

CYBER SECURITY INSURANCE

In consideration of payment of the premium and subject to the terms and conditions of this policy, the Company and the **Insured** agree as follows:

1. INSURING CLAUSES

- A. E-THEFT LOSS**
The Company shall pay **E-Theft Loss** which is **Discovered** during the **Policy Period**.
- B. E-COMMUNICATIONS LOSS**
The Company shall pay **E-Communications Loss** which is **Discovered** during the **Policy Period**.
- C. E-THREAT LOSS**
The Company shall pay **E-Threat Loss** solely and directly as a result of a **Threat** made directly to an **Insured** during the **Policy Period**.
- D. E-VANDALISM LOSS**
The Company shall pay **E-Vandalism Loss** which is **Discovered** during the **Policy Period**.
- E. E-BUSINESS INTERRUPTION AND EXTRA EXPENSES**
The Company shall pay:
Business Income Loss; and
Extra Expenses,
incurred during the **Period of Recovery of Services** resulting directly from **Fraudulent Access or Transmission** which causes an actual or potential impairment or denial of **Operations** during the **Policy Period**.
- F. CYBER LIABILITY**
The Company shall pay, on behalf of an **Insured**, **Loss** on account of any **Claim** first made during the **Policy Period** or, if exercised, during the **Extended Reporting Period**, for a **Wrongful Act** occurring after the **Retroactive Date**.

2. EXTENSIONS

A. Expenses

The Company shall pay:
Privacy Notification Expenses;
Crisis Expenses; and
Reward Expenses;

Up to the amount of the sub-limit in Item 4. of the Schedule.

B. Advancement of Defence Costs

The Company shall, prior to the final disposition of any **Claim**, advance **Defence Costs** within thirty (30) days of receipt of invoice for same provided that, with respect to any **Claim** brought or maintained by or on behalf of any government agency or authority; or licensing or regulatory organization, the Company's obligation to advance **Defence Costs** is limited to the sub limit in Item 4.F.1 of the Schedule.

Any advancement of **Defence Costs** shall be repaid to the Company by the **Insured's**, severally according to their respective interests, if and to the extent it is determined that such **Defence Costs** are not insured under this Policy.

C. Bilateral Extended Reporting Period

Solely with respect to **Insuring Clause 1.F**, if this policy is terminated or not renewed by either the **Company** or the **Principal Organization** for any reason other than termination by the **Company** for non-payment of premium, and provided no **Event** has occurred, the **Insured's** shall have the right:

- (i) to an extended reporting period of 90 days within which to report any **Claims** that are first made during the **Policy Period** or during such 90 day period. There is no additional premium payable for such extended reporting period;
- (ii) upon payment of the additional premium set forth in Item 6(b) of the Schedule, to an additional extended reporting period of 365 days from the expiry date of the extended reporting period referred to in (i) above within which to report any **Claims** first made during the **Policy Period** or during such additional 365 days,

but only to the extent such **Claims** are for **Wrongful Acts** occurring prior to the effective date of termination or non-renewal.

Any **Claim** made during an **Extended Reporting Period** shall be deemed to have been made during the immediately preceding **Policy Period**.

If an **Extended Reporting Period** is elected then it cannot be cancelled by the **Insured's** or the **Company**; and the entire premium noted in Item 6(b) of the Schedule shall be deemed fully earned at the inception of the additional **Extended Reporting Period**.

The offer of renewal terms or premiums different from those in effect prior to renewal shall not constitute a refusal to renew.

Cover as set forth in the above extensions is subject to all the provisions of this policy unless stated otherwise.

3. DEFINITIONS

When used in bold type in this policy:

Bail Bond and Civil Bond Expenses means the reasonable premium (not including collateral) for a bond or other financial instrument to guarantee an **Insured Person's** contingent obligation for bail required by a court in respect of any **Claim** including the premium paid for appeal, attachment or similar bonds.

Business Income Loss means:

- A. net profit or loss that would have been earned or incurred by an **Insured** before income taxes; and
B. an **Insured's** continuing normal operating and payroll expenses.
Business Income does not mean bank interest or investment income.

Claim means:

- (1) a written demand for monetary damages or non-pecuniary relief;
(2) a civil proceeding;
(3) an arbitration, mediation, conciliation or alternative dispute resolution proceeding;
(4) a criminal proceeding; or
(5) a formal administrative or formal regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document, against an **Insured** for a **Wrongful Act**, including any appeal there from;
(6) an **Extradition proceeding**.

Communication means an electronic record or message created, generated, sent, communicated, received or stored by electronic means that is capable of retention by the recipient at the time of receipt, including a telefacsimile transmission or e-mail, and that was transmitted or purported to have been transmitted through a **Network**.

Computer means a device or group of devices that by manipulation of electronic, magnetic, optical or electromechanical impulses pursuant to a computer program can perform operations on **Data**.

Conduit Liability means loss sustained or allegedly sustained by a person because a **System** cannot be used, or is impaired, resulting directly from:

- A. a **Cyber-attack** into an **Insured's System**, provided such **Cyber-attack** was then received into a third party's **System**; or
B. a natural person who has accessed a **System** without authorization, through an **Insured's System**,

Provided such transmission or access occurred on or after the **Retroactive Date** and before the end of the **Policy Period**.

