



AFB MEDIA TECH®

PROFESSIONAL AND TECHNOLOGY BASED SERVICES, TECHNOLOGY PRODUCTS, COMPUTER NETWORK SECURITY, AND MULTIMEDIA AND ADVERTISING LIABILITY INSURANCE POLICY

NOTICE: This Coverage is provided on a Claims Made and Reported Basis. Except as otherwise provided, this coverage applies only to **Claims** first made against the **Insured** and reported to the Insurer during the **Policy Period**. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. Please review the coverage afforded under this Insurance Policy carefully and discuss the coverage hereunder with your insurance agent or broker.

The Insurer agrees with the Named Insured, set forth at Item 1. of the Declarations made a part hereof, in consideration of the payment of the premium and reliance upon the statements in the **Application** which is made a part of and attached to this Insurance Policy (hereinafter referred to as the "Policy" or "Insurance") and subject to the Limit of Liability, deductible, exclusions, conditions and other terms of this Insurance:

I. INSURING CLAUSES

A. Professional and Technology Based Services Coverage

To pay on behalf of any **Insured**:

Damages and **Claims Expenses**, in excess of the Each **Claim** Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** first made against any **Insured** and reported in writing to the Insurer during the **Policy Period** or **Optional Extension Period** (if applicable) arising out of any negligent act, error or omission, or any unintentional breach of contract, in rendering or failure to render **Professional Services** or **Technology Based Services** on or after the Retroactive Date set forth in Item 6. of the Declarations and before the end of the **Policy Period** by the **Insured** or by any person, including an independent contractor, for whose negligent act, error or omission or unintentional breach of contract the **Insured Organization** is legally responsible.

B. Technology Products Coverage

To pay on behalf of any **Insured**:

Damages and **Claims Expenses**, in excess of the Each **Claim** Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** first made against

any **Insured** and reported in writing to the Insurer during the **Policy Period** or **Optional Extension Period** (if applicable) arising out of any negligent act, error or omission, or any unintentional breach of contract, by the **Insured** on or after the Retroactive Date set forth in Item 6. of the Declarations and before the end of the **Policy Period** that results in the failure of **Technology Products** to perform the function or serve the purpose intended.

C. **Computer Network Security Coverage**

To pay on behalf of any **Insured**:

Damages and Claims Expenses, in excess of the Each **Claim** Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** first made against any **Insured** and reported in writing to the Insurer during the **Policy Period** or **Optional Extension Period** (if applicable) arising out of any act, error or omission on or after the Retroactive Date set forth in Item 6. of the Declarations and before the end of the **Policy Period** in the course of providing or managing **Computer Systems** security by the **Insured** or by any person, including an independent contractor, for whose act, error or omission the **Insured Organization** is legally responsible that results in:

1. the inability of a third party, who is authorized to do so, to gain access to **Computer Systems** or your **Technology Based Services**;
2. the failure to prevent **Unauthorized Access** to **Computer Systems** that results in:
 - (a) the destruction, deletion or corruption of electronic data on **Computer Systems**;
 - (b) **Theft of Data** from **Computer Systems**; or
 - (c) denial of service attacks against Internet sites or computers; or
3. the failure to prevent transmission of **Malicious Code** from **Computer Systems** to third party computers and systems.

D. **Multimedia and Advertising Coverage**

To pay on behalf of any **Insured**:

Damages and Claims Expenses, in excess of the Each **Claim** Deductible, which the **Insured** shall become legally obligated to pay because of liability imposed by law or **Assumed Under Contract** resulting from any **Claim** first made against any **Insured** and reported in writing to the Insurer during the **Policy Period** or **Optional Extension Period** (if applicable) arising out of one or more of the following acts committed on or after the Retroactive Date set forth in Item 6 of the Declarations and before the end of the **Policy Period** in the course of the **Insured Organization's** performance of **Professional Services, Media Activities** or **Technology Based Services**:

1. defamation, libel, slander, product disparagement, trade libel, prima facie tort, infliction of emotional distress, outrage, outrageous conduct, or other tort

- related to disparagement or harm to the reputation or character of any person or organization;
2. invasion of or interference with the right to privacy or of publicity;
 3. misappropriation of any name or likeness for commercial advantage;
 4. false arrest, detention or imprisonment or malicious prosecution;
 5. invasion of or interference with any right to private occupancy, including trespass, wrongful entry, wrongful eviction or eavesdropping;
 6. plagiarism, piracy or misappropriation of ideas under implied contract;
 7. infringement of copyright;
 8. infringement of trade dress, domain name, title or slogan, or the dilution or infringement of trademark or service mark;
 9. negligence regarding the content of any **Media Communication**, including harm caused through any reliance or failure to rely upon such content; and
 10. misappropriation of trade secret.

