health and safety investigations/prosecutions
  - Motor fleet policies
    - Driving convictions
    - Corporate investigations/prosecutions
    - Undisclosed accidents
    - Changes to vehicle performance
    - Change of use of vehicle
  - Business personal accident and travel policies
    - Changes to business activities
    - Material differences in the travel pattern (different geographies, number of journeys, etc.)
  - **Remember, this list provides examples only. If in doubt – disclose.** If you are unsure whether a fact or circumstance should be disclosed, or whether the duty to disclose information continues throughout the period of a particular policy, we recommend that you disclose the information anyway, as failure to do so may lead to your insurer reducing its claim payment, applying additional terms, or even avoiding the policy.

#### When to disclose

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- Your duty to make a fair presentation applies throughout the negotiations preceding the placing of your policy until your insurer has agreed to accept the risk and has set the terms, price, and level of participation, and the contract has been finalised.
- After the policy has been placed, your duty to make a fair presentation arises again:
  - if you wish to make changes to the policy so that the insurer takes additional risk or when there is an extension of the policy period; or

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- a policy condition may also require you to advise your insurer of a specific increase or alteration in risk which puts a duty on you to disclose certain information.
  - The duty to make a fair presentation and disclose material circumstances arises again during the renewal process.

### **Failure to disclose**

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- The consequences of failing to comply with the duty of fair presentation and failing to disclose a material fact or circumstance will depend on the precise terms of your insurance policy and whether or not your failure was deliberate or reckless but could lead to your insurer reducing its claim payment, applying additional terms or even voiding the policy.
- The Insurance Act 2015 sets out the remedies that your insurer will have if you fail to comply with the duty of fair presentation. Your insurer's remedies will depend on whether or not your failure was deliberate or reckless:
  - If you deliberately or recklessly fail to comply with your duties, your insurer will be able to void the policy, that is, to treat it as if it had never existed, and may retain the premium.
  - If your failure to comply with your duties was not deliberate or reckless, your insurer's remedy will depend on what the insurer can show it would have done had you made a "fair presentation of the risk":
    - If your insurer would not have entered into the contract on any terms, it can still avoid the contract but must return the premium;
    - If your insurer would have entered into the contract but on different terms (not relating to premium), the contract may be treated as if it included those terms from the outset; or
    - If your insurer would have entered into the contract but would have charged a higher premium, the amount paid on a claim may be reduced proportionately.
- Similar proportionate remedies are available to your insurer in the event of a breach of the duty of fair presentation in relation to a variation of your policy, and will depend on whether the breach was deliberate or reckless and what the insurer would have done had the duty not been breached. This may result in the insurer treating the policy as if the variation was never made, reducing your claim payment, or even avoiding the entire policy.



# Regulations

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## Trade Sanctions and Export Controls

Trade sanctions are restrictions placed by governments or international organisations on the provision of goods and services to designated countries, individuals or entities, industries or other targets such as vessels. Trade sanctions can prohibit Marsh or your insurers from providing insurance cover and insurance services.

Export and Trade Controls may also may also prohibit Marsh or insurance companies from offering cover for military, dual use or other controlled goods.

Please be aware that if your placement requires cover for military goods, or you transact business (including direct or indirect imports and exports, other forms of trading, services, travel and working abroad) with any country or natural person or corporate body subject to sanctions imposed by Law, you **must** notify us.

We will require all relevant details / circumstances which may arise during the period of your insurance cover, and not just at renewal. Dependent on the activity and the sanctioned country or person, your insurance programme may not be able to provide cover. Please consult us if you are in any doubt, or have any further questions.

## Premium Finance

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For the purpose of arranging premium finance, Marsh Ltd t/a Marsh Commercial ("Marsh Commercial") acts as a credit broker and we can arrange for you to pay the premiums/fee(s) due in instalments by using an exclusive facility that we have negotiated for our clients with Close Brothers Premium Finance (CBPF) who, subject to criteria and acceptance, will provide funding to you.

**To assess your application, and at other stages throughout the period of your credit agreement, Close Brothers may use credit scoring, credit reference agencies and automated decision-making systems. The assessment will take place after Close Brothers have received your application. This may leave a hard footprint on your credit record. If it is unsuccessful, Close Brothers will notify you in writing. You will then need to find an alternative way to pay for your insurance premiums.**

Please consider the financial commitment you will be entering into when applying for credit with Close Brothers Premium Finance. Payment via monthly instalments with CBPF is more expensive than paying in full, a full breakdown of the costs and rate applicable has been provided to you to help you decide if this product is suitable for you. We are providing this product on a 'non-advised' basis and do not give advice on its suitability. You will need to make your own decision about how to proceed.

Your credit agreement may run for a different duration to the length of your policy, a payment schedule will be provided by CBPF, confirming payment due dates.

If you decide to finance via CBPF, we will require you to advise us of your bank details, together with an email address and mobile telephone number of a person authorised to sign a credit agreement on your behalf, which we will provide to CBPF. CBPF will then send to you full details of the terms and conditions applicable together with all the required paperwork for you to sign. It is important that you read all of the information provided and take time to consider it carefully to ensure that it is the right product for you before signing. If your application is accepted by CBPF, we will receive a commission for introducing customers to CBPF and the work we undertake.

To arrange your premium finance, we and CBPF use the personal data you have provided either relating to you or a third party. More information about how we use personal data is provided in the enclosed Terms of Business and in our Privacy Notice available at [www.marshcommercial.co.uk/info/privacy/](http://www.marshcommercial.co.uk/info/privacy/). You can request a copy of our Privacy Notice by contacting [dataprotection@marsh.com](mailto:dataprotection@marsh.com).

We only secure terms from CBPF. Upon request, we can investigate what, if any facilities are available from the respective insurers that we recommend for renewal. Additionally, should any of the recommended insurers inform us that instalment facilities are available from them, then these will be detailed to you on the How to Pay section of your report.

Your instruction for us to proceed with CBPF will entitle them to collect the first instalment from you prior to CBPF receiving the completed application and / or direct debit mandate. If you fail to make a minimum payment on time you'll be charged a default fee of £25 (for loans under £25,000) or £50 (for loans over £25,000) which will be collected along with the missed payment. If CBPF is unable to collect under your Direct Debit instruction, they may cancel your agreement. You may be charged a cancellation fee of £15 (for loans under £25,000) or £125 (for loans over £25,000). You'll be liable to

pay all sums owing and any charges CBPF may issue. Missing payments may affect your credit rating and can lead to cancellation of any insurance policy funded by CBPF.

Please note that incorporated entities do not benefit from Consumer Credit Act 1974 protections or the Financial Conduct Authority's Consumer Credit Sourcebook.

Cancellation (Consumers)\*: You can withdraw free of charge from the credit agreement within 14 days of signing your credit agreement. If you do, you'll have to pay back any credit you received and find a different way to pay for your insurance premium. You can repay the credit agreement in full at any time or make a partial repayment.

\*Consumers are: **Individuals, sole traders, unincorporated members' clubs** (other than a partnership) where at least one member is an individual, **small partnerships** (of two or three partners) where at least one of the partners is an individual, **Trusts** (other than a partnership) where at least one of the trustees is an individual and **unincorporated voluntary or charitable organisations / religious communities** (other than a partnership) where at least one member is an individual.

Please note that the credit product is only appropriate for the funding of your insurance policy and associated costs and not for any other purpose.

# Commercial Terms of Business

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## Introduction

Marsh Commercial is a trading name of Marsh Ltd and is an insurance intermediary, risk consultant and credit broker.

These Terms of Business will form the agreement between us and you, our client ("this Agreement").

References to 'you' and 'your' include each of your affiliates (as defined in clause 11).

These Terms of Business contain important information. If there is anything you do not understand or accept, please talk to your regular Marsh Commercial contact. By instructing us, you are accepting these Terms of Business.

In the interests of security, staff training and to generally improve our service please be aware that telephone calls may be monitored and/or recorded.

You have the right to ask us for a copy of any personal data that we hold about you in our records, and to correct any inaccuracies or out-of-date information. Should you wish to do so or if you have any questions about our use of the personal data you provide please contact your regular Marsh Commercial contact or write to the Data Protection Officer:

Data Protection Officer  
Marsh Ltd  
1 Tower Place West  
London EC3R 5BU  
Email: [dataprotection@marsh.com](mailto:dataprotection@marsh.com)

**Our information and/or documentation can be made available in a larger font, or an alternative format, on request. Please contact your Account Executive for further details.**

## 1. Our services

- 1.1. We will use the reasonable skill and care expected of a competent and professional insurance intermediary and risk consultant providing similar services.
- 1.2. We offer a wide range of products and our services may include advice or recommendations (or both) as set out in your insurance pack or report. However, it is up to you to decide whether or not to accept our advice or recommendations.
- 1.3. We will be entitled to provide the services ourselves or, where appropriate, through one of our affiliates or sub-contractors.
- 1.4. Claims related services will only be provided up to the time this Agreement ends, unless specifically agreed otherwise in writing.
- 1.5. Any information we provide on insurance regulatory and tax issues will be based on information available publicly and our experience from working on similar matters for other clients. We are not qualified to provide, and will not provide legal, accounting, regulatory or tax advice. We recommend that you obtain your own advice on such matters from relevant professional advisers.
- 1.6. After assessing your needs, we will normally recommend an insurance solution for you. You will then need to decide how to proceed. When we receive your instructions, we will try to arrange insurance to meet the needs you have specified. If we cannot place your insurance policy, we may refer you to another insurance intermediary.
- 1.7. As part of our negotiations with insurers on your behalf, we may on occasion be able to obtain more favourable terms and conditions for your placement by providing insurers with certain types of information. Where we believe your interests would be advanced by doing so, you authorise us to do the following:
  - 1.7.1. at the outset of the negotiations, to provide insurers with the terms of the expiring policy, including pricing and/or a pricing objective for your placement;
  - 1.7.2. during negotiations, to provide one or more insurers with the terms of a quote received from another insurer, where in our judgement doing so may lead to improved terms for you; and
  - 1.7.3. at the end of negotiations, to provide one or more insurers with an opportunity to submit an improved quote after all other quotes have been received.
- 1.8. In the event that you fail to perform any of your obligations in this Agreement, we reserve the right to suspend the provision of our services to you.
- 1.9. In the event that you have direct interaction with insurers, without our involvement as your appointed intermediary, we shall not be responsible for the outcome and consequences of such direct interactions.