Content Liability means loss sustained or allegedly sustained by a person because of the actual or alleged infringement of:

- A. a collective mark, service mark, design right or trade mark name, slogan, symbol or title;
B. a copyright;
C. the name of a product, service, or organization; or
D. the title of an artistic or literary work,

resulting directly from **Cyber Activities** of an **Insured**, provided that the **Cyber Activities** that caused or allegedly caused the **Content Liability** first occurred on or after the **Retroactive Date** and before the end of the **Policy Period**.

Crisis Expenses means reasonable costs, charges, fees and expenses (other than regular or overtime wages, salaries or fees of **Insured Persons** or office overheads, travel costs unrelated to a **Claim** or loss or other administration costs) incurred by an **Organization**, with the Company's prior written consent (which shall not be unreasonably withheld), in retaining the services of an independent legal counsel; an information security forensic investigator; a public relations consultant to advise an **Organization** with respect to managing the public communication of and limiting the disruption to the **Organization's** business due to a **Claim**, **E-Theft Loss**, **E-Communication Loss**, **E-Threat Loss** or **E-Vandalism Loss**. The limit of liability for **Crisis Expenses** is in addition to, and does not reduce, the Limits of Liability set forth in Item 4 of the Schedule. The limit of liability for **Crisis Expenses** is not eroded by payments within the Limits of Liability set forth in Item 4 of the Schedule.

Customer means a person that:

- A. is applying for, or requesting, an **Organization's** products or services;
B. has applied for, or has requested, an **Organization's** products or services; or
C. is using, or has used, an **Organization's** products or services

Cyber Activities means the electronic display, electronic transmission, or electronic dissemination of information through a **Network** or through an **Insured's System**.

Cyber-attack means the transmission of fraudulent or unauthorized **Data** that is designed to modify, alter, damage, destroy, delete, record or transmit information within a **System** without authorization, including **Data** that is self-replicating or self-propagating and is designed to contaminate other computer programs or legitimate computer **Data**, consume computer resources or in some fashion usurp the normal operation of a **System**.

Data means a representation of information, knowledge, facts, concepts, or instructions which are processed or have been processed in a **Computer**.

Defence Costs means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to legal counsel's fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of **Insured Persons** or office overheads, travel costs unrelated to a **Claim** or other administration costs) incurred in defending, investigating, settling or appealing any **Claim**.

Defence Costs shall include:

- (a) **Bail Bond and Civil Bond Expenses;**
- (b) reasonable costs, charges or fees resulting from an **Insured Person** lawfully opposing, challenging, resisting or defending against any request for or any effort to obtain the **Extradition** of such **Insured Person**; or appealing any order or other grant of **Extradition** of such **Insured Person**.

Director means any natural person who was, now is or shall be a company director including, for the avoidance of doubt, an alternate director, a de facto director or a shadow director and shall include any equivalent position in any jurisdiction.

Disclosure Liability means loss sustained or allegedly sustained by a natural person because of the potential or actual unauthorized access to such natural person's **Record** by another person when such access:

- A. occurs on or after the **Retroactive Date** and before the end of the **Policy Period**; and
- B. results directly from:
 - 1. a **Cyber-attack** into a **System** owned by an **Organization**; or
 - 2. a natural person who has gained unauthorized access to, or has exceeded authorized access to a **System** or **System Output** owned by:
 - i. an **Organization**; or
 - ii. an organization that is authorized by an **Insured** through a written agreement to process, hold or store **Records** for an **Insured**.

Discovery or **Discovered** means the knowledge of a director or officer of an **Organization** or an employee designated to represent such **Organization** for the purposes of effecting and maintaining insurance of circumstances which could give rise to an **Expense**, loss or an actual or potential claim in which it is alleged that an **Insured** is liable to a third party regardless of when the acts causing or contributing to such **Expense** or loss occurred and even though the amount of such **Expense** or loss does not exceed the applicable Deductible, or the exact amount or details of such **Expense** or loss may not then be known.

E-Communication Loss means loss resulting directly from a **Customer**, automated clearing house, custodian or financial institution having transferred, paid or delivered any funds or property, established any credit, debited any account or given any value on the faith of any fraudulent **Communication** purporting to have been directed by an **Insured** to any of the foregoing for the purpose of initiating, authorizing or acknowledging the transfer, payment, delivery or receipt of funds or property, but which **Communication** was either not sent by an **Insured** or was fraudulently modified during electronic transmission and for which loss an **Insured** is held to be legally liable.

E-Theft Loss means loss resulting directly from an **Insured** having transferred, paid or delivered any funds or property, established any credit, debited any account or given any value due to the fraudulent input of **Data** either directly into an **Insured's System** or through a **Network** into an **Insured's System**.

E-Threat Loss means:

- A. funds or property an **Insured** surrenders and any of the expenses set forth below incurred by an **Insured**:
 - 1. reasonable fees and expenses of any independent negotiator or consultant;
 - 2. reasonable travel and accommodation expenses;
 - 3. any other reasonable expense with the Company's prior written approval; or
- B. loss resulting directly from the actual destruction, disappearance, confiscation or wrongful abstraction of funds or property intended as an extortion payment, while being held or conveyed by any person duly authorized by an **Insured** to have custody of such funds or property.

E-Vandalism Loss means the cost incurred by an **Insured** of the blank media and the cost of labour for the actual transcription or copying of **Data** or **Media** furnished by an **Insured** in order to reproduce such **Data** or replace such **Media** from others of the same kind or quality where such cost results directly from the alteration, damage, deletion or destruction of **Data**, which is owned by an **Insured** or for which an **Insured** is legally liable.