Provided, Insuring Clauses I.A., I.B., I.C., and I.D. of this Insurance shall not apply to any **Claim** for or arising out of the disclosure, misuse or misappropriation of any ideas, trade secrets or confidential information that came into the possession of any person prior to the date he or she became an employee, officer, director, principal or partner of the **Insured Organization**.

II. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS

- A. The Insurer shall have the right and duty to defend, subject to the Limit of Liability, exclusions and other terms and conditions of this Policy, any **Claim** against the **Insured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.
- B. The Insurer shall have the right and duty to defend, subject to the Limit of Liability, exclusions, and other terms and conditions of this Policy, any **Claim** in the form of a civil suit against the **Insured** that seeks injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction) for one or more of the acts listed in Insuring Clause I.D. if:
 1. the **Claim** is first made and reported to the Insurer during the **Policy Period** or **Optional Extension Period** (if applicable); and
 2. the act or acts were committed on or after the Retroactive Date and before the end of the **Policy Period** in the course of the **Insured's** performance of **Professional Services, Media Activities** or **Technology Based Services**.
- C. When the Insurer defends a **Claim**, it will pay **Claims Expenses** incurred with its prior written consent. The Limit of Liability available to pay **Damages** shall be reduced and

may be completely exhausted by payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied against the Each **Claim** Deductible.

- D. The Insurer shall have the right to make any investigation it deems necessary, including, without limitation, any investigation with respect to the **Application** and statements made in the **Application** and with respect to coverage.

However, notwithstanding the above, the **Insured's** rights under this Policy shall not be prejudiced by any refusal to disclose the identity of any confidential source of information, or to produce any documentation or information obtained in the course of **Media Activities** in respect of which the **Insured** has asserted a claim of reporter's privilege or any other privilege regarding the protection of news-gathering activities.

- E. If the **Insured** shall refuse to consent to any settlement or compromise recommended by the Insurer and acceptable to the Claimant and elects to contest the **Claim**, the Insurer's liability for any **Damages** and **Claims Expenses** shall not exceed the amount for which the **Claim** could have been settled, less the remaining Each **Claim** Deductible, plus the **Claims Expenses** incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less, and the Insurer shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**. The portion of any proposed settlement or compromise that requires the **Insured** to cease, limit or refrain from actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not **Damages** shall not be considered in determining the amount for which a **Claim** could have been settled.
- F. It is further provided that the Insurer shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability has been exhausted by payment of **Damages** and/or **Claims Expenses** or after deposit of the applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, the Insurer shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.

III. THE INSURED AND THE INSURED ORGANIZATION

As used throughout this Policy, whether expressed in singular or plural, "**Insured**" shall mean:

- A. The Named Insured and any **Subsidiaries** of the Named Insured (together the "**Insured Organization**");
- B. A director or officer of the **Insured Organization**, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- C. An employee of the **Insured Organization**, but only for work done while acting within the scope of his or her employment and related to the conduct of the **Insured Organization's** business;
- D. A principal if the Named Insured is a sole proprietorship, or a partner if the Named Insured is a partnership, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;

- E. Any person who previously qualified as an **Insured** under B, C or D above prior to the termination of the required relationship with the **Insured Organization**, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**; and
- F. The estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Insurance.

IV. TERRITORY

This Insurance applies to **Claims** made and acts, errors or omissions committed anywhere in the world.