## 2. How we are paid by you

- 2.1. We are either paid:
  - a percentage of the premium due to the insurer for your insurance policies (a commission and/or brokerage);
  - a fee; or
  - a combination of commission, brokerage and fee.
- 2.2. We will also make individual client administration charges per policy (up to a maximum of 3 policies, per policy period) to cover the costs associated with administering your insurances e.g. arranging a new policy, carrying out short-period or mid-term cancellations, mid-term changes, providing replacement or duplicate documents and for other administrative tasks. We will advise you of the amount of fee before you become liable to pay it. Individual charges will not be made in relation to employee benefit related products.
- 2.3. For insurance broking services, we will be considered to have fully earned our commission, brokerage, and/or fee from the inception of your policy. We will keep our commission, brokerage and/or fee even if an insurance policy is amended, terminated or cancelled. This does not affect any statutory cancellation rights you have. Our right to fee earnings is not conditional on the placement of an insurance policy.
- 2.4. If you would like details of how much commission we earn for arranging your policy, please let us know. If you have any questions, issues or concerns regarding how we are paid, then please contact a member of your Marsh Commercial service team. Alternatively, you may send an email to [commission.disclosure@marshcommercial.co.uk](mailto:commission.disclosure@marshcommercial.co.uk).
- 2.5. Where appropriate we will charge reasonable expenses in connection with travel, accommodation and meals while working on your behalf away from any Marsh office.
- 2.6. If you ask us for a copy of your files, we may charge you for our time spent and costs reasonably incurred in dealing with such a request.
- 2.7. All fees and expenses we quote do not include VAT (which will be added if applicable).

### **3. Client money**

- 3.1. If we hold money on a client's behalf, it will be held in a trust fund that is separate from our own cash assets. These separate trust fund arrangements are commonly known as "client money". If we were ever unable to pay our debts, then those to whom we owe money (our creditors) should not be able to make claims on our client money in the separate trust funds as it does not form part of our own cash assets.
- 3.2. The trust arrangement we use for client money is known as a non-statutory trust. Here, we may use premiums and claims monies we receive to cross-fund clients' premiums and claims; for example we may pay a premium on to an insurer before we have received it from the client if we believe it is in the best interests of that client.
- 3.3. We have agreements with some insurers (known as "risk transfer agreements"). Under these risk transfer agreements the insurers agree that they are responsible to you for any premium that you have already paid to us and that they remain responsible for any premium refunds or

claims payments until the premium refund or claim payment is received by you. In this case we may hold client money due to or from the insurers in the same trust fund.

- 3.4. Where we do not have risk transfer agreements in place with insurers the client money we hold will still be protected within the non-statutory trust but will be known as "non risk transfer" client money. Non risk transfer clients have priority over insurers to the money in the trust fund as insurers granting risk transfer have agreed to subordinate their interests in the trust to those of Marsh's non risk transfer clients.
- 3.5. We do not use client money to pay ourselves commission before we receive your premium.
- 3.6. When we hold client money on trust for you this gives rise to fiduciary duties upon us that will not be discharged until the client money is deemed to have reached the insurer or product provider (as detailed above, this is when we receive premium in the case of risk transfer agreements).
- 3.7. Without affecting our fiduciary duties to you, in some cases we may:
  - hold client money in accounts which are outside of the United Kingdom and which may be subject to different legal and regulatory conditions and may treat money differently in the event of a bank failing. If you are a consumer (a person who buys products or services for personal use and not for business purposes) you can ask us not to put your client money in an account in a particular country;
  - pass client money to another intermediary, including ones outside of the United Kingdom where different legal and regulatory conditions apply and where money may be treated differently in the event of an intermediary failing. If you are a consumer, you can ask us not pass your money to an intermediary outside of the United Kingdom or in a particular country; and
  - arrange to hold certain investments with a value at least equal to the money that would otherwise have been paid into a separate client account. If we do this, we will be responsible for meeting any shortfall in the client money funds if the shortfall is due to a reduction in the market value of those investments.
- 3.8. If, in the process of handling client money, we earn interest or benefit from investment income or from foreign exchange rate movements, we will keep any such amounts.

## 4. Your obligations

- 4.1. Your attention is drawn to Section 2, entitled "The Duty of Disclosure and Fair Presentation", which sets out some of your insurance obligations. In addition, the below sets out further obligations which apply to all services.
  - 4.1.1. You shall provide us with all relevant information in relation to your business to enable us to provide the services. Such information must be provided within the timeframe that we agree with you in a format which allows us to provide a clear presentation to insurers. We can rely on any information provided to us by you and/or your outgoing insurance broker.
  - 4.1.2. You must pay our invoices in accordance with the amounts and payment dates specified in our correspondence with you. Time for payment shall be of the essence for this Agreement. **Failure to meet the payment dates may lead to insurers cancelling your policy, thus leaving you**

**without insurance cover. Please note that where insurers have specified that the premium must be settled by a certain date (i.e. 'premium payment warranty'), failure to comply can result in the automatic termination of your insurance contract.**

If you have any concerns about your ability to make payments, please make early contact with your normal Marsh Commercial contact.

- 4.2. For consulting services only;
- you must arrange for us to have access to all records, documents, files and other relevant information, personnel and/or management. If we need further information or if we need to visit any of your premises, we will arrange this with you;
  - our services are based on conditions observed by us and information provided by you; and
  - you agree to pay our invoices within the timescales specified in our correspondence with you. We may suspend or terminate the services entirely until all invoices are paid.

## 5. Work product

5.1. We disclaim all responsibility for any consequence whatsoever should a third party rely upon any report, letter, information or advice we provide to you without our prior written consent that such third party may do so.

5.2. The restrictions in this clause 5.2 apply to our consulting services only.

5.2.1. You must not use any materials that we create, utilise or develop in connection with this Agreement, and any intellectual property rights associated with them (the "Work Product"), for any purpose other than:

- i. your internal risk management purposes; or
- ii. the procurement of insurance with our prior written permission (the "Purposes").

Save for disclosures to insurers or within the Purposes or as otherwise set out in clause 5.2.4 you must not:

- disclose the Work Product to any third party;
- use it for any other purpose; or
- reproduce, disseminate, quote from or refer to, in whole or in part at any time, nor shall any public references be made concerning Marsh Commercial or the Work Product or disclosure of Marsh Commercial's role in connection with this Agreement, or public reference to this Agreement without our prior written permission. However, subject always to clause 9, we may refer to the fact that we have carried out work for you.

5.2.2. Notwithstanding the above obligation not to disclose the Work Product to any third parties and only use it for the Purposes, should a third party receive the Work Product and place reliance on it, you will indemnify, defend and hold harmless Marsh Commercial, its directors, officers, shareholders, affiliates and employees (collectively "Indemnified Persons") from and against any and all claims (including claims for reasonable legal fees) brought by such a third party in connection with the Work Product or this Agreement. You will not be liable under this indemnity to the extent any such claim is determined, by way of a final judgment of a court of competent jurisdiction, not subject to further appeal, to have resulted from the fraud or wilful misconduct of any Indemnified Person.



- 5.2.3. Any oral or draft Work Product which we might provide will not constitute our final opinions and conclusions. These will be contained in our final written Work Product, which shall be expressed as such.
- 5.2.4. Provided that any relevant party (referred to below) to which you intend to disclose a Work Product agrees in writing that it cannot rely on the Work Product and that it will not disclose the Work Product to any third party, we agree that you may provide the Work Product to your regulators, your financing banks or proposed financing banks, insurers or proposed insurers for information only.
- 5.2.5. Where we permit a third party to place reliance on a Work Product and thereby agree to accept liability or responsibility to a third party it will be by means of a letter from us to the addressees as defined in such letter (the "Release Letter") where the addressees accept and agree:
- to enter into a contractual relationship with us;
  - that the report containing the Work Product was addressed to you and was prepared on your instructions only and will not necessarily address or reflect their interests or circumstances; and
  - that our liability to them is limited to, and aggregated with, our liability to you.

## 6. Period and termination

- 6.1. The engagement starts on the date when you receive this Agreement.
- 6.2. Either party may terminate the Terms by giving the other not less than 90 days' notice in writing. We will still be entitled to the earnings referenced in clause 2 and/or a fee for any consulting services and/or for any Global Analytics Services which we have provided based on the time we have spent providing the services plus any reasonable expenses.
- 6.3. Either party may terminate immediately in writing if the other party:
- commits a material breach including (but not limited to) any breach of clause 4 or clause 5 and, in the case of a breach capable of remedy, fails to do so within 30 days of receipt of a notice setting out particulars of the breach; or
  - becomes insolvent or bankrupt, goes into liquidation, enters into a voluntary arrangement with their creditors, becomes subject to an administration order or has a receiver appointed over their assets, or becomes subject to any equivalent foreign process.
- 6.4. When this Agreement terminates we will cooperate in the transfer of your business where necessary, in consideration of all amounts owed to us being paid.

## 7. Limit of our liability

- 7.1. The maximum aggregate liability of Marsh Commercial and our affiliates to you, howsoever arising, in connection with this Agreement shall be limited in total to;
- 7.1.1. for insurance broking services, £10,000,000;
- 7.1.2. for consulting services to the greater of £500,000 or ten times the total compensation paid to Marsh Commercial for providing consulting services. In the event that we agree to make the Work Product available to third party(ies) in accordance with clause 5.2 above, the aggregate

liability described in this clause 7.1.2 shall be the aggregate liability to you and/or all of the third parties; and

- 7.1.3. for Global Analytics Services (including risk financing optimisation, fund reserving, catastrophe modelling, financial modelling and structured/legacy solutions) one times the fee or where no fee is charged for Global Analytics Services, then £500,000.
- 7.2. Marsh Commercial and our affiliates shall not be liable to you in any circumstances for any loss of profit or any special, indirect or consequential loss howsoever arising under or in connection with our services.
- 7.3. We are not liable for any actions or failures arising before the date you enter into this Agreement.
- 7.4. These provisions shall not apply to any liability for;
  - death or personal injury;
  - fraud or fraudulent misrepresentation; and
  - any client defined as a consumer (i.e. a person acting for purposes outside their trade, business or profession)
- 7.5. This limitation of liability clause shall survive the termination of this Agreement.
- 7.6. Our obligations to you are solely contractual in nature. We act as a fiduciary for you to the extent required under English law but do not have any enhanced fiduciary or other duty to you.

## **8. Data protection and intellectual property**

- 8.1. We shall retain all intellectual property rights in all materials developed, designed or created by us (or any of our affiliates) before or during our working relationship, however we grant you a perpetual and royalty free licence to use these materials, but only for the purposes for which they were created under this Agreement.
- 8.2. The parties both warrant that they will comply with the provisions of the applicable UK law including the General Data Protection (Regulation EU 2016/679, as incorporated into UK law by section 3 of the European Union (Withdrawal) Act 2018, as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 and 2020 and its successor laws (together the "UK GDPR"), Data Protection Act 2018 and any other data protection laws, applicable to this Agreement.
- 8.3. To provide our services, we will collect and use information about individuals such as their name and contact details, which may also include special categories of personal data (e.g. health information) and information relating to criminal convictions and offences. We are an independent data controller of any personal data you provide to us or which we process in connection with the Services. When you provide such personal data to us, you will also be acting as a separate and independent controller. The purposes for which we use personal data may include arranging insurance cover, handling claims, for crime prevention and detection and for marketing. We may also use personal data on a de-identified and/or aggregate basis for benchmarking, modelling and other analytics offerings as described in clause 9. More information about our use of personal data is provided in the Marsh Commercial Privacy Notice

available at <https://www.marshcommercial.co.uk/info/privacy/>. You or the data subjects whose data you provide to us can also request a copy of the Marsh Commercial Privacy Notice by email or writing to the Data Protection Officer, Marsh Ltd, Tower Place, London EC3R 5BU or [dataprotection@marsh.com](mailto:dataprotection@marsh.com) We recommend that you review this notice.