Event means:

- (a) the **Principal Organization** merging into or consolidating with another organization such that the **Principal Organization** becomes a subsidiary of the other organization;
- (b) another organization acquiring the business or assets of the **Principal**

- Organization**; or
- (c) another organization or person or group of organizations or persons acting in concert acquiring control of the composition of the **Principal Organization's** board, being in a position to cast, or control the casting of more than fifty percent (50%) of the maximum number of votes that might be cast at a general meeting of the **Principal Organization** or holding more than fifty percent (50%) of the issued share capital of the **Principal Organization** (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

Exceeded Authorized Access means to access an **Insured's System** with authorization but to use such access to perform unauthorized fraudulent operations, including the fraudulent input of **Data**.

Expense means **E- Business Interruption and Extra Expenses, Privacy Notification Expenses, Crisis Expenses and/or Reward Expenses**.

External Administrator means any liquidator, receiver, receiver and manager, administrator, administrative receiver, judicial manager or holder of similar office or position in any jurisdiction whether appointed under the provisions of any law anywhere in the world or pursuant to the provisions of any contract or other instrument.

Extra Expenses means reasonable expenses an **Insured** incurs in an attempt to continue **Operations** that are over and above the expenses such **Insured** would have normally incurred. **Extra Expenses** do not include any costs of updating, upgrading or remediation of an **Insured's System** that are not otherwise covered under this policy.

Extradition means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation.

Fraudulent Access or Transmission means that a person has:

- A. fraudulently accessed an **Insured's System** without authorization;
- B. **Exceeded Authorized Access**; or
- C. launched a **Cyber-attack** into an **Insured's System**.

Impaired Access Liability means loss sustained or allegedly sustained by a **Customer** authorized to access an **Insured's System** because such access has been impaired or denied resulting directly from **Fraudulent Access or Transmission**, provided such **Fraudulent Access or Transmission** occurred on or after the **Retroactive Date** and before the end of the **Policy Period**.

Informant means any natural person providing information solely in return for monetary payment paid or promised by an **Insured**.

Insured means any **Organization** and/or **Insured Persons**.

Insured Person means any natural person, who was, now is or shall become a director or officer (or equivalent position of the foregoing) or employee of an **Organization**, but only while active within the scope of his duties as such. **Insured Person** shall not include an **External Administrator**.

Intellectual Property Law or Right means any:

- A. certification mark, collective mark, copyright, patent, service mark, or trademark;
- B. right to, or law recognizing an interest in, any trade secret or confidential or proprietary information;
- C. other right to, or law recognizing an interest in, any expression, idea, likeness, name, slogan, style of doing business, symbol, title, trade dress or other intellectual property; or
- D. other law concerning piracy, unfair competition or other similar practices.

Internet means a group of connected networks that allow access to an **Insured's System** through service providers using telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.

Loss means:

- (a) **E-Communication Loss; E-Theft Loss; E-Threat Loss; E-Vandalism Loss**.
- (b) with respect to Insuring Clause 1.F only: the amount which an **Insured** becomes legally obligated to pay on account of any covered **Claim**, including but not limited to **Defence Costs**; awards of damages or orders made by any court of tribunal to pay compensation; judgments, sums payable due to settlements to which the Company has consented; awards of claimant's costs, pre-judgment and post-judgment interest; and punitive, exemplary or aggravated damages unless the Company is legally prohibited from paying such damages in the jurisdiction in which the **Claim** is determined.

Loss does not include:

- 1. any consideration owed or paid in connection with any **Insured's** goods, products or services, including but not limited to any restitution, reduction, disgorgement or return of any payments, charges or fees;
- 2. any costs or expenses incurred in the performance of any obligation

Policy Wording

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- 3. assumed by, on behalf of, or with the consent of any **Insured**;
- any costs or expenses incurred to replace, upgrade, update, improve, or maintain a **System**;
- 4. any costs incurred by any **Insured** to comply with any order for injunctive or other non-pecuniary relief, or to comply with an agreement to provide such relief;
- 5. taxes, fines or penalties other than to the extent covered as set forth in paragraph (b) above;
- 6. liquidated damages; or
- 7. any amount not insurable under the law pursuant to which this policy is construed.

Media means objects on which **Data** can be stored so that it can be read, retrieved or processed by a **Computer**. **Media** does not mean paper.

Network means any and all services provided by or through the facilities of any electronic or computer communication system, including Fedwire, Clearing House Interbank Payment System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT) and similar automated interbank communication systems, automated teller machines, point of sale terminal and other similar operating systems and includes any share networks, **internet** access facilities, or other similar facilities for such systems, in which an **Insured** participates, allowing the input, output, examination, or transfer of **Data** or programs from one computer to an **Insured's Computer**.

Operations mean an **Organization's** business activities.

Organization means the **Principal Organization** and any **Subsidiary**, or any one of them.

Pending or Prior Date means the date from which an **Organization** has maintained uninterrupted cover of the same nature as that provided herein with the Company or such date as agreed to in writing by the Company.

Period of Recovery of Services:

- A. begins:
 - 1. for **Extra Expenses**, immediately after the actual or potential impairment or denial of **Operations** occurs; and
 - 2. for the **Business Income Loss**, twenty-four (24) business hours after the actual impairment or denial of **Operations** occurs; and
- B. will continue until the earlier of the following:
 - 1. the date **Operations** are restored, with due diligence and dispatch, to the condition that would have existed had there been no impairment or denial; or
 - 2. sixty (60) days after the date an **Insured's Services** are fully restored, with due diligence and dispatch, to the level that would have existed had there been no impairment or denial.