V. EXCLUSIONS

The coverage under this Insurance does not apply to **Damages** or **Claims Expenses** in connection with or resulting from any **Claim**:

- A. Arising out of or resulting from any criminal, dishonest, fraudulent or malicious act, error or omission committed by any **Insured**; however, this Policy shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Insured**, or admission by the **Insured**, establishing such criminal, dishonest, fraudulent or malicious conduct, or a plea of *nolo contendere* or no contest regarding such conduct, at which time the Named Insured shall reimburse the Insurer for all **Claims Expenses** incurred defending the **Claim** and the Insurer shall have no further liability for **Claims Expenses**;
- B. Arising out of or resulting from any act, error or omission committed prior to the inception date of this Insurance:
 - 1. if any **Insured** on or before the inception date knew or could have reasonably foreseen that such act, error or omission might be expected to be the basis of a **Claim**; or
 - 2. in respect of which any **Insured** has given notice of a circumstance which might lead to a **Claim** to the insurer of any other policy in force prior to the inception date of this Policy;
- C. Arising out of any related or continuing acts, errors or omissions where the first such act, error or omission was committed prior to the Retroactive Date set forth in Item 6. of the Declarations;
- D. For or arising out of or resulting from **Bodily Injury** or **Property Damage**;
- E. Arising out of or resulting from any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written, except:

1. with respect to Insuring Clause I.A. for breach of an agreement by the **Insured Organization** to perform **Professional Services** or **Technology Based Services**; or Insuring Clause I.B. for breach of an agreement by the **Insured Organization** to manufacture, develop, create, distribute, license, lease or sell **Technology Products**; provided, this exception V.E.1. shall not apply to breach of any hold harmless or indemnity agreement;
 2. with respect to Insuring Clause I.D. for liability:
 - (a) **Assumed under Contract**; or
 - (b) misappropriation of ideas under an implied contract; or
 3. to the extent the **Insured** would have been liable in the absence of such contract or agreement;
- F. For or arising out of or resulting from:
1. breach of any express warranty or representation except for an agreement to perform within a reasonable standard of care or skill consistent with applicable industry standards, or breach of any other contractual obligation which goes beyond an express or implied duty to exercise a degree of care or skill as is consistent with applicable industry standards;
 2. breach of guarantee or any promises of cost savings, profits, or return on investment; or
 3. delay in delivery or performance, or failure to deliver or perform at or within an agreed upon period of time;
- G. For or arising out of or resulting from:
1. inaccurate, inadequate, or incomplete description of the price of goods, products or services;
 2. cost guarantees, cost representations, or contract price estimates of probable costs or cost estimates actually or allegedly being exceeded;
 3. the failure of goods, products, or services to conform with any represented quality or performance contained in **Advertising**; or
 4. any actual or alleged gambling, contest, lottery, promotional game or other game of chance;
- H. Arising out of or resulting from any actual or alleged obligation to make licensing fee or royalty payments, including but not limited to the amount or timeliness of such payments;
- I. For or arising out of or resulting from any costs or expenses incurred or to be incurred by the **Insured** or others for:
1. the reprinting, recall, removal or disposal of any **Media Material**, including any media or products containing such **Media Material**; or

2. the withdrawal, recall, inspection, repair, replacement, reproduction, removal or disposal of:
 - (a) **Technology Products**, including any products or other property of others that incorporate **Technology Products**;
 - (b) work product resulting from or incorporating the results of **Professional Services** or **Technology Based Services**; or
 - (c) any products or other property on which **Professional Services** or **Technology Based Services** are performed;

however, this exclusion shall not apply to third party **Claims** for the resulting loss of use of such **Media Material** or **Technology Products**, or loss of use of the work product resulting from such **Professional Services** or **Technology Based Services**;

- J. Arising out of or resulting from the advising or requiring of, or failure to advise or require, or failure to maintain any form of insurance, suretyship or bond, either with respect to the **Insured** or any other person or entity;
- K. Arising out of or resulting from:
 1. the failure of **Computer Systems** to be protected by security practices and procedures equal to or superior to those disclosed in response to questions in the **Application** for Insurance relating to **Computer Systems** security, including access protection, intrusion detection, data back up procedures, **Malicious Code** protection, and data encryption procedures; or
 2. the failure to install available software product updates and releases, or to apply security related software patches, to computers and other components of **Computer Systems**;
- L. Arising out of, resulting from or alleging:
 1. any failure or malfunction of electrical or telecommunications infrastructure or services, unless under the **Insured Organization's** operational control; or
 2. fire, flood, earthquake, volcanic eruption, explosion, lighting, wind, hail, tidal wave, landslide, act of God or other physical event;
- M. For or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, violation of the Sherman Anti-Trust Act, the Clayton Act, the Robinson-Patman Act, as amended, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive or misleading advertising;
- N. Brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any similar governmental entity, in such entity's regulatory or official capacity;
- O. For or arising out of actual or alleged:
 1. infringement of patent or patent rights or misuse of patent or;