- 8.4. Providing the services may involve the disclosure of personal data to third parties such as insurers, reinsurers, loss adjusters, premium finance providers, sub-contractors, our affiliates and to certain regulatory bodies who may require your personal data themselves for the purposes described in the Marsh Commercial Privacy Notice.
- 8.5. Depending on the circumstances, the use of personal data described in this notice may involve a transfer of data to countries outside of the European Economic Area (EEA) or the United Kingdom (UK) that have less robust data protection laws.
- 8.6. Each of us shall only transfer personal data from the EEA or the UK to third countries which are not subject to an adequacy decision by the appropriate authority, after having implemented appropriate safeguards in accordance with applicable data protection laws, such as binding corporate rules or the standard contractual clauses in the form in the C(2021) 3972 final Annex to the Commission Implementing Decision. If so required by applicable data protection laws, we and you shall: (i) promptly exercise each other's rights as a data exporter in the standard contractual clauses; (ii) execute or re-execute the standard contractual clauses as separate documents setting out the proposed transfers of personal data in such manner as may be required by data protection laws; and (iii) reasonably cooperate with the other in order to demonstrate compliance with personal data transfer restrictions under applicable data protection laws.
- 8.7. **Use of personal data based on consent:** In some circumstances, we may need to collect and use special categories of personal data. Where your consent to this processing is necessary for us to provide you with the relevant services, this consent may be withdrawn at any time (and you shall promptly notify us of that) but, if it is, we may be unable to continue to provide our services and this may mean that we are unable to process an enquiry or claim and it may impact (re)insurers' ability to provide (re)insurance. We will explain the consequences of withdrawing consent at the relevant time.
- 8.8. Where you are providing us with information about a person other than yourself, you agree to notify them of our use of their personal data and, where necessary obtain their consent to our use of certain special categories of personal data. You agree that our provision of the services to you is conditional on you providing such notices and obtaining such consents. Where the consent of such third party is required, they may withdraw such consent at any time but if consent is withdrawn then we may be unable to continue to provide services to them (and possibly you), and this may mean that we are unable to process enquiries or claims and it may impact (re)insurers' ability to provide (re)insurance. We will explain the consequences of withdrawing consent at the relevant time.
- 8.9. We will maintain appropriate data security procedures designed to protect against loss or compromise of personal data.
- 8.10. Where you have consented or we are otherwise legally permitted to do so, from time to time we may send you information about products or services offered by Marsh Commercial and/or our affiliates either by post, telephone or email and if the product or service is offered by one of our

affiliates, we may pass your contact details to them so they can contact you directly. If you would not like us, or any of our affiliates, to send you this type of information, please advise your usual contact or you can write in to the Data Protection Officer at [dataprotection@marsh.com](mailto:dataprotection@marsh.com) or 1 Tower Place West, Tower Place, London EC3R 5BU.

## 9. Confidentiality

- 9.1. We will keep your information confidential. However, in the normal course of business and in acting on your behalf we may disclose your information to our employees, agents, outsourcers, premium finance providers, affiliates or sub-contractors or to insurers and their agents. We may also have to disclose your information pursuant to legal or regulatory requirements including, but not limited to, requests meeting the requirements under the Third Parties (Rights Against Insurers) Act 2010. Any disclosure to any other third party will only be made with your prior written consent.
- 9.2. We will be entitled to use information in relation to your insurance, on a de-identified and/or aggregate basis, when dealing with insurers on other risks on behalf of policyholders other than yourself.
- 9.3. We may:
  - provide databases to insurers which may include confidential information relating to your insurance;
  - include, on a de-identified and/or aggregate basis, information relating to your insurance programme and risk management in benchmarking, modelling and other analytics offerings; and
  - share with prospective insurers information about your upcoming insurance renewals to help insurers identify opportunities to compete for risk. Marsh shares the information as part of its insurer consulting offering, which is designed to help insurers expand their own offerings and create superior solutions for Marsh clients.
- 9.4. For more information, please visit <https://www.marshcommercial.co.uk/info/transparency/>.
- 9.5. This confidentiality commitment to you does not apply to information lawfully in our possession or in the public domain.

## 10. Bribery and corruption

Each party shall comply with all applicable laws, statutes and/or regulations relating to bribery and corruption, including but not limited to the Bribery Act 2010.

## 11. Affiliates

- 11.1. You accept this Agreement on your own behalf and on behalf of each of your affiliates (where they are receiving, or are a beneficiary of the services). You shall ensure that each of your affiliates will act on the basis that they are a party to and bound by this Agreement. All references in this Agreement to "you" (and derivatives of it) shall mean you and each of your affiliates.

- 11.2. For the purpose of this Agreement "affiliates" means, in relation to a company, its subsidiaries and subsidiary undertakings and any holding company it may have and all other subsidiaries and subsidiary undertakings of any such holding company (as such terms are defined in the Companies Act 2006). In addition to the foregoing, in reference to Marsh Commercial the term "affiliates" shall include Marsh & McLennan Companies, Inc. and all of its subsidiaries. As the term applies to you, "affiliate" shall also include your partners, co-ventures and/or other co-insureds to whom we or any of our affiliates may assume a responsibility as a consequence of the provision of the services or any additional services.

## **12. General**

- 12.1. This Agreement may only be amended by written agreement signed by each party.
- 12.2. Except as set out in this Agreement, a person who is not a party to this Agreement, has no rights to enforce or to enjoy the benefit of any term of this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 12.3. Neither party will have any liability for any failure or delay in performing their obligations because of a force majeure event. Force majeure means an event beyond the reasonable control of a party.
- 12.4. Notwithstanding clauses 6 and 12.3 Marsh Commercial reserves the right to suspend or terminate this Agreement (in whole or in part) where it believes performance could be a breach of applicable economic or trade sanctions. Marsh Commercial shall not provide insurance or reinsurance broking, risk consulting, claims or other services or provide any benefit to the extent that the provision of such services or benefit would violate applicable law or expose Marsh Commercial or its affiliates to any sanction, prohibition or restriction under UN Security Council Resolutions or under other trade or economic sanctions, laws or regulations.
- 12.5. If any provision of this Agreement is prohibited or unenforceable or is found to be invalid, illegal or unenforceable by a court or any other competent authority, that provision shall, to the extent required, be deemed deleted and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 12.6. This Agreement sets out the entire understanding of the parties in relation to the matters that it deals with and supersedes and invalidates all previous letters, agreements and understandings (oral or written) in relation to those matters.
- 12.7. Any failure or delay in exercising any rights under this Agreement shall not constitute a waiver of such rights.

## **13. Governing law and jurisdiction**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law and any disputes related thereto shall be subject to the exclusive jurisdiction of the English courts.

# Important information for Marsh Commercial clients

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## Introduction

Please read this important information carefully and if there is anything that you do not understand, please talk to your regular Marsh Commercial contact.

We aim to treat our clients fairly and will not deliberately put ourselves in a position where our interests, or duties to anyone else, prevent us from fulfilling our duties to you.

Please visit our website at <https://www.marshcommercial.co.uk/info/transparency/> or contact us for more information on how we manage conflicts of interest.

## How we are regulated

Marsh Commercial is a trading name of Marsh Ltd and is authorised and regulated by the Financial Conduct Authority ('FCA') for General Insurance Distribution and Credit Broking (Firm Reference No. 307511). You can check our authorisations and the names under which we trade by visiting their website at [www.fca.org.uk/register/](http://www.fca.org.uk/register/) or by calling them on 0800 111 6768. Not all products and services offered are regulated by the FCA. We will tell you where this is the case.

Marsh Ltd is covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim. General Insurance advising and arranging is covered for 90% of the claim, without any upper limit. For Professional Indemnity insurances and compulsory classes of insurance, insurance advising and arranging is covered for 100% of the claim, without any upper limit.

Further information about compensation scheme arrangements is available from the FSCS.

## Complaints and access rights

Your complaint is important to us and should be made in the first instance to your usual Marsh contact. Alternatively you can contact our Complaints Department:

Complaints Department  
Marsh Ltd  
Tower Place  
London EC3R 5BU  
Telephone: 020 7357 1000  
Email: [UKComplaints@marsh.com](mailto:UKComplaints@marsh.com)

Should you remain dissatisfied with the way we resolve a complaint, you may have the right to refer to the Financial Ombudsman Service, free of charge. The Financial Ombudsman Service can be contacted on 0800 023 4567 or 0300 123 9123. Alternatively you can contact them by Email at [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk) or write to them at:

The Financial Ombudsman Service, Exchange Tower, London, E14 9SR.

Further information can be found on the Financial Ombudsman Service website: <https://www.financial-ombudsman.org.uk>

You have the right to ask us for a copy of any personal data that we hold about you in our records, and to correct any inaccuracies or out-of date information. Should you wish to do so or if you have any questions about our use of the personal data you provide please contact your regular Marsh Commercial contact or write to the Data Protection Officer, Marsh Ltd, Tower Place, London EC3R 5BU or [dataprotection@marsh.com](mailto:dataprotection@marsh.com)

## How we are paid

In addition to the information under Section 2 above "How we are paid by you";

We may also receive payments from insurers for work transferred to us which we do on their behalf, such as binding cover, producing and issuing policy documents and settling claims. We may also receive payments from insurers for marketing, distribution and IT systems. We will disclose to you that we receive any such payments if they specifically relate to your policies.

We may receive payments from third parties in connection with arrangements such as premium finance facilities. Such payments are not subject to any form of rebate and are not deemed to count towards any earnings limit that we may have agreed with you.

We may receive payments from insurers for providing consulting, data analytics and other services. These services are designed to:

- improve the range of products we can offer to our clients;
- help insurers to identify new opportunities; and
- make insurers more efficient.

The scope and nature of these services may vary. A list of insurers who pay us for consulting services is on our website at <https://www.marshcommercial.co.uk/info/transparency/>

If we cannot place your insurance policy, we may refer you to another insurance intermediary. If we receive payment for doing so we will tell you.

We may use an affiliate or sub-contractors to help us meet your insurance needs; if so they may receive payment from insurers or from us. If insurers with which we place your business choose to use our services or the services of an affiliate of ours for reinsurance purposes, we may also receive further payment. Unless you advise us otherwise, we will consider that you have no objection to our placing further reinsurance for your insurers.