The expiration date of this Policy will not cut short the **Period of Recovery of Services**.

Policy Period means the period of time specified in **Item 2** of the Schedule subject to prior termination in accordance with **section 23**. If this period is less than or greater than one (1) year, then the Limits of Liability specified in the Schedule of this policy shall be the Company's maximum limit of liability under this policy for the entire period. If the Extended Reporting Period is exercised, it shall be part of the **Policy Period** and not an additional **Policy Period**.

Pollutants means solids, liquids, gaseous or thermal irritants, contaminants including smoke, vapour, soot, fumes, acids, alkalis, chemicals, asbestos products or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Pollution means any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, escape, treatment, removal or disposal of any **Pollutants**; or any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request.

Principal Organization means the organization designated in **Item 1** of the Schedule.

Privacy Notification Expenses means the reasonable costs incurred by an **Insured** resulting from **Disclosure Liability** or **Reputational Liability** of: (a) notifying persons who may have sustained such an injury; (b) changing such persons **Records**; and (c) providing them, for a stipulated period of time agreed to by the Company, with credit monitoring or similar services that may help protect them against the fraudulent use of a **Record**.

Proposal means all proposals, including the Cyber Security Risk Matrix or similar network security assessment completed by or on behalf of the **Insured**, attachments and materials incorporated therein, submitted by, or information disclosed by, or on behalf of the **Insured** to the Company for this policy or any policy of issued by the Company of which this policy is a direct or indirect renewal or replacement. All such proposals, attachments and materials are deemed attached to, incorporated into and made a part of this policy.

Record means a natural person's first name or first initial, and last name, in combination with:

- A. their driver's licence number, tax file number or other personal

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- identification number (including an employee identification number or student identification number);
- B. their financial account number (including a bank account number, superannuation or retirement account number);
- C. medicare card number;
- D. their credit, debit or payment card number;
- E. any information related to their employment by an **Organization**; or
- F. any individually identifiable health information held by an **Organization**,

When any of the information in "A" through "F" above is intended by an **Organization** to be accessible only by persons it has specifically authorized to have such access.

Related Claims means all **Claims** based upon, arising from, or in consequence of the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events.

Reputational Liability means loss sustained or allegedly sustained by a person because of an actual or alleged:

- A. disparagement of such person's products or services;
- B. defamation, libel or slander of such natural person; or
- C. violation of such person's rights of privacy or publicity,

resulting directly from **Cyber Activities** of an **Insured**, provided that the **Cyber Activities** that caused or allegedly caused the **Reputational Liability** first occurred on or after the **Retroactive Date** and before the end of the **Policy Period**.

Retroactive Date means the date set forth in **Item 7** of the Schedule, provided that if no date is set forth in **Item 7**, then the **Retroactive Date** shall be the inception date of this policy.

Reward Expenses means the reasonable amount paid by an **Insured**, with the prior approval of the Company, to an **Informant** for information not otherwise available which leads to the arrest and conviction of persons responsible for a **Cyber-attack, Fraudulent Access or Transmission**, or a **Threat** otherwise covered under this policy.

Services mean computer time, data processing, or storage functions or other uses of an **Insured' System**.

Single Expense means, with respect to Insuring Clauses A through E, all **Expense** or loss resulting from:

- A. any one act or series of related acts on the part of any natural person resulting in damage or destruction of **Data** or **Media**;
- B. any one act or series of related acts which impairs or denies an **Insured's Services**;
- C. all acts, other than those specified above, caused by any person or in which such person is implicated; or
- D. any one event not specified above.

Subsidiary means any organization, at or prior to the inception date of the policy, in which one or more **Organizations** (a) controls the composition of the organization's board; (b) is in a position to cast, or control the casting of, more than fifty percent (50%) of the maximum number of votes that might be cast at a general meeting of the organization; or (c) holds more than fifty percent (50%) of the issued share capital of such organization (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

System means a **Computer**; and

- A. all input, output, processing, storage and communication devices controlled, supervised or accessed by the operating systems that are proprietary to, or licensed to, the owner of the **Computer**; and
- B. **Media**.

System Output means a tangible substance on which one or more **Records** are printed from a **System**.

Threat means a declaration made by a natural person that he has gained access or alleges to have gained access to an **Insured's System** and intends to:

- A. cause an **Insured** to transfer, pay or deliver any funds or property using an **Insured's System**;
- B. sell or disclose a **Record** to another person;
- C. alter, damage or destroy an **Insured's Data** while stored within an **Insured's System**;
- D. alter, damage, or destroy an **Insured's Data** through a **Cyber-attack**; or
- E. impair or deny an **Insured's Services**, and makes a demand for an extortion payment or a series of such payment as condition for the mitigation or removal of such threat.

Wrongful Act means **Disclosure Liability, Reputational Liability, Content Liability, Conduit Liability or Impaired Access Liability**.