2. infringement of copyright or misappropriation of trade secret arising out of or related to **Technology Products**;
- P. For or arising out of the actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced And Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal law or legislation, or law or legislation of any state, province or other jurisdiction similar to the foregoing, whether such law is statutory, regulatory or common law;
- Q. For or arising out of the actual or alleged violation of any securities law, regulation or legislation, including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Act of 1940, the Sarbanes-Oxley Act of 2002, any state or provincial blue sky or securities law, any other federal securities law or legislation, or any or similar law or legislation of any state, province or other jurisdiction, or any amendment to the above laws, or any violation of any order, ruling or regulation issued pursuant to the above laws;
- R. By or on behalf of one or more **Insureds** under this Insurance against any other **Insured** or **Insureds** under this Insurance;
- S. Made by any business enterprise in which any **Insured** has greater than a fifteen percent (15%) ownership interest or made by any parent company or other entity which owns more than fifteen percent (15%) of the Named Insured, or arising out of or resulting from any **Insured's** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the **Insured Organization**;
- T. Arising out of **Professional Services, Media Activities** or **Technology Based Services** performed for any entity, or **Technology Products** provided to any entity which:
1. is operated, managed or controlled by an **Insured** or in which any **Insured** has an ownership interest in excess of fifteen percent (15%); or in which any **Insured** is an officer or director; or
 2. operates, controls or manages the Named Insured, or has an ownership interest of more than fifteen percent (15%) in the Named Insured;
- U. Arising out of or resulting from the insolvency or bankruptcy of any **Insured** or of any other entity including but not limited to the failure, inability, or unwillingness to pay **Claims**, losses, or benefits due to the insolvency, liquidation or bankruptcy of any such individual or entity;
- V. For or arising out of or resulting from:
1. any employer-employee relations, policies, practices, acts or omissions, or any actual or alleged refusal to employ any person, or misconduct with respect to employees, whether such **Claim** is brought by an employee, former employee, applicant for employment, or relative of such person;

2. actual or alleged violation of the Fair Labor Standards Act of 1938, the National Labor Relations Act, the Worker Adjustment and Retraining Act of 1988, the Certified Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act of 1970, any similar law or legislation of any state, province or other jurisdiction, or any amendment to the above law or legislation, or any violation of any order, ruling or regulation issued pursuant to the above laws or legislation;
 3. any actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy;
 4. any actual or alleged acts, errors or omissions related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974 or any similar federal law or legislation, or similar law or legislation of any state, province or other jurisdiction, or any amendment to the Act or any violation of any regulation, ruling or order issued pursuant to the Act or such similar laws or legislation; or
 5. any actual or alleged act, error or omission or breach of duty by any director or officer in the discharge of their duty if the **Claim** is brought by the Named Insured, a **Subsidiary**, or any directors, officers, stockholders, or employees of the Named Insured or a **Subsidiary** in his or her capacity as such; and
- W. Either in whole or in part, directly or indirectly, arising out of or resulting from or in consequence of, or in any way involving:
1. asbestos, or any materials containing asbestos in whatever form or quantity;
 2. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind; any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins; and any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins;

The Insurer will have no duty or obligation to defend any **Insured** with respect to any **Claim** or governmental or regulatory order, requirement, directive, mandate or decree which either in whole or in part, directly or indirectly, arises out of or results from or in consequence of, or in any way involves the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind;

3. the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property; or
4. the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants; or any governmental, judicial or regulatory directive or request that the **Insured** or anyone acting under the direction or control of the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including gas, acids, alkalis, chemicals, heat, smoke, vapor, soot, fumes or waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

VI. DEFINITIONS

Wherever used in this Policy in bold face type, the following definitions shall apply.