In some circumstances, an insurer may wish to purchase reinsurance in respect of the cover provided to a client. Marsh or our Guy Carpenter business unit may receive fees of commission for work related to the reinsurance solution on behalf of an insurer, if they are the intermediary on that placement. Reinsurance helps insurers to manage their volatility, enabling them to provide more effective and efficient solutions to our retail clients.

If, in the process of handling client money, we earn interest or benefit from investment income or from foreign exchange rate movements, we will keep any such amounts (see Client Money section below).



For more details of payments we receive, please see our "Guide to how we are paid (UK and Ireland)" at <https://www.marshcommercial.co.uk/info/transparency/>

## Our services

After assessing your needs, we will normally recommend an insurance solution for you. We will recommend the route to the insurer and will not introduce additional steps unless this is in your best interests. You will then need to decide how to proceed. When we receive your instructions, we will try to arrange insurance to meet the needs you have specified.

Insurance policies taken out, amended or renewed through our online/remote service (i.e. without speaking to one of our advisors) will be on a non-advised basis. This means information will be provided to you in order for you to make an informed decision about any insurance transactions undertaken by you. You should therefore ensure such transactions are suitable for you needs.

If you speak to one of our advisors about taking out, amending or renewing your policy, then you are likely to do so on an advised basis. This will include the provision of advice and recommendations where appropriate, in order to ensure insurance discussed is suitable for your needs.

Sometimes we obtain quotations from a limited number of insurers, or even only a single insurer. In such a case we will approach the insurers based on our knowledge and expertise in the market. Normally we will give you a list of the insurers we intend to approach, or have approached, before arranging any insurance for you.

As part of our negotiations with insurers on your behalf, we may on occasion be able to obtain more favourable terms and conditions for your placement by providing insurers with certain types of information. Where we believe your interests would be advanced by doing so, you authorise us to do the following:

- at the outset of negotiations, to provide insurers with the terms of the expiring policy, including pricing, and/or a pricing objective for your placement;
- during negotiations, to provide one or more insurers with the terms of a quote received from another insurer, where in our judgement doing so may lead to improved terms for you; and
- at the end of negotiations, to provide one or more insurers with an opportunity to submit an improved quote after all other quotes have been received.

Our obligations to you are solely contractual in nature. We act as a fiduciary for you to the extent required under English law but do not have any enhanced fiduciary or other duty to you.

We may:

- provide databases to insurers which may include confidential information relating to your insurance;
- include, on a de-identified and/or aggregate basis, information relating to your insurance programme and risk management in benchmarking, modelling and other analytics offerings; and
- share with prospective insurers information about your upcoming insurance renewals to help insurers identify opportunities to compete for risk. Marsh shares the information as part of its insurer consulting offering, which is designed to help insurers expand their own offerings and create superior solutions for Marsh clients.



For more information, please visit <https://www.marshcommercial.co.uk/info/transparency/>

## Your obligations

### Documents

You must promptly check all documents you receive from us or insurers to make sure there are no mistakes or misunderstandings. You must immediately tell your regular Marsh Commercial contact or the insurer about any mistakes or anything which you do not think is in line with your instructions.

You should keep your policy documents in a safe place for as long as it is possible for you to make a claim. We may not issue new documents every year, or, depending on any regulatory requirements, keep copies.

### Warranties

#### Payment

Some insurance policies may include a settlement due date or a warranty under the terms of which the premium must be paid to them by a certain date or dates. We will tell you about any such requirements and the relevant date or dates in time to enable you to meet the payment terms.

#### Other policy warranties

If you do not comply with the exact terms of a warranty, it may adversely affect the validity of your policy and/or your right to claim under the policy.

### Quotations

Quotations are valid until the date cover commences up to a maximum period of 30 days, unless otherwise stated. Specimen policy wordings are available upon request.

### Renewals

The information you have previously provided to us is what your insurance cover has been based on. Renewals are invited on the basis that there have been no changes in the risk or item being insured, other than those specifically notified to us or your insurers (see section 2, entitled "The Duty of Disclosure and Fair Presentation"). It is very important that you check this carefully and confirm it remains accurate and complete. You should contact us immediately if the information is incorrect or if your circumstances have changed so we can update your details. **Failure to notify us or your insurer of any incorrect information or change in circumstances may lead to your policy being avoided or your claim rejected or not fully paid.**

### Transferred business

Where we are appointed to service insurance policies, other than at their inception or renewal, and which were originally arranged via another party, we shall not be liable during the current insurance period for any loss arising from any errors or omissions or gaps in your insurance cover or advice not provided by us. Should you have any concerns in respect of a policy, which has been transferred to us, or if you require an immediate review of your insurance arrangements, you must notify us

immediately. Otherwise we shall review your insurance arrangements and advise accordingly as each policy falls due for renewal.

## **Making a claim under your insurance policy**

Most insurance policies have strict conditions about what you should do if you have a claim or you know about something that might lead to a claim in the future. It is your responsibility to understand these conditions and any relevant limitation period for commencing legal proceedings or other forms of dispute resolution against insurers should the need occur.

As part of our service, whilst we are your appointed broker, we will help you submit a claim on your policy to your insurer but it remains your responsibility to have read, understood or queried all documentation upon receipt. We may also provide a claims handling service but should we do so, we reserve the right to charge a reasonable fee for our services. In the event that we no longer act as your appointed broker, we may provide (at your request) a claims handling service or if we are already providing one, continue to provide a claims handling service but in each case, subject to payment of a reasonable fee.

All incidents that could possibly give rise to a claim must be notified to us or your insurer in accordance with the terms of your policy and a claim form completed where required. If you are unsure whether a matter constitutes a claim or not, please contact us and we will advise you. A delay in notifying a claim and/or completing required forms will risk a loss where you/the policyholder may suffer not being paid in part or in full. You should not, however, admit liability or agree a course of action, other than emergency measures carried out to minimise the loss, until you have agreement from your insurer.

## **Cancellation rights**

Your insurance contract may include a cancellation clause and you may have the right to cancel your policy. If you decide to cancel your insurance contract within any stipulated timeframe and you have not made a claim on the policy, you may be entitled to receive a refund of any premium paid, less any reasonable costs incurred by the insurer in providing the cover. The terms of your policy may allow insurers to retain the premium in full or to charge short period premiums in the event of cancellation before the policy expires – please check your policy documentation for further information or ask a member of staff for clarification. Please note our commission and, where appropriate, fees are fully earned from the date insurance cover commences and will not be refundable in the event of cancellation, avoidance or early termination of a policy.

## **General**

We only place insurance with insurers that meet our minimum financial standards, unless a client provides specific instructions to the contrary. We do not guarantee the solvency or continuing solvency of any insurers and you should note that the financial position of an insurer can change. If an insurer ceases trading we do our best to assist our clients, but you should note that in those cases of insurer insolvency where we have a risk transfer agreement with the insurer, premiums held by us will be deemed to have been paid to that insolvent insurer and therefore cannot be returned to clients. Similarly, claims monies held by us may be returnable to the insolvent insurers or their liquidators, rather than our clients.

Marsh & McLennan Companies, Inc. and its subsidiaries (including Marsh Commercial) own equity interests and have contractual arrangements with certain insurers and wholesale brokers. Information regarding these arrangements can be provided to you in paper form upon request from a member of your service team, or is available at the following web address:  
<https://www.marshcommercial.co.uk/info/transparency/>.

*If you have any questions about this section or any part of our agreement with you, please contact your usual Marsh Commercial contact in the first instance.*

*Marsh Commercial Legal Pack 6 (July 2023)*



# Cyber

Private enterprise

| Policy document

| **Rest of World**

## PREAMBLE

**IMPORTANT: COVERAGE TRIGGERS.** It is important for **you** to review this Policy carefully as the trigger for coverage, including when **you** must notify **us** of a claim, under each Section and Insuring Clause may differ.

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

The sections of this Policy are identified by the blue lines across the page with white upper case print, these are for information purposes only and do not form part of the cover given by this Policy. Terms in bold upper case print are references to specific Insuring Clauses, Sections or Conditions. Other terms in bold lower case print are defined terms and have a special meaning as set forth in the Definitions section and elsewhere. Words stated in the singular will include the plural and vice versa.

In consideration of the **premium** and in reliance upon the information that **you** have provided to **us** prior to the commencement of this insurance, **we** agree to provide the cover as set out below:

## INSURING CLAUSES

### INSURING CLAUSE 1: CYBER INCIDENT RESPONSE

#### SECTION A: INCIDENT RESPONSE COSTS

**We** agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

- a. gain access to **our 24/7 cyber incident response line**;
- b. engage with **our cyber incident manager** who will coordinate the initial response;
- c. obtain initial advice and consultancy from **our cyber incident manager**, including threat intelligence in relation to the **cyber event**; and
- d. obtain initial remote support and assistance from **our cyber incident manager** to respond to the **cyber event**.

#### SECTION B: LEGAL AND REGULATORY COSTS

**We** agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

- a. obtain legal advice to determine the correct course of action;
- b. draft **privacy breach** notification letters, substitute notices, website notices or e-mail notification templates;

- c. notify any appropriate governmental, regulatory, law enforcement, professional or statutory body;
- d. respond to any **regulatory investigation**; and
- e. defend any regulatory action.

### SECTION C: IT SECURITY AND FORENSIC COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

- a. engage with an external IT security consultant to identify the source and scope of the **cyber event**;
- b. obtain initial advice to remediate the impact of the **cyber event**;
- c. conduct a forensic investigation of **your computer systems** where reasonable and necessary or as required by law or a regulatory body (including a requirement for a PCI Forensic Investigator);
- d. contain and remove any malware discovered on **your computer systems**; and
- e. engage with an IT security consultant to provide expert witness testimony at any trial or hearing arising from the **cyber event**.

### SECTION D: CRISIS COMMUNICATION COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

- a. engage with a crisis communications consultant to obtain specific advice in direct relation to the **cyber event**;
- b. coordinate media relations in response to the **cyber event**;
- c. receive training for relevant spokespeople with respect to media communications in direct relation to the **cyber event**; and
- d. formulate a crisis communications plan in order to reduce damage to **your** brand and reputation as a direct result of the **cyber event**.

### SECTION E: PRIVACY BREACH MANAGEMENT COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered during the **period of the policy** to:

- a. print and post appropriate notices for any individual affected by the actual or suspected **cyber event** or to send e-mail notices or issue substitute notices;
- b. provide credit monitoring services, identity monitoring services, identity restoration services or identity theft insurance to affected individuals;
- c. set up a call centre to manage inbound and outbound calls in direct relation to the **cyber event**; and
- d. provide translation services to manage communications with affected individuals.