4. EXCLUSIONS

A. Exclusions Applicable to All Insuring Clauses

The Company shall not be liable on account of any **Claim, Loss or Expense**:

1. **Prior Notice**
based upon, arising from or in consequence of any fact or circumstance if notice of such fact or circumstance has been accepted under any policy of which this policy is a renewal or replacement or which it may succeed in time;
2. **Dishonesty**
based upon, arising from or in consequence of any deliberately fraudulent act or omission or any willful violation or breach of any law, regulation or by-law anywhere in the world or duty imposed by any such law, regulation or by-law by any **Insured** or an **Insured** having gained any profit, advantage or remuneration to which the **Insured** is not legally entitled provided that this exclusion shall not apply, including, for the avoidance of doubt, to the Company's obligation to advance **Defence Costs** until a final non-appealable adjudication in any proceeding establishes such a deliberately fraudulent act, omission, willful violation or breach, profit, advantage or remuneration. The term 'proceeding' shall not include any declaratory proceeding brought by or against the Company;
3. **Assumed Liability**
for any actual or alleged liability of any **Insured** under any contract provided that this exclusion shall not apply to **Conduit Liability, Impaired Access Liability or Disclosure Liability** or to liability that would have attached to such **Insured** in the absence of such contract or to the Company's obligation to advance **Defence Costs** under Extension 2B;
4. **Pollution**
based upon, arising from, or in consequence of **Pollution**;
5. **Bodily Injury and Property Damage**
for bodily injury, sickness, disease or death of any person (except for mental anguish and emotional distress resulting from **Disclosure Liability or Reputational Liability**) damage to or destruction of any tangible property, including loss of use thereof, whether or not it is damaged or destroyed; or
6. **External Administrators**
brought or maintained by or on behalf of an **External Administrator**.

B. Exclusions Applicable to Insuring Clauses 1.A through to 1.E Only

With respect to Insuring Clauses 1.A through to 1.E the Company shall not be liable for:

1. any costs, fees or expenses incurred or paid by any **Insured** in establishing the existence of or amount of loss, ; or
2. any income, including but not limited to interest and dividends, not realized by any **Insured** or any **Customer**; provided that this exclusion shall not apply to loss of **Business Income** otherwise covered under Insuring Clause 1.E;
3. any **Expense** caused by an employee of any **Insured**; provided that this exclusion shall not apply to **E-Threat Loss** or **E-Vandalism Loss**;
4. resulting directly or indirectly from written instruction or advice, other than a telefacsimile or e-mail; or telegraphic or cable instruction or advice, or instruction or advice by voice over the telephone;
5. resulting directly or indirectly from forged, altered or fraudulent negotiable instruments, securities, documents or written instruments used as source documentation in the preparation of **Data**;
6. based upon, or directly or indirectly arising out of or resulting from an indirect or consequential loss or damage of any kind; provided that this exclusion shall not apply to Insuring Clause 1.E;
7. relating to negotiable instruments, securities, documents or written instruments except as converted to **Data** and then only in that converted form; or
8. resulting from mechanical failure, faulty construction, error in design, latent defect, wear or tear, gradual deterioration, electrical disturbance, **Media** failure or breakdown or any malfunction or error in programming or error or omission in processing.

C. Exclusion Applicable to Insuring Clause 1.F Only

Solely with respect to Insuring Clause 1.F only, the Company shall not be liable for **Loss** on account of any **Claim**:

1. based upon, arising from, or in consequence of any demand, suit or proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the **Pending or Prior Date** set forth in Item 8 of the Schedule, or the same or substantially the same facts or circumstances underlying or alleged therein;

2. brought or maintained by or on behalf of a natural person who is a director, chairman, chief executive officer, chief operating officer, or holder of any equivalent position in any jurisdiction, of **Organization**;
3. based upon, arising from, or in consequence of any assertion or infringement of any right to or interest in a patent, idea, trade secret or know how by any **Insured**;
4. based upon, arising from, or in consequence of any claim or proceeding brought by or on behalf of any government agency or authority; or licensing or regulatory organization other than for **Defence Costs** to the extent set forth in Extension 2.B;
5. based upon, arising from, or in consequence of any publication of information, by, on behalf of, or with the consent of any **Insured**:
 - (i) with the knowledge of its falsity; or
 - (ii) if a reasonable person in the circumstances of such **Insured** would have known such to be false;
6. based upon, arising from, or in consequence of the failure of goods, products, or services to conform with any representation or warranty with respect to durability, fitness, performance, quality, or use;
7. for **Content Liability or Reputational Liability** sustained by any person that:
 - (i) creates, designs, develops, or provides any content, material, or services for any **Insured**; or
 - (ii) is an assign or heir of any person described in (i) above,

provided that this exclusion applies regardless of whether such content, material, or service was jointly created, designed, developed, or provided by any **Insured**;
8. for **Content Liability or Reputational Liability** that is based upon, arises from, or in consequence of any:
 - (i) distribution or sale of, or offer to distribute or sell, any good, product, or service; or
 - (ii) other use of any good, product, or service, that actually or allegedly infringes or violates any **Intellectual Property Law or Right** relating to the appearance, design or function of any good, product, or service;
9. based upon, arising from or in consequence of:
 - (i) controlling, creating, designing, or developing any third party's web site;
 - (ii) controlling, creating, designing, developing, determining, or providing the content of material of any third party's web site; or
 - (iii) controlling, facilitating, or providing, or failing to control, facilitate, or provide, access to the **Internet**; or
10. based upon, arising from or in consequence of any actual or alleged infringement of, violation of, or assertion of any right to or interest in any:
 - (i) software or its source content or material;
 - (ii) computer code or its source content or material; or
 - (iii) expression, method, or process designed to control or facilitate any operation or other use of a **Computer** or automated system.

CONDITIONS

5. Severability of Exclusions

With respect to the exclusions in Section 4 of this policy, in order to determine if coverage is available:

- A. no fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person**; and
- B. only facts pertaining to or knowledge possessed by any chief executive officer, chief operating officer and chief financial officer or holder of any equivalent position in any jurisdiction of an **Organization's** shall be imputed to such **Organization**.