- A. **“Advertising”** means material which promotes the product, service or business of the **Insured Organization** or others.
- B. **“Application”** means all signed applications, including all attachments and other materials submitted therewith or incorporated therein, and any other such documents submitted in connection with the underwriting of this Policy including any endorsement or other part thereof, or any other professional liability policy issued by the Insurer, of which this Policy is a renewal or, replacement or which succeeded it in time.
- C. **“Assumed Under Contract”** means liability assumed by the **Insured Organization** under a written hold harmless or indemnity agreement regarding the content of **Media Material** used in a **Media Communication**, but only as respects acts for which insurance is afforded under Insuring Clause I.D.
- D. **“Bodily Injury”** means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- E. **“Claim”** means a demand received by any **Insured** for money or services, including the service of suit or institution of arbitration proceedings. **“Claim”** shall also mean a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction).

Multiple **Claims** arising from the same or a series of related or repeated acts, errors or omissions or from any continuing acts, errors or omissions shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of Claimants or **Insureds** involved in the **Claim**. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

- F. **“Claims Expenses”** means:
 1. reasonable and necessary fees charged by an attorney designated by the Insurer; and

2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit or proceeding arising in connection therewith, or circumstance which might lead to a **Claim**, if incurred by the Insurer, or by the **Insured** with the prior written consent of the Insurer;

Claims Expenses shall not include any salary, overhead or other charges of or by an **Insured** for any time spent in cooperating in the defense and investigation of any **Claim** or circumstance that might lead to a **Claim** notified under this Policy.

- G. "**Computer Systems**" means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:
1. operated by and either owned by or leased to the **Insured Organization**; or
 2. operated by a third party service provider and used for the purpose of providing hosted computer application services to the **Insured Organization** or for processing, maintaining, hosting or storing the **Insured Organization's** electronic data, pursuant to written contract with the **Insured Organization** for such services.
- H. "**Damages**" means a monetary judgment, award or settlement.

The term **Damages** shall not include or mean:

1. future profits, restitution, disgorgement of unjust enrichment or profits by an **Insured**, or the costs of complying with orders granting injunctive or equitable relief;
2. return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
3. costs incurred by the **Insured** to correct, re-perform or complete any **Professional Services, Media Activities or Technology Based Services**;
4. any damages which are a multiple of compensatory damages, fines, taxes or loss of tax benefits, sanctions or penalties;
5. punitive or exemplary damages, unless insurable by law under the law under which this Policy is construed;
6. discounts, coupons, prizes, awards or other incentives offered to the **Insured's** customers or clients;
7. liquidated damages to the extent that such damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages agreement;
8. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**; or

9. matters deemed uninsurable under the law pursuant to which this Policy shall be construed.
- I. “**Malicious Code**” means any virus, Trojan Horse, worm or other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and spread itself from one computer to another.
- J. “**Media Activities**” means **Media Communications** and/or the gathering, collection or recording of **Media Material** for inclusion in any **Media Communication** in the ordinary course of the **Insured Organization’s** business.
- K. “**Media Communication**” means the display, broadcast, dissemination, distribution or release of **Media Material** to the public by the **Insured Organization**.
- L. “**Media Material**” means information in the form of words, sounds, numbers, images, or graphics in electronic, print or broadcast form, including **Advertising**, but does not mean computer software.
- M. “**Optional Extension Period**” means the twelve (12) month period of time after the end of the **Policy Period** for reporting **Claims** as provided in Clause X. of this Policy.
- N. “**Policy Period**” means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this Insurance and specifically excludes any **Optional Extension Period** or any prior policy period or renewal period.
- O. “**Professional Services**” means professional services performed for others by or on behalf of the **Insured Organization** for a fee, but does not include **Technology Based Services, Media Activities**, any services involving the creation, development, sale, distribution, installation, licensing or manufacturing of **Technology Products**, or work or activities performed by or on behalf of the **Insured Organization** or for the **Insured Organization** as an accountant, architect, surveyor, health care provider, lawyer, insurance or real estate agent or broker, or civil or structural engineer.
- P. “**Property Damage**” means physical injury to or destruction of any tangible property, including any resulting loss of use thereof.
- Q. “**Subsidiary**” means any corporate entity while more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity’s directors are owned by the Named Insured directly or indirectly, if such entity was so owned on the inception date of this Policy; or:
1. was so owned prior to the inception date of this Policy and was insured under a policy issued by the Insurer of which this Policy is a renewal;
 2. becomes so owned after the inception date of this Policy provided the revenues of the entity do not exceed ten percent (10%) of the Named Insured’s Annual Revenues as set forth in their most recent **Application**; or
 3. becomes so owned after the inception date of this Policy provided that if the revenues of the entity exceed ten percent (10%) of the Named Insured’s Annual

Revenues as set forth in their most recent **Application**, the provisions of Clause XVI., Mergers and Acquisitions, must be fulfilled.