## SECTION F: THIRD PARTY PRIVACY BREACH MANAGEMENT COSTS

We agree to pay on behalf of any **third party** any reasonable sums necessarily incurred as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

- a. print and post appropriate notices for any individual affected by the actual or suspected **cyber event** or to send e-mail notices or issue substitute notices;
- b. provide credit monitoring services, identity monitoring services, identity restoration services or identity theft insurance to affected individuals;
- c. set up a call centre to manage inbound and outbound calls in direct relation to the **cyber event**; and
- d. provide translation services to manage communications with affected individuals;

provided that **you** have contractually indemnified the **third party** against this **cyber event** and they have a legal obligation to notify affected individuals.

## SECTION G: POST BREACH REMEDIATION COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, with **our cyber incident manager** following a **cyber event** covered under **INSURING CLAUSE 1 (SECTIONS A, B, C, D, E and F only)** for the following services in order to mitigate the potential of a future **cyber event**:

- a. complete an information security risk assessment;
- b. conduct an information security gap analysis;
- c. develop an information security document set; and
- d. deliver an information security awareness training session.

## INSURING CLAUSE 2: CYBER CRIME

### SECTION A: FUNDS TRANSFER FRAUD

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

- a. any unauthorised electronic transfer of funds from **your** bank;
- b. theft of money or other financial assets from **your** bank by electronic means;
- c. theft of money or other financial assets from **your** corporate credit cards by electronic means; or
- d. any phishing, vishing or other social engineering attack against any **employee** or **senior executive officer** that results in the transfer of **your** funds to an unintended **third party**.

### SECTION B: THEFT OF FUNDS HELD IN ESCROW

We agree to reimburse **you** for **loss** (including compensation **you** are required to pay) first discovered by **you** during the **period of the policy** as a direct result of **you** having to reimburse any **third party** for theft, committed by a **third party** by electronic means, of their money or other financial assets from a bank account held by **you** on their behalf.

### SECTION C: THEFT OF PERSONAL FUNDS

We agree to reimburse any **senior executive officer** for personal financial loss first discovered by them during the **period of the policy** as a direct result of any **third party** compromising the **company's** network security which results in:

- a. theft of money or other financial assets from a personal bank account of the **senior executive officer**; or
- b. identity theft of the **senior executive officer** as a result of a **privacy breach** suffered by **you**.

### SECTION D: EXTORTION

We agree to reimburse **you** for any ransom paid by **you**, or on **your** behalf, in response to an extortion demand first discovered by **you** during the **period of the policy** as a direct result of any threat to:

- a. introduce malware, or the actual introduction of malware, including Ransomware, into **your computer systems**;
- b. prevent access to **your computer systems** or data or any **third party** systems hosting **your** applications or data;
- c. reveal **your** confidential information or confidential information entrusted to **you**; or
- d. damage **your** brand or reputation by posting false or misleading comments about **you** on social media sites.

### SECTION E: CORPORATE IDENTITY THEFT

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

### SECTION F: TELEPHONE HACKING

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

### SECTION G: PUSH PAYMENT FRAUD

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

- a. the cost of creating and issuing a specific press release or establishing a specific website to advise **your** customers and prospective customers of the fraudulent communications; and



- b. the cost of reimbursing **your** existing customers for their financial loss arising directly from the fraudulent communications, including fraudulent invoices manipulated to impersonate **you**; and
- c. **your direct loss of profits** sustained following **your** discovery of the fraudulent communications as a direct result of the fraudulent communications; and
- d. external costs associated with the removal of websites designed to impersonate **you**.

## SECTION H: UNAUTHORISED USE OF COMPUTER RESOURCES

We agree to reimburse **you** for **loss** first discovered by **you** during the **period of the policy** as a direct result of **cryptojacking** or **botnetting**.

## INSURING CLAUSE 3: SYSTEM DAMAGE AND BUSINESS INTERRUPTION

### SECTION A: SYSTEM DAMAGE AND RECTIFICATION COSTS

We agree to reimburse **you** for the additional cost of employing:

- a. contract staff or overtime costs for **employees** to rebuild **your** data, including the cost of data re-entry or data re-creation;
- b. specialist consultants, including IT forensic consultants, to recover **your** data or applications; and
- c. specialist consultants or overtime costs for **employees** working within **your** IT department to reconstitute **your computer systems** to the position they were in immediately prior to the **cyber event**;

reasonably and necessarily incurred as a direct result of a **cyber event** first discovered by **you** during the **period of the policy**.

### SECTION B: DIRECT LOSS OF PROFITS AND INCREASED COST OF WORKING

We agree to reimburse **you** for **your direct loss of profits** and **increased cost of working** during the **indemnity period** as a direct result of an interruption to **your business operations** caused by **computer systems** downtime arising directly out of a **cyber event** or **system failure** which is first discovered by **you** during the **period of the policy**, provided that the **computer systems** downtime lasts longer than the **waiting period**.

### SECTION C: ADDITIONAL INCREASED COST OF WORKING

We agree to reimburse **you** for any reasonable sums necessarily incurred during the **indemnity period** that are in addition to **your** normal operating expenses and the **increased cost of working** recoverable under **INSURING CLAUSE 3 (SECTION B only)**:

- a. to source **your** products or services from alternative sources in order to meet contractual obligations to supply **your** customers;
- b. to employ contract staff or overtime costs for **employees** in order to continue **your business operations**;

- c. to employ specialist consultants, including IT forensic consultants to diagnose the source of the **computer systems** downtime; and
- d. for **employees** working overtime within **your** IT department to diagnose and fix the source of the **computer systems** downtime;

to mitigate an interruption to **your business operations** caused by **computer systems** downtime arising directly out of a **cyber event** or **system failure** which is first discovered by **you** during the **period of the policy**, provided that the **computer systems** downtime lasts longer than the **waiting period**.

#### **SECTION D: DEPENDENT BUSINESS INTERRUPTION**

We agree to reimburse **you** for **your direct loss of profits** and **increased cost of working** sustained during the **indemnity period** as a direct result of an interruption to **your business operations** arising directly out of any sudden, unexpected and continuous outage of computer systems used directly by a **supply chain partner** which is first discovered by **you** during the **period of the policy**, provided that the computer systems downtime lasts longer than the **waiting period** and arises directly out of any **cyber event** or **system failure**.

#### **SECTION E: CONSEQUENTIAL REPUTATIONAL HARM**

We agree to reimburse **you** for **your direct loss of profits** sustained during the **reputational harm period** as a direct result of the loss of current or future customers caused by damage to **your** reputation as a result of a **cyber event** first discovered by **you** during the **period of the policy**.

#### **SECTION F: CLAIM PREPARATION COSTS**

We agree to pay on **your** behalf any reasonable sums necessarily incurred to determine the amount of **your direct loss of profits** sustained following an interruption to **your business operations** covered under **INSURING CLAUSE 3 (SECTIONS A, B, C, D and E only)**. We will only pay these costs where they are incurred with an independent expert appointed by the **cyber incident manager**.

#### **SECTION G: HARDWARE REPLACEMENT COSTS**

We agree to pay on **your** behalf any reasonable sums necessarily incurred to replace any computer hardware or tangible equipment forming part of **your computer systems** that have been damaged as a direct result of a **cyber event** first discovered by **you** during the **period of the policy**, provided that replacing the computer hardware or tangible equipment is a more time efficient and cost effective solution than installing new firmware or software onto **your** existing hardware.

## INSURING CLAUSE 4: NETWORK SECURITY & PRIVACY LIABILITY

### SECTION A: NETWORK SECURITY LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including the establishment of any consumer redress fund and associated expenses) as a result of any **claim** arising out of a **cyber event** first discovered by **you** during the **period of the policy** that results in:

- a. the transmission of malware to a **third party's** computer system;
- b. **your computer systems** being used to carry out a denial of service attack;
- c. **your** failure to prevent unauthorised access to information stored or applications hosted on **your computer systems** or a **third party's** computer systems; and
- d. identity theft, experienced by **your employees, senior executive officers** or any **third party**.

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

### SECTION B: PRIVACY LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including the establishment of any consumer redress fund and associated expenses) as a result of any **claim** arising out of a **cyber event** first discovered by **you** during the **period of the policy** that results in:

- a. an actual or suspected disclosure of or unauthorized access to any Personally Identifiable Information (PII), including payment card information or Protected Health Information (PHI);
- b. **your** failure to adequately warn affected individuals of a **privacy breach**, including the failure to provide a data breach notification in a timely manner;
- c. a breach of any rights of confidentiality as a direct result of **your** failure to maintain the confidentiality of any data pertaining to an **employee** or a **senior executive officer**;
- d. a breach of any rights of confidentiality, including a breach of any provisions of a non-disclosure agreement or breach of a contractual warranty relating to the confidentiality of commercial information, PII, or PHI;
- e. a breach of any part of **your** privacy policy; or
- f. actual or suspected disclosure of or unauthorized access to **your** data or data for which **you** are responsible.

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

### SECTION C: MANAGEMENT LIABILITY

We agree to pay on behalf of any **senior executive officer** all sums they become legally obliged to pay as a result of any **claim** made against them arising directly out of a **cyber event** first discovered by **you** during the **period of the policy**.

We will also pay **costs and expenses** on behalf of **your senior executive officers**.

However, **we** will not make any payment under this Section for which the **senior executive officer** is entitled to indemnity under any other insurance, except for any additional sum which is payable over and above the other insurance.

#### **SECTION D: REGULATORY FINES**

**We** agree to pay on **your** behalf any fines and penalties resulting from a **regulatory investigation** arising as a direct result of a **cyber event** first discovered by **you** during the **period of the policy**.

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

#### **SECTION E: PCI FINES, PENALTIES AND ASSESSMENTS**

**We** agree to pay on **your** behalf any fines, penalties and card brand assessments including fraud recoveries, operational reimbursements, non-cooperation costs and case management fees which **you** become legally obliged to pay **your** acquiring bank or payment processor as a direct result of a **payment card breach** first discovered by **you** during the **period of the policy**.

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

#### **INSURING CLAUSE 5: MEDIA LIABILITY**

##### **SECTION A: DEFAMATION**

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

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

arising out of any **media content**.

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

##### **SECTION B: INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT**

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

- a. infringement of any intellectual property rights, including, but not limited to, copyright, trademark, trade dilution, trade dress, commercial rights, design rights, domain name rights, image rights, moral rights, service mark or service name, but not including patent;
- b. act of passing-off, piracy or plagiarism or any misappropriation of content, concepts, format rights or ideas or breach of a contractual warranty relating to intellectual property rights;

- c. breach of any intellectual property rights licence acquired by **you**; or
- d. failure to attribute authorship or provide credit;

arising out of any **media content**.

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

#### **INSURING CLAUSE 6: TECHNOLOGY ERRORS AND OMISSIONS**

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

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

#### **INSURING CLAUSE 7: COURT ATTENDANCE COSTS**

**We** agree to reimburse **you** for any reasonable sums necessarily incurred by **you** with **our** prior written agreement (which will not be unreasonably withheld) to attend court or any tribunal, arbitration, adjudication, mediation or other hearing in connection with any claim for which **you** are entitled to indemnity under this Policy.