6. Proposal – Non Rescindable

With respect to Insuring Clause 1.F:

The **Proposal** shall be construed as a separate proposal for coverage for each **Insured**. No statement, representation or information provided in the **Proposal** or knowledge possessed by an **Insured** shall be imputed to any other **Insured** for the purpose of determining if coverage is available under this Insuring Clause 1.F.

The Company shall not be entitled, under any circumstances, to avoid or rescind Insuring Clause 1.F with respect to any **Insured** or exercise any rights against any **Insured** for any misrepresentation in the **Proposal** or for any non-disclosure (whether such misrepresentation is innocent, negligent, fraudulent or otherwise). However in the event of

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misrepresentation or non-disclosure which would otherwise entitle the Company to avoid or rescind this policy or exercise any rights as against one or more **Insureds**:

- (a) no **Insured Person** who, at the time the contract evidenced by this policy was entered into, knew the true position with regard to the facts or matters misrepresented to the Company or knew any of the non-disclosed facts, and no **Organization** to the extent that it may indemnify any such **Insured Person**, shall have cover under this policy for any **Loss** of that **Insured Person** on account of a **Claim** based upon, arising from or in consequence of the true position or any non-disclosed facts; and
- (b) if any chairman, chief executive officer, chief financial officer, in-house general counsel or the holder of any equivalent position in any jurisdiction of an **Organization** knew the true position with regard to the facts or matters misrepresented to the Company or knew any of the non-disclosed facts, then no **Organization** shall have cover under this policy for any **Loss** of that **Organization** on account of a **Claim** based upon, arising from or in consequence of the true position or any non-disclosed facts.

7. Limit of Liability and Deductible

The Company's maximum aggregate liability for all **Loss** and **Expense** covered under this policy, whether covered under one or more Insuring Clauses, shall be the Aggregate Limit of Liability for each **Policy Period** set forth in Item 3 of the Schedule.

The Company's maximum liability for all **Loss** on account of each **Claim** made, or for each **Loss** or **Single Expense** discovered, during the **Policy Period**, shall be the applicable Limit of Liability set forth in Item 4 of the

Schedule or the unpaid portion of the Aggregate Limit of Liability for each **Policy Period**, whichever is less. If a **Loss** or **Single Expense** is covered under more than one Insuring Clause, the maximum amount payable shall not exceed the largest applicable Limit of Liability.

Other than with respect to **Crisis Expenses** sub limits are part of, and not in addition to, the Limits of Liability set forth in the Schedule.

Defence Costs are part of and not in addition to the Limits of Liability set forth in Item 4 of the Schedule; the payment by the Company of **Defence Costs** erodes such Limits of Liability.

All **Related Claims** shall be treated as a single **Claim** first made on the date the earliest of such **Related Claims** was first made, or on the date the earliest of such **Related Claims** is treated as having been made in accordance with section 8. Reporting, regardless of whether such date is before or during the **Policy Period**.

The limit of liability available during the Extended Reporting Period, if exercised, shall be part of, and not in addition to, the Company's maximum aggregate limit of liability for **Loss** on account of all **Claims** first made during the immediately preceding **Policy Period**.

8. DEDUCTIBLE AND CO INSURANCE

The Company's liability shall apply only to that part of each **Claim**, **Loss** or **Expense** which is in excess of the applicable Deductible set forth in Item 4 of the Schedule. Such Deductible shall be depleted only by **Loss** or **Expense** and shall be borne by the **Insured** uninsured and at their own risk.

If different parts of a **Loss** or **Single Expense** are subject to different Deductibles, or if a **Claim**, **Loss** and a **Single Expense** arise from any one or a series of related facts, circumstances, situations, transactions, or events, the applicable Deductible will be applied separately to each part of such **Claim**, **Loss** or **Single Expense**, but the sum of such Deductible shall not exceed the largest applicable Deductible.

To the extent that **Loss** on account of a single **Claim** or a **Loss** or **Single Expense** is covered under this policy and is in excess of the Deductible, the **Insured's** shall bear uninsured and at their own risk that percentage of such **Loss** or **Expense** specified as the Co-insurance Percentage set forth in Item 5 of the Schedule. The Company's liability shall apply only to the remaining percentage of such **Loss** or **Expense**.

9. Reporting

A. With respect to Insuring Clauses 1.A through 1.E, the **Insureds**:

- 1. shall give to the Company written notice of any **Loss** or **Expense** as soon as practicable, and in no event later than ninety (90) days after **Discovery** of a **Loss** or an **Expense**;
- 2. shall furnish a proof of loss with full particulars to the Company within six (6) months of such **Discovery**;
- 3. submit to examination under oath at the Company's request;
- 4. produce all pertinent records at such reasonable times and places as the Company designates; and
- 5. fully co-operate with the Company in all matters pertaining to a claim for loss.

B. With respect to Insuring Clause 1.F:

- 1. The **Insured's** shall give to the Company written notice of any **Claim** as soon as practicable and, in any event, no later than the expiration of any applicable Extended Reporting Period.
- 2. If during the **Policy Period** or Extended Reporting Period, an **Insured** becomes aware of circumstances which could give rise to a **Claim** and gives written notice of such circumstances to the Company then any **Claims** subsequently arising from such circumstances shall be considered to have been made during the **Policy Period** or the Extended Period in which the circumstances were first reported to the Company.
- 3. The **Insured's** shall give to the Company such information and co-operation as it may reasonably require including but not limited to a description of the **Claim** or circumstances; the nature of the alleged **Wrongful Act**; the nature of the alleged or potential loss; the names of actual or potential claimants; and the manner in which the **Insured** first became aware of the **Claim** or circumstances.

