

Cyber Liability Insurance

Proposal form

ONYX

Presentation and background Information

The proposal form is usually the main point of contact between you – the Insured – and the Insurer. It is therefore important that the information contained in the form is expressed and presented to a high standard. Where there is insufficient space available, please use clearly marked appendices, indicating which questions they refer to.

The continuing duty to disclose

The duty to disclose material circumstances is not confined to completion of proposal forms at inception or renewal. If, during the period of insurance arranged there is any material alteration/change in the information disclosed in the proposal information, prompt disclosure to us is essential. This might include, but is not limited to:

- new partners, directors, corporate entities, partnerships or trading titles,
- any change in the areas of activity of the insured Firm(s),
- the possibility of a claim being made against the Firm(s),
- any change in the trading status of the Firm(s), or membership of professional bodies, or regulatory status.

Claims and/or claims circumstances

The policy to be arranged provides cover on a “claims made” basis, which means that cover must be in force at the time you first become aware of a claim or circumstances which may lead to a claim. Notification must be given at that time. It is that policy which will respond to any subsequent claim – even if the claim develops years later and/or arises out of activities performed prior to its inception. It is essential that full enquiry and discussion take place between all partners/directors and senior staff before any answers are given. If you are in any doubt as to what may constitute a material circumstance, please disclose the information – too much information is preferable to too little, and the consequences thereof.

Insurance act 2015 – Duty of fair presentation

1. Before this insurance contract is entered into, the Insured must make a fair presentation of the risk to the Insurer, in accordance with Section 3 of the Insurance Act 2015. In summary, the Insured must:
 - (a) Disclose to the Insurer every material circumstance which the Insured knows or ought to know. Failing that, the Insured must give the Insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries in order to reveal material circumstances. A matter is material if it would influence the judgement of a prudent insurer as to whether to accept the risk, or the terms of the insurance (including premium);
 - (b) Make the disclosure in clause (1)(a) above in a reasonably clear and accessible way; and
 - (c) Ensure that every material representation of fact is substantially correct, and that every material representation of expectation or belief is made in good faith.
2. For the purposes of clause (1)(a) above, the Insured is expected to know the following:
 - (a) If the Insured is an individual, what is known to the individual and anybody who is responsible for arranging his or her insurance.
 - (b) If the Insured is not an individual, what is known to anybody who is part of the Insured’s senior management; or anybody who is responsible for arranging the Insured’s insurance.
 - (c) Whether the Insured is an individual or not, what should reasonably have been revealed by a reasonable search of information available to the Insured. The information may be held within the Insured’s organisation, or by any third party (including but not limited to subsidiaries, affiliates, the broker, or any other person who will be covered under the insurance). If the Insured is insuring subsidiaries, affiliates or other parties, the Insurer expects that the Insured will have included them in its enquiries, and that the Insured will inform the Insurer if it has not done so. The reasonable search may be conducted by making enquiries or by any other means.

Remedies for a breach of the duty of fair presentation under the insurance act 2015

In the event of a breach by the Insured of the duty of fair presentation the insurer may apply the following remedies if the insurer shows that, but for the breach, the insurer:

- (a) would not have entered into the contract of insurance at all; or
- (b) would have done so only on different terms.

A breach for which the insurer has a remedy against the Insured is referred to as a “qualifying breach” and can be either;

- (a) deliberate and reckless; or
- (b) neither deliberate and reckless

Deliberate or reckless breaches

A breach for which the insurer has a remedy against the Insured is referred to as a “qualifying breach” and can be either;

- (a) deliberate and reckless; or
- (b) neither deliberate and reckless

Deliberate or reckless breaches

If a qualifying breach was deliberate or reckless, the insurer;

- (a) may avoid the contract and refuse all claims, and
- (b) need not return any of the premiums paid.

Other breaches

If a qualifying breach was neither deliberate nor reckless.

- (a) If, in the absence of the qualifying breach, the insurer would not have entered into the contract on any terms, the insurer may avoid the contract and refuse all claims, but must in that event return the premiums paid.
- (b) If the insurer would have entered into the contract, but on different terms (other than terms relating to the premium), the contract is to be treated as if it had been entered into on those different terms if the insurer so requires.
- (c) In addition, if the insurer would have entered into the contract (whether the terms relating to matters other than the premium would have been the same or different), but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.

“reduce proportionately” means that the insurer need pay on the claim only X% of what it would otherwise have been under an obligation to pay under the terms of the contract (or, if applicable, under the different terms provided for by virtue of paragraph b), where;

$$x = \frac{\text{Premium actually charged}}{\text{Higher premium}} \times 100$$

Proposing Firm:

Principal
Address:

Company
Website:

Company Type: Sole Trader
 Limited Company
 LLP
 PLC
 CIC
 Other

Are there any subsidiary
companies? Yes No

If yes, please
provide details

Industry /
Profession:

Date trading
commenced:

Gross Income
from the last
complete
Financial Year:

Do you currently have
a Cyber Liability
Policy in place? Yes No

If yes, what is
the Retroactive
Date:

- | | Yes | No |
|---|-----|----|
| 1. Has / have you and / or any partner and / or director and / or officer of the Proposing firm: | | |
| a) ever been declared bankrupt or disqualified from being a company director? | | |
| b) have outstanding County Court Judgement(s) or Sheriff Court Decree(s)? | | |
| c) ever been officers of a company that has been declared insolvent, or had a receiver or liquidator appointed, or entered into arrangements with creditors in accordance with the Insolvency Act 1986? | | |
| d) ever been convicted or have any prosecutions pending or been given an official police caution, in respect of any criminal offence other than motoring offences? | | |
| e) ever had any insurance proposal declined, renewal refused, had any special or increased terms applied or had insurance cancelled or avoided by Underwriters? | | |
| 2. Are all changes to vendor/client/customer contact and/or bank account details agreed in writing, confirmed and validated over the telephone with the client/customer? | | |
| 3. Do you receive confirmation that all requests for transfer of monies or other assets are authenticated with the recipient prior to execution over the telephone? | | |
| 4. Do you deploy commercial grade antivirus and firewalls across your network? | | |
| 5. Do you password protect (or use biometrics) your operating systems and all portable media including, but not limited to smartphones, tablets and memory sticks? | | |
| 6. Do you (or your outsource provider) back up critical data at least every 7 days? | | |
| 7. Has the firm suffered any unplanned outage in the last 12 months that has lasted more than 4 hours? | | |
| 8. Do you process or store any credit or debit card information? | | |
| 9. Have you had any claims or incidents in the past 5 years that may have resulted in a claim if a Cyber policy had been in force? | | |

Declaration

I/we declare that I/we have made a fair presentation of the risk, by disclosing all material matters which I/we know or ought to know or, failing that, by giving the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries in order to reveal material circumstances

Signature of Director/Partner/Principal

Name

Date