## **HOW MUCH WE WILL PAY**

### **YOUR MAXIMUM LIMITS UNDER THIS POLICY**

The maximum amount payable by **us** under this Policy for any one claim or series of related claims is the **policy limit** plus the **incident response limit**.

The maximum amount payable by **us** under any Insuring Clause for any one claim or series of related claims is the amount shown as the limit in the Schedule for that Insuring Clause.

The maximum amount payable by **us** under any Section for any one claim or series of related claims is the amount shown as the limit in the Schedule for that Section.

### **YOUR MAXIMUM LIMIT FOR RELATED INCIDENTS**

Where more than one claim arises from the same original cause or single source or event, all of those claims will be deemed to be one claim and only one **policy limit** and one **incident response limit** will apply in respect of that claim.

In the event that cover is provided under multiple Insuring Clauses or multiple Sections for any one claim, only one **policy limit** and one **incident response limit** will apply in total for that claim.

In respect of **INSURING CLAUSES 4, 5, 6 and 7**, **we** may at any time pay to **you** in connection with any **claim** the amount of the **policy limit** (after deduction of any amounts already paid). Upon that payment being made **we** will relinquish the conduct and control of the **claim** and be under no further liability in connection with that **claim** except for the payment of **costs and expenses** incurred prior to the date of such payment (unless the **policy limit** is stated to be inclusive of **costs and expenses**).

If **costs and expenses** are stated in the Schedule to be in addition to the **policy limit** plus the **incident response limit**, or if the operation of local laws require **costs and expenses** to be paid in addition to the **policy limit** plus the **incident response limit**, and if a damages payment in excess of the **policy limit** plus the **incident response limit** has to be made to dispose of any **claim**, **our** liability for **costs and expenses** will be in the same proportion as the **policy limit** plus the **incident response limit** bears to the total amount of the damages payment.

## YOUR DEDUCTIBLE

**We** will only be liable for that part of each and every claim which exceeds the amount of the **deductible**. If any expenditure is incurred by **us** which falls within the amount of the **deductible**, then **you** will reimburse that amount to **us** upon **our** request.

Where more than one claim arises from the same original cause or single source or event all of those claims will be deemed to be one claim and only one **deductible** will apply.

In respect of **INSURING CLAUSE 3 (SECTIONS B and D only)**, a single **waiting period, deductible** and **indemnity period** will apply to each claim. Where the same original cause or single source or event causes more than one period of computer systems downtime these will be considered one period of computer systems downtime whose total duration is equal to the cumulative duration of each individual period of computer systems downtime.

Where cover is provided under multiple Sections or multiple Insuring Clauses only one **deductible** will apply to that claim and this will be the highest **deductible** of the Sections under which cover is provided.

## DEFINITIONS

1. "**Approved claims panel providers**" means  
the approved claims panel providers stated in the schedule.

2. "**Botnetting**" means

the unauthorised use of **your computer systems** by a **third party** for the purpose of launching a denial of service attack or hacking attack against another **third party**.

3. "**Business operations**" means

the business operations stated in the Schedule.

4. "**Claim**" means

- a. a written demand for compensation;
- b. a written request for a retraction or a correction;
- c. a threat or initiation of a lawsuit; or
- d. a disciplinary action or **regulatory investigation**.

made against **you**.

5. "**Client**" means

any **third party** with whom **you** have a contract in place for the supply of **your** business services in return for a fee, or where a fee would normally be expected to be paid.

6. "**Company**" means

the company named as the Insured in the Schedule or any **subsidiary**.

7. "**Computer systems**" means

all electronic computers used directly by **you**, including operating systems, software, hardware and all communication and open system networks and any data or websites wheresoever hosted, off-line media libraries and data back-ups and mobile devices including but not limited to smartphones, iPhones, tablets or personal digital assistants.

8. "**Continuity date**" means

the **inception date** or if **you** have maintained uninterrupted insurance of the same type with **us**, the date this insurance was first incepted with **us**.

9. "**Costs and expenses**" means

- a. **third party** legal and professional expenses (including disbursements) reasonably incurred in the defence of **claims** or circumstances which could reasonably be expected to give rise to a **claim** or in quashing or challenging the scope of any injunction, subpoena or witness summons;
- b. any post judgment interest; and
- c. the cost of appeal, attachment and similar bonds including bail and penal bonds.

Subject to all **costs and expenses** being incurred with the **cyber incident manager's** prior written agreement.



10. **"Cryptojacking"** means  
the unauthorised use of **your computer systems** by a **third party** for the sole purpose of cryptocurrency mining activities.
11. **"Cyber event"** means  
any actual or suspected unauthorised system access, electronic attack or **privacy breach**, including denial of service attack, cyber terrorism, hacking attack, Trojan horse, phishing attack, man-in-the-middle attack, application-layer attack, compromised key attack, malware infection (including spyware or Ransomware) or computer virus.
- Cyber event** does not mean **system failure**.
12. **"Cyber incident manager"** means  
the company or individual named as the cyber incident manager in the Schedule.
13. **"Cyber incident response line"** means  
the telephone number stated as the cyber incident response line in the Schedule.
14. **"Cyber war"** means  
any unauthorised access to or electronic attack on computer systems, carried out by or on behalf of a **state**, that directly results in another **state** becoming an **impacted state**.
15. **"Deductible"** means  
the amount stated as the deductible in the Schedule.
16. **"Direct loss of profits"** means  
**your** income that, had the **cyber event** or **system failure** which gave rise to the claim not occurred, would have been generated directly from **your business operations** (less sales tax) during the **indemnity period** or **reputational harm period**, less:
- a. actual income (less sales tax) generated directly from **your business operations** during the **indemnity period** or **reputational harm period**; and
  - b. any cost savings achieved as a direct result of the reduction in income.
17. **"Employee"** means  
any employee of the **company**, any volunteer working for the **company** and any individual working for the **company** as an independent contractor.
- "Employee"** does not mean any **senior executive officer**.
18. **"Expiry date"** means  
the expiry date stated in the Schedule.



19. **"Impacted state"** means  
any **state** that suffers a major detrimental impact on its:
- a. ability to function; or
  - b. defence and security capabilities;
- as a direct result of any unauthorised access to or electronic attack on computer systems, carried out by or on behalf of another **state**.
20. **"Inception date"** means  
the inception date stated in the Schedule.
21. **"Incident response limit"** means  
the highest individual limit available where cover is applicable under **INSURING CLAUSE 1** as stated in the Schedule.
22. **"Increased cost of working"** means  
**your** reasonable sums necessarily incurred in addition to **your** normal operating expenses to mitigate an interruption to and continue **your business operations**, provided that the costs are less than **your** expected **direct loss of profits** sustained had these measures not been taken.
23. **"Indemnity period"** means  
the period starting from the first occurrence of:
- a. the **computer systems** downtime; or
  - b. the downtime of computer systems used directly by a **supply chain partner**;
- and lasting for the period stated as the indemnity period in the Schedule.
24. **"Loss"** means  
any direct financial loss sustained by the **company**.
25. **"Media content"** means  
any content created or disseminated by **you** or on **your** behalf, including but not limited to content disseminated through books, magazines, brochures, social media, billboards, websites, mobile applications, television and radio.
- "Media content"** does not include any:
- a. tangible product design;
  - b. industrial design;
  - c. architectural or building services;
  - d. any advertisement created by **you** for a **third party**;
  - e. business, company, product or trading name;

- f. product packaging or labelling; or
- g. software products.

26. **"Payment card breach"** means

an actual or suspected unauthorised disclosure of payment card data stored or processed by **you** arising out of an electronic attack, accidental disclosure or the deliberate actions of a rogue **employee**.

**"Payment card breach"** does not mean a situation where payment card data is deliberately shared with or sold to a **third party** with the knowledge and consent of a **senior executive officer**.

27. **"Period of the policy"** means

the period between the **inception date** and the **expiry date** or until the Policy is cancelled in accordance with **CONDITION 5**

28. **"Policy limit"** means

the highest individual limit available where cover is applicable under any Insuring Clause or Section as stated in the Schedule.

29. **"Premium"** means

the amount stated as the premium in the Schedule and any subsequent adjustments.

30. **"Privacy breach"** means

an actual or suspected unauthorised disclosure of information arising out of an electronic attack, accidental disclosure, theft or the deliberate actions of a rogue **employee** or **third party**.

**"Privacy breach"** does not mean a situation where information is deliberately shared with or sold to a **third party** with the knowledge and consent of a **senior executive officer**.

31. **"Regulatory investigation"** means

a formal hearing, official investigation, examination, inquiry, legal action or any other similar proceeding initiated by a governmental, regulatory, law enforcement, professional or statutory body against **you**.

32. **"Reputational harm period"** means

the period starting from when the **cyber event** is first discovered and lasting for the period stated as the reputational harm period in the Schedule.

33. **"Senior executive officer"** means

board members, C-level executives, in-house lawyers and risk managers of the **company**.

34. **"State"** means  
sovereign state.
35. **"Subsidiary"** means  
any entity in which the **company** has majority ownership of on or before the **inception date**.
36. **"Supply chain partner"** means  
any:
- a. **third party** that provides **you** with hosted computing services including infrastructure, platform, file storage and application level services; or
  - b. **third party** listed as a supply chain partner in an endorsement attaching to this policy which **we** have issued.
37. **"System failure"** means  
any sudden, unexpected and continuous downtime of **your computer systems** which renders them incapable of supporting their normal business function and is caused by an application bug, an internal network failure or hardware failure.
- However, in respect of **INSURING CLAUSE 3 (SECTION D only)**, **system failure** also means any sudden, unexpected and continuous downtime of computer systems used directly by a **supply chain partner** which renders them incapable of supporting their normal business function and is caused by an application bug, an internal network failure or hardware failure.
- System failure** does not mean a **cyber event**.
38. **"Technology services"** means  
the supply by **you** of technology services to **your client**, including but not limited to hardware, software, data processing, internet services, data and application hosting, computer systems analysis, consulting, training, programming, installation, integration, support and network management.
39. **"Third party"** means  
any person who is not an **employee** or any legal entity that is not the **company**.
40. **"Waiting period"** means  
the number of hours stated as the waiting period in the Schedule.
41. **"War"** means  
any physical:
- a. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or

b. action taken in controlling, preventing, suppressing or in any way relating to a. above.

42. "We/our/us" means

the Underwriters stated in the Schedule.

43. "You/your" means

the **company, employees** and **senior executive officers** solely acting in the normal course of the **company's business operations**.