10. Defence and Settlement

It shall be the duty of the **Insured** and not the duty of the Company to defend **Claims**.

With respect to any **Claim** the Company shall have the right and shall be given the opportunity to associate with each **Insured**, and shall be consulted in advance by the **Insured**, regarding the investigation, defence and settlement, including the negotiation of any settlement, of any such **Claim**. It shall not be unreasonable for the Company to withhold its consent to separate counsel for one or more of such **Insured's**, unless there is a material actual or potential conflict of interest among such **Insured's**.

Each **Insured** agrees not to settle, or convey any offer of settlement to any claimant with regard to, any **Claim**, incur any **Defence Costs**, or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's prior written consent. The Company shall not otherwise be liable for any **Defence Costs**, any other element of **Loss** incurred, any obligation assumed or any admission made by an **Insured** without the Company's prior written consent. Provided each **Insured** complies with this section, the Company shall not unreasonably withhold or delay any such consent.

If any **Insured** withholds consent to any settlement acceptable to the claimant in accordance with the Company's recommendation (a "Proposed Settlement"), then the Company's liability for all **Loss** from such **Claim** shall not exceed the amount of the Proposed Settlement plus **Defence Costs** incurred up to the date of such **Insured's** refusal to consent to the Proposed Settlement of such **Claim**.

Each **Insured** agrees to provide the Company with all information, assistance and co-operation which the Company reasonably requires, including, without limitation, for the purposes of any investigation the Company makes, in its absolute discretion.

Each **Insured** agrees that, in the event of a **Claim**, such **Insured** will do nothing that may prejudice the Company's position or its potential or actual rights of recovery.

11. Allocation

Where a **Claim**:

- (a) includes both matters covered and matters that are not covered under this policy; or
- (b) is made against a person or organization other than an **Insured**,

the Company and the **Insured** shall allocate any amounts incurred by or on behalf of the **Insured**:

- (i) based upon the relative legal and financial exposures of an **Insured** to matters covered and matters not covered by this policy; and
- (ii) in the case of a settlement in such **Claim**, based also on the relative benefits to an **Insured**.

If the **Insured** and the Company cannot agree on an allocation of amounts incurred by an **Insured**:

- (1) the Company, if requested by the **Insured**, shall submit any disagreement between them regarding the allocation to **Loss** for determination by arbitration as define herein under clause 11A.
- (2) any allocation or advancement of **Defence Costs** shall not apply to or create any presumption with respect to the allocation to **Loss**

11A Subject to agreement between the parties, the arbitration panel shall consist of one arbitrator selected by such **Insured**, one arbitrator selected by the Company, and a third independent arbitrator selected by the first two arbitrators in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The arbitration shall be governed by Indian Law

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and the venue of arbitration shall be within India.

- A. All proceedings in any arbitration shall be conducted in English and a daily transcript in English of such proceedings shall be prepared
- B. The cost of arbitration undertaken in accordance with this section shall be borne by the parties associated with the arbitration and shall share equally in the costs of the arbitration proceedings and presiding arbitrator.
- C. It is clearly agreed and understood that no reference to arbitration can be made if the company has either not admitted or has disputed liability in respect of any claim under or in respect of this policy.
- D. In the event that these arbitration provisions shall be held to be invalid then all such disputes or differences shall be referred to the exclusive jurisdiction of the Indian Courts.

It is further expressly agreed and declared that if the company shall disclaim liability in respect of any claim and is not within 12 calendar months from the date of such disclaimer be made the subject matter of a suit or proceeding before a Court of law or any other forum, it shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

12. CHANGES IN EXPOSURE

A. Acquisition or Creation of Another Organization

If an **Organization**, during the **Policy Period**:

1. acquires securities or voting rights in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
2. acquires any organization by merger into or consolidation with itself such that the **Organization** is the holding company,

then such other organization and the **Insured Persons** in relation thereto shall be **Insured's** under this policy but only with respect to **Wrongful Acts** occurring after, or **Loss** or **Expense** first incurred, after such acquisition or creation. With respect to Insuring Clauses A through E, coverage applies to such other organization and the **Insured Persons** in relation thereto only for **Expense** where all of the circumstances, conditions or acts causing or contributing to such **Expense** occur on or after the date of such acquisition or creation.

However, if such acquired or created organization:

- (a) has annual revenues equal to or less than twenty five per cent (25%) of the annual revenues of the **Organization** as reflected in the most recent audited, consolidated financial statements of the **Organization** and, in the case of such acquisition, the acquired organization; or
- (b) is located, incorporated, domiciled or operates in, or has securities listed on any exchange in, the **U.S.A.**;

then the **Principal Organization** shall give written notice of such acquisition or creation and full details of the acquisition or merger when it next applies for renewal of this policy. Upon renewal, the Company may impose additional or different terms and conditions of coverage and require payment of additional premium.