## EXCLUSIONS

We will not make any payment under this Policy:

### EXCLUSIONS RELATING TO SYSTEM DAMAGE AND BUSINESS INTERRUPTION

In respect of **INSURING CLAUSE 3** only:

#### 1. Business interruption liability

for that part of any **claim** that constitutes actual or alleged liability to a **third party**, or legal costs in the defence of any **claim**, including customer compensation.

### EXCLUSIONS RELATING TO ALL INSURING CLAUSES

#### 2. Antitrust

in respect of **INSURING CLAUSES 5** and **6**, for or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive advertising.

#### 3. Associated companies

- a. in respect of any **claim** made by any company, firm or partnership in which the **company** has greater than a 10% executive or financial interest, unless the **claim** emanates from an independent **third party**;
- b. in respect of any **claim** made by any company, firm, partnership or individual which has greater than a 10% executive or financial interest in the **company**, unless the **claim** emanates from an independent **third party**;
- c. arising out of or resulting from any of **your** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the **company**; or
- d. in respect of any **claim** made by or on behalf of the **company** against a **third party**.

#### 4. Betterment

which results in **you** being in a better financial position or **you** benefitting from upgraded versions of **your computer systems** as a direct result of the event which gave rise to the claim under this policy.

However, in the event of a hacking attack, malware infection or computer virus, when rebuilding **your computer systems** we will pay the additional costs and expenses incurred to install a more secure and efficient version of the affected **computer system**, provided that the maximum amount we will pay is 25% more than the cost that would have been incurred to repair or replace the original model or licence. Under no circumstances will we pay the cost of acquiring or installing **computer systems** which did not form a part of **your computer systems** immediately prior to the incident which gave rise to the claim.

This Exclusion will not apply to **INSURING CLAUSES 1 (SECTION G only) and 3 (SECTION G only)**.

#### 5. **Bodily injury and property damage**

arising directly or indirectly out of bodily injury, or tangible property damage.

However, this Exclusion will not apply to **INSURING CLAUSES 4 (SECTIONS A, B and C only) and 5** for any **claim** as a direct result of mental injury or emotional distress.

#### 6. **Chargebacks**

for any credit card company or bank, wholly or partially, reversing or preventing a payment transaction, unless specifically covered under **INSURING CLAUSE 4 (SECTION E only)** for which **you** have purchased coverage.

#### 7. **Core internet infrastructure failure**

arising directly from a failure, material degradation or termination of any core element of the internet, telecommunications or GPS infrastructure that results in a regional, countrywide or global outage of the internet or core telecommunications network, including a failure of the core DNS root servers, satellite network or the IP addressing system or an individual state or non-state actor turning off all or part of the internet.

#### 8. **Domain name suspension or revocation**

arising directly or indirectly from the suspension, cancellation, revocation or failure to renew any of **your** domain names or uniform resource locators.

#### 9. **Insolvency**

arising out of or relating directly or indirectly to **your** insolvency or bankruptcy, or the insolvency or bankruptcy of any **third party**. However, **your** insolvency will not relieve **us** of any of **our** legal obligations under this contract of insurance where this insolvency does not give rise to a claim under this Policy.

#### 10. **Known claims and circumstances**

arising out of any actual or suspected **cyber event, claim** or circumstance which might give rise to a claim under this Policy which a **senior executive officer** was aware of, or ought

reasonably to have been aware of, prior to the **continuity date**, including any claim or circumstance notified to any other insurer.

**11. Liquidated damages, service credits and penalty clauses**

for liquidated damages or service credits, or arising out of penalty clauses unless **you** would have been liable in the absence of any contract stipulating the liquidated damages or service credits or penalty clauses.

**12. Loss of economic value**

for the reduction in economic or market value (including loss of potential future sales) of any of **your** intellectual property assets.

**13. Management liability**

for any sums that **your senior executive officers** become legally obliged to pay, including **costs and expenses**, as a result of any **claim** made against them arising out of a **cyber event**.

However, this Exclusion will not apply to **INSURING CLAUSE 4 (SECTION C only)**.

**14. Misleading advertising**

arising directly or indirectly from any advertisement, promotion or product description that is actually or alleged to be false or misleading.

**15. Nuclear**

arising directly or indirectly from or contributed to by:

- a. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component.

**16. Patent infringement**

arising directly or indirectly out of the actual or alleged infringement of any patent or inducing the infringement of any patent.

**17. Payment card industry related fines, penalties and assessments**

for fines, penalties and card brand assessments, including fraud recoveries, operational reimbursements, non-cooperation costs and case management fees which **you** become legally obliged to pay **your** acquiring bank or payment processor as a direct result of a **payment card breach**.

However, this Exclusion will not apply to **INSURING CLAUSE 4 (SECTION E only)**.

**18. Power and utility failure**

arising directly or indirectly from any:

- a. failure in the power supply, including that caused by any surge or spike in voltage, electrical current or transferred energy; or
- b. failure, disruption or reduction in the supply of utilities, including but not limited to gas and water infrastructure or services.

#### 19. **Product IP infringement**

arising directly or indirectly from the actual or alleged theft or misappropriation of any trade secret by an **employee** from a former employer of theirs or infringement of any intellectual property right by any product manufactured, designed, formulated, licenced, distributed, or sold by **you** or the misappropriation of any trade secret by **you** or a **third party**.

#### 20. **Professional liability**

arising directly out of any negligent advice or professional services provided to a **client** for a fee except when arising directly from a **cyber event**.

However, this Exclusion will not apply to **INSURING CLAUSE 6**.

#### 21. **Property and hardware costs**

for any tangible property repair or replacement including the cost of repairing any hardware or replacing any tangible property or equipment that forms part of **your computer systems**.

However, this Exclusion will not apply to **INSURING CLAUSE 3 (SECTION G only)**.

#### 22. **Regular hours staff costs**

for contracted salary and bonus costs paid to **employees** or **senior executive officers**.

#### 23. **Sanctions**

or will be deemed to provide any cover, to the extent that the provision of such payment or cover will expose **us** to any sanction, prohibition or restriction under the United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, Canada, the European Union, United Kingdom or United States of America.

#### 24. **Terrorism**

arising directly or indirectly out of:

- a. any act or threat of force or violence by an individual or group, whether acting alone or on behalf of or in connection with any organisation or government, committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear; or
- b. any action taken in controlling, preventing, suppressing or in any way relating to a. above.

However, this Exclusion does not apply to a **cyber event** affecting **your computer systems** or a **supply chain partner's** computer systems.

25. **Theft of funds held in escrow**

for theft of money or other financial assets belonging to a **third party** from a bank account held by **you** on their behalf.

However, this Exclusion will not apply to **INSURING CLAUSE 2 (SECTION B only)**.

26. **Uninsurable fines**

for fines, penalties, civil or criminal sanctions or multiple, punitive or exemplary damages, unless insurable by law.

27. **Unlawful surveillance**

in respect of any actual or alleged eavesdropping, wiretapping, or unauthorised audio or video recording committed by **you** or by a **third party** on **your** behalf with the knowledge and consent of **your senior executive officers**.

28. **Unsolicited communications**

arising directly or indirectly from any actual or alleged violation of:

- a. the CAN-SPAM Act of 2003 or any subsequent amendments to that Act;
- b. the Telephone Consumer Protection Act (TCPA) of 1991 or any subsequent amendments to that Act; or
- c. any other law, regulation or statute relating to unsolicited communication, distribution, sending or transmitting of any communication via telephone or any other electronic or telecommunications device.

However, this Exclusion will not apply to **INSURING CLAUSE 4 (SECTION A only)**.

29. **War and cyber war**

arising directly or indirectly out of:

- a. **war**; or
- b. **cyber war**.

However, part b. above will not apply to:

- a. **INSURING CLAUSE 1 (SECTION A only)**; and
- b. that part of any claim relating to any computer systems which are physically located outside of an **impacted state**.

30. **Wilful or dishonest acts of senior executive officers**

arising directly or indirectly out of any wilful, criminal, malicious or dishonest act, error or omission by a **senior executive officer** as determined by final adjudication, arbitral tribunal or written admission.



## CONDITIONS

### 1. What you must do if an incident takes place

If any **senior executive officer** becomes aware of any incident which may reasonably be expected to give rise to a claim under this Policy, **you** must:

- a. other than in accordance with **CONDITION 2**, notify the **cyber incident manager** as soon as is reasonably practicable and follow their directions. However, this notification must be made no later than the end of any applicable extended reporting period. A telephone call to **our cyber incident response line** or confirmed notification via **our** cyber incident response app will constitute notification to the **cyber incident manager**;
- b. in respect of **INSURING CLAUSE 2 (SECTIONS A, B and C only)**, report the incident to the appropriate law enforcement authorities; and
- c. in respect of **INSURING CLAUSES 4, 5 and 6**, not admit liability for or settle or make or promise any payment or incur any **costs and expenses** without **our** prior written agreement (which will not be unreasonably withheld).

Due to the nature of the coverage offered by this Policy, any unreasonable delay by **you** in notifying the **cyber incident manager** could lead to the size of the claim increasing or to **our** rights of recovery being restricted. **We** will not be liable for that portion of any claim that is due to any unreasonable delay in **you** notifying the **cyber incident manager** of any incident in accordance with this clause. However, if **you** are prevented from notifying **us** by a legal or regulatory obligation then **your** rights under this Policy will not be affected.

If **you** discover a **cyber event** **you** may only incur costs without **our** prior written consent within the first 72 hours following the discovery and any **third party** costs incurred must be with a company forming part of the **approved claims panel providers**. All other costs may only be incurred with the prior written consent of the **cyber incident manager** (which will not be unreasonably withheld).

### 2. What you must do in the event of a circumstance which could give rise to a claim

In respect of **INSURING CLAUSES 5 and 6**, should a **senior executive officer** become aware of:

- a. a situation during the **period of the policy** that could give rise to a **claim**; or
- b. an allegation or complaint made or intimated against **you** during the **period of the policy**;

then **you** have the option of whether to report this circumstance to **us** or not. However, if **you** choose not to report this circumstance **we** will not be liable for that portion of any **claim** that is greater than it would have been had **you** reported this circumstance.

If **you** choose to report this circumstance **you** must do so no later than the end of any applicable extended reporting period for it to be considered under this Policy and **we** will require **you** to provide full details of the circumstance, including but not limited to:

- a. the time, place and nature of the circumstance;
- b. the manner in which **you** first became aware of this circumstance;
- c. the reasons why **you** believe that this circumstance could give rise to a **claim**;
- d. the identity of the potential claimant; and
- e. an indication as to the size of the **claim** that could result from this circumstance.

Any subsequent **claim** arising directly from this circumstance will be deemed to have been made at the time this circumstance was notified to **us** and **we** will regard this **claim** as having been notified under this Policy.

### 3. Additional insureds

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

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

Before **we** indemnify any additional insured they must:

- a. prove to **us** that the **claim** arose solely out of an act, error or omission committed by **you**; and
- b. fully comply with **CONDITION 1** as if they were **you**.