If, at the time of an acquisition or merger described above, the annual revenues of the other organization exceed twenty five percent (25%) of the annual revenues of the **Principal Organization**, as reflected in the most recent audited, consolidated financial statements of the **Principal Organization** and, in the case of such acquisition, the acquired organization, the **Principal Organization** shall give written notice of such acquisition or creation to the Company as soon as reasonably practicable, but in no event later than sixty (60) days after the date of such acquisition or creation, together with such information as the Company may require. If the **Principal Organization** fails to give such notice within the time specified in the preceding sentence, coverage for such acquired or created organization and the **Insured Persons** in relation thereto shall terminate with respect to **Claims** first made or **Loss** or **Expense** first incurred more than sixty (60) days after such acquisition or creation. In the event of such acquisition or creation, the Company shall have the right to impose additional or different terms and conditions of coverage and require payment of additional premium.

B. Cessation of Subsidiaries

If an organization ceases to be a **Subsidiary**, before or after the **Policy Period**, coverage with respect to such **Subsidiary** and the **Insured Persons** in relation thereto shall continue until termination of this policy or any renewal thereof, but only for **Wrongful Acts** occurring, or **Loss** or **Expense** first incurred, prior to the date such organization ceased to be a

Subsidiary and on or after the **Retroactive Date** shown in Item 7 of the Schedule

C. Acquisition of Organization by Another Organization

If, during the **Policy Period**, an **Event** occurs coverage shall continue until termination of this policy but only with respect to **Wrongful Acts** occurring, or **Loss** or **Expense** first incurred, prior to such **Event** and on or after the **Retroactive Date** shown in Item 7 of the Schedule.

The **Principal Organization** shall give written notice of any **Event** to the Company as soon as practicable, but in no event later than sixty (60) days, after the date of such **Event**, together with such other information as the Company may require. The entire premium for this Policy will be deemed fully earned as of the date of such **Event**

13. VALUATION

With respect to Insuring Clauses A and B, the value of any loss of property other than **Data** or **Media** shall be the actual cash value or the cost of repairing or replacing such property with property of similar quality and value, whichever is less, at the time the **Principal Organization** furnishes proof of loss in compliance with section 8.A.

14. OTHER INSURANCE

If any **Loss** under this policy is insured under any other insurance policy, prior or current, then this policy shall cover such **Loss**, subject to its terms and conditions, only to the extent that the amount of such **Loss** is in excess of the applicable retention (or deductible) and limit of liability of such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this policy. Any payment by **Insured's** of a retention or deductible under such other insurance shall deplete, by the amount of such payment, the applicable Deductible Amount under this policy.

15. TERRITORY AND JURISDICTION

Coverage shall extend anywhere in the world.

16. CHOICE OF LAW FOR POLICY DISPUTES

The construction and enforcement of the provisions of this policy shall be determined in accordance with and governed by the laws of India. Any disputes relating to the construction and enforcement of this policy shall be submitted to the exclusive jurisdiction of the courts of India.

17. VALUATION AND FOREIGN CURRENCY

All premiums, limits, deductibles, **Loss** and other amounts under this policy are expressed and payable in Indian Rupees. If judgment is rendered, settlement is denominated, or any element of **Loss** is stated in a currency other than Indian Rupees, then payment under this policy shall be made in Indian Rupees at the mid rate of exchange published in the currency conversion web site, **Oanda.com**, or, if it has ceased to be current, a currency conversion web site **selected by the Company**, on the date the final judgment is reached, the amount of the settlement is agreed upon, or the any element of **Loss** is due, respectively.

18. AUTHORISATION CLAUSE

By acceptance of this policy, the **Principal Organization** agrees to act on behalf of all **Insured's** with respect to the giving and receiving of notices of **Claim** or **Loss** or termination, the negotiation, agreement to and acceptance of endorsements, and the giving or receiving of any notices provided for in this policy and each **Insured** agrees that the **Principal Organization** shall act on their behalf.

19. SUBROGATION

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

20. BANKRUPTCY

The bankruptcy, winding-up, receivership or insolvency of an **Insured** or of the estate of an **Insured** shall not relieve the Company of its obligations nor deprive the Company of its rights under this policy.

21. ALTERATION AND ASSIGNMENT

No change in, modification of, or assignment of interest under this policy shall be effective except when made by a written endorsement to this policy which is signed by an authorised employee of the Company.

22. TERMINATION OF POLICY

Without prejudice to the rights and remedies at law of each party, this policy shall terminate at the earliest of the following times:

- (a) upon expiration of the **Policy Period** as set forth in Item 4 of the Schedule of this policy; or
- (b) at such other time as may be agreed upon in writing by the Company and the **Principal Organization**.

The Company shall have no obligation to renew this policy upon its expiration or termination.

23. PREMIUM PAYMENT

It is hereby agreed that, as a condition precedent to any liability under this policy, any premium due must be paid and actually received by the Company in full. However, in the absence of any premium amount (that

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has to be received by the company) the policy shall deemed to be void-ab-inito.

24. CONFORMITY

The provisions of this policy shall be read subject to the laws governing construction of this policy and if any provision of this policy are inconsistent with such laws then:

- (a) where such provision can be read so as to give it a valid and enforceable operation of a partial nature it shall be read to the extent necessary to achieve that result;
in any other case such provision shall be severed from this policy in which event the remaining provisions shall operate as if the severed provision had not been included.

25. POLICY CONSTRUCTION

In this policy:

- (a) the title and any headings or sub-headings are solely for convenience and form no part of its terms and conditions;
- (b) the Schedule hereto is part of and forms an integral part of this policy;
- (c) the singular includes the plural and the plural includes the singular, unless otherwise indicated; and
- (d) a reference to one gender includes the other gender.

26. RIGHTS OF THIRD PARTIES

In this policy a person or organization that is not a party to this insurance contract shall have no right to enforce any of its terms.