Where a **third party** is treated as an additional insured as a result of this Condition, any **claim** made by that **third party** against **you** will be treated by **us** as if they were a **third party** and not as an insured.

### 4. Agreement to pay claims (duty to defend)

**We** have the right and duty to take control of and conduct in **your** name the investigation, settlement or defence of any **claim**. **We** will not have any duty to pay **costs and expenses** for any part of a **claim** that is not covered by this Policy.

**You** may ask the **cyber incident manager** to consider appointing **your** own lawyer to defend the **claim** on **your** behalf and the **cyber incident manager** may grant **your** request if they consider **your** lawyer is suitably qualified by experience, taking into account the subject matter of the **claim**, and the cost to provide a defence.

**We** will endeavour to settle any **claim** through negotiation, mediation or some other form of alternative dispute resolution and will pay on **your** behalf the amount **we** agree with the claimant. If **we** cannot settle using these means, **we** will pay the amount which **you** are found liable to pay either in court or through arbitration proceedings, subject to the **policy limit** and **incident response limit**.

**We** will not settle any **claim** without **your** consent. If **you** refuse to provide **your** consent to a settlement recommended by **us** and elect to continue legal proceedings in connection with the **claim**, any further **costs and expenses** incurred will be paid by **you** and **us** on a proportional basis, with 80% payable by **us** and 20% payable by **you**. As a consequence of **your** refusal, **our** liability for the **claim**, excluding **costs and expenses**, will not be more than the amount for which the **claim** could have been settled.

## 5. Cancellation

This Policy may be cancelled with 30 days written notice by either **you** or **us**.

If **you** give **us** notice of cancellation, the return **premium** will be in proportion to the number of days that the Policy is in effect. However, if **you** have made a claim under this Policy there will be no return **premium**.

If **we** give **you** notice of cancellation, the return **premium** will be in proportion to the number of days that the Policy is in effect.

**We** also reserve the right of cancellation in the event that any amount due to **us** by **you** remains unpaid more than 60 days beyond the **inception date**. If **we** exercise this right of cancellation it will take effect from 14 days after the date the written notice of cancellation is issued.

The Policy Administration Fee will be deemed fully earned upon inception of the Policy.

## 6. Continuous cover

If **you** have neglected, through error or oversight only, to report an incident discovered by **you** that might give rise to a **claim** under this Policy during the period of a previous renewal of this Policy issued to **you** by **us**, then provided that **you** have maintained uninterrupted insurance of the same type with **us** since the expiry of that earlier Policy, then, notwithstanding **EXCLUSION 10**, **we** will permit the matter to be reported under this Policy and **we** will indemnify **you**, provided that:

- a. the indemnity will be subject to the applicable limit of liability of the earlier Policy under which the matter should have been reported or the **policy limit** plus the **incident response limit**, whichever is the lower;
- b. **we** may reduce the indemnity entitlement by the monetary equivalent of any prejudice which has been suffered as a result of the delayed notification; and

- c. the indemnity will be subject to all of the terms, Conditions, Definitions and Exclusions of this Policy, other than a) above.

## 7. Dispute resolution

All disputes or differences between **you** and **us** will be referred to mediation or arbitration and will take place in the country of registration of the company named as the insured in the Schedule.

In respect of any arbitration proceeding **we** will follow the applicable rules of the arbitration association in the country where the company stated as the insured in the Schedule is registered, the rules of which are deemed incorporated into this Policy by reference to this Condition. Unless the applicable arbitration association rules state otherwise, a single arbitrator will be appointed who will be mutually agreed between **you** and **us**. If **you** and **we** cannot agree on a suitable appointment then **we** will refer the appointment to the applicable arbitration association.

Each party will bear its own fees and costs in connection with any mediation or arbitration proceeding but the fees and expenses of the arbitrator will be shared equally between **you** and **us** unless the arbitration award provides otherwise.

Nothing in this Condition is intended to remove **your** rights under **CONDITION 18**. However, if a determination is made in any mediation or arbitration proceeding, **CONDITION 18** is intended only as an aid to enforce this determination.

## 8. Extended reporting period

An extended reporting period of 60 days following the **expiry date** will be automatically granted at no additional premium. This extended reporting period will cover, subject to all other terms, conditions and exclusions of this Policy:

- a. any **claim** first made against **you** during the **period of the policy** and reported to **us** during this extended reporting period;
- b. any **cyber event, loss** or **system failure** first discovered by **you** during the **period of the policy** and reported to **us** during this extended reporting period; and
- c. any circumstance that a **senior executive officer** became aware of during the **period of the policy** and reports to **us** during this extended reporting period.

No claim will be accepted by **us** in this 60 day extended reporting period if **you** are entitled to indemnity under any other insurance, or would be entitled to indemnity under such insurance if its limit of liability was not exhausted.

## 9. Optional extended reporting period

If **we** or **you** decline to renew or cancel this Policy then **you** will have the right to have issued an endorsement providing an optional extended reporting period for the duration stated in the Schedule which will be effective from the cancellation or non-renewal date. This optional

extended reporting period will cover, subject to all other terms, conditions and exclusions of this Policy:

- a. any **claim** first made against **you** and reported to **us** during this optional extended reporting period, provided that the **claim** arises out of any act, error or omission committed prior to the date of cancellation or non-renewal; and
- b. any **cyber event, loss or system failure** first discovered by **you** during this optional extended reporting period, provided that the **cyber event, loss or system failure** occurred during the **period of the policy**;

If **you** would like to purchase the optional extended reporting period **you** must notify **us** and pay **us** the optional extended reporting period premium stated in the Schedule within 30 days of cancellation or non-renewal.

The right to the optional extended reporting period will not be available to **you** where cancellation or non-renewal by **us** is due to non-payment of the **premium** or **your** failure to pay any amounts in excess of the applicable **policy limit** and **incident response limit** or within the amount of the applicable **deductible** as is required by this Policy in the payment of claims.

At the renewal of this Policy, **our** quotation of different **premium, deductible**, limits of liability or changes in policy language will not constitute non-renewal by **us**.

#### 10. Fraudulent claims

If it is determined by final adjudication, arbitral tribunal or written admission by **you**, that **you** notified **us** of any claim knowing it to be false or fraudulent in any way, **we** will have no responsibility to pay that claim, **we** may recover from **you** any sums paid in respect of that claim and **we** reserve the right to terminate this Policy from the date of the fraudulent act. If **we** exercise this right **we** will not be liable to return any **premium** to **you**. However, this will not affect any claim under this Policy which has been previously notified to **us**.

#### 11. Innocent non-disclosure

**We** will not seek to avoid the Policy or reject any claim on the grounds of non-disclosure or misrepresentation except where the non-disclosure or misrepresentation was reckless or deliberate.

#### 12. Mergers and acquisitions

If **you** acquire an entity during the **period of the policy** whose annual revenue does not exceed 20% of the **company's** annual revenue, as stated in its most recent financial statements, cover is automatically extended under this Policy to include the acquired entity as a **subsidiary**.

If **you** acquire an entity during the **period of the policy** whose annual revenue exceeds 20% of the **company's** annual revenue, as stated in its most recent financial statements, cover is

automatically extended under this Policy to include the acquired entity as a **subsidiary** for a period of 45 days.

**We** will consider providing cover for the acquired entity after the period of 45 days if:

- a. **you** give **us** full details of the entity within 45 days of its acquisition; and
- b. **you** accept any amendment to the terms and conditions of this Policy or agree to pay any additional **premium** required by **us**.

In the event **you** do not comply with a. or b. above, cover will automatically terminate for the entity 45 days after the date of its acquisition.

Cover for any acquired entity is only provided under this Policy for any act, error or omission committed on or after the date of its acquisition.

No cover will be automatically provided under this Policy for any acquired entity:

- a. whose business activities are materially different from **your** business activities;
- b. that has been the subject of any lawsuit, disciplinary action or regulatory investigation in the 3 year period prior to its acquisition; or
- c. that has experienced a **cyber event** in the 3 year period prior to its acquisition, if the **cyber event** cost more than the highest **deductible** of this Policy.

If during the **period of the policy you** consolidate, merge with or are acquired by another entity then all coverage under this Policy will terminate at the date of the consolidation, merger or acquisition unless **we** have issued an endorsement extending coverage, and **you** have agreed to any additional **premium** and terms of coverage required by **us**.

### 13. **Our rights of recovery**

**You** must maintain all of **your** rights of recovery against any **third party** and make these available to **us** where possible.

**We** will not exercise any rights of recovery against any **employee** or **senior executive officer**, unless this is in respect of any fraudulent or dishonest acts or omissions as proven by final adjudication, arbitral tribunal or written admission by **you**.

Any recoveries will be applied in proportion to the amounts paid by **you** and **us**.

### 14. **Prior subsidiaries**

Should an entity cease to be a **subsidiary** after the **inception date**, cover in respect of the entity will continue as if it was still a **subsidiary** during the **period of the policy**, but only in respect of an act, error, omission or event occurring prior to the date that it ceased to be a **subsidiary**.

#### 15. Process for adjustment of business interruption losses

In order to determine the amount of **loss** following an interruption to **your business operations** covered under **INSURING CLAUSE 3 (SECTIONS B, C, D and E only)**, the **cyber incident manager** will appoint an independent expert agreed between **you** and **us** which will be paid for by **us** in accordance with **INSURING CLAUSE 3 (SECTION F only)**.

If an independent expert cannot be agreed upon, one will be appointed by an arbitrator mutually agreed between **you** and **us** whose decision will be final and binding.

Once an independent expert has been appointed, their calculation of **loss** will be final and binding.

#### 16. Process for paying privacy breach notification costs

Any **privacy breach** notification transmitted by **you** or on **your** behalf must be done with **our** prior written consent. **We** will ensure that notification is compliant with any legal or regulatory requirements and contractual obligations. No offer must be made for financial incentives, gifts, coupons, credits or services unless with **our** prior written consent which will only be provided if the offer is commensurate with the risk of harm.

**We** will not be liable for any portion of the costs **you** incur under **INSURING CLAUSE 1 (SECTION E only)** that exceed the costs that **you** would have incurred had **you** gained **our** prior written consent. In the absence of **our** prior written consent **we** will only be liable to pay **you** the equivalent cost of a notification made using the most cost effective means permissible under the governing law.

#### 17. Supply chain interruption events

In respect of **INSURING CLAUSE 3 (SECTION D only)**, it is a condition precedent to liability under this Policy that **you** submit to **us** a written report from the **supply chain partner** confirming the root cause and length of the outage.

#### 18. Choice of law and jurisdiction

This policy will be interpreted under, governed by and construed in all respects in accordance with the law of the jurisdiction of the place of registration of the company stated as the insured in the Schedule and **we** and **you** agree to submit to the exclusive jurisdiction of the courts within the territorial limits and jurisdiction of the place of registration of the company stated as the insured in the Schedule.