Provided that this Policy only provides coverage for acts, errors or omissions taking place while the corporate entity is so owned by the Named Insured.

- R. **“Technology Based Services”** means computer and electronic technology services, including data processing, Internet services, data and application hosting, computer systems analysis, technology consulting and training, custom software programming for a specific client of the **Insured Organization**, computer and software systems installation and integration, computer and software support, and network management services performed by the **Insured**, or by others acting under the **Insured Organization’s** trade name, for others for a fee, but shall not mean **Technology Products**.
- S. **“Technology Products”** means a computer or telecommunications hardware or software product, or related electronic product that is created, manufactured or developed by the **Insured Organization** for others, or distributed, licensed, leased or sold by the **Insured Organization** to others, for compensation, including software updates, service packs and other maintenance releases provided for such products.
- T. **“Theft of Data”** means the unauthorized taking, misuse or disclosure of information on **Computer Systems**, including but not limited to charge, debit, and credit card information, banking, financial, and investment services account information, proprietary information, and personal, private, and confidential information.
- U. **“Unauthorized Access”** means:
1. the use of or access to **Computer Systems** by a person not authorized to do so by the **Insured Organization**; or
 2. the authorized use of or access to **Computer Systems** in a manner not authorized by the **Insured Organization**.

VII. LIMIT OF LIABILITY

The Limit of Liability stated in Item 3.(a) of the Declarations for “Each **Claim**” is the limit of the Insurer’s liability for all **Damages** and **Claims Expenses** arising out of each **Claim**.

The “Aggregate for the Policy Period” stated in Item 3.(b) of the Declarations is the Insurer’s combined total Limit of Liability for all **Damages** and **Claims Expenses** arising out of all **Claims** or circumstances which might lead to a **Claim** which are covered under the terms and conditions of this Policy, and neither the inclusion of more than one **Insured** under this Policy, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.

The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the Limit of Liability of the Insurer for the **Policy Period**.

VIII. DEDUCTIBLE

The “Each **Claim** Deductible” stated in Item 4. of the Declarations applies separately to each **Claim**. The Each **Claim** Deductible shall be satisfied by monetary payments by the Named Insured of **Damages** and **Claims Expenses** resulting from **Claims** first made and reported to the Insurer during the **Policy Period** and the **Optional Extension Period**. Satisfaction of the Each **Claim** Deductible is a condition precedent to the payment by the Insurer of any amounts hereunder, and the Insurer shall be liable only for the amounts in excess of such Each **Claim** Deductible subject to the Insurer’s total liability not exceeding the Limits of Liability stated in Items 3.(a) and 3.(b) of the Declarations. The Named Insured shall make direct payments within the Each **Claim** Deductible to appropriate other parties designated by the Insurer.

IX. INNOCENT INSURED

- A. Whenever coverage under this Insurance would be excluded, suspended or lost because of Exclusion V.A relating to criminal, dishonest, fraudulent or malicious acts, errors or omissions by any **Insured**, and with respect to which any other **Insured** did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge thereof, then the Insurer agrees that such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **Insureds** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts, errors or omissions described in Exclusion V.A.

This provision is inapplicable to any **Claim** or circumstance that could reasonably be the basis of a **Claim** against the **Insured Organization** arising from acts, errors or omissions known to any present or former principal, partner, director or officer of the **Insured Organization**.

- B. With respect to this provision, the Insurer’s obligation to pay in such event shall be in excess of the full extent of any recoverable assets of any **Insured** to whom Exclusion V.A. applies and shall be subject to the terms, conditions and limitations of this Policy.

X. NOTICE OF CLAIM, OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM

- A. If any **Claim** is made against the **Insured**, the **Insured** shall immediately forward to the Insurer through persons named in Item 8.(a) of the Declarations written notice of such **Claim** in the form of a telecopy, or express or certified mail together with every demand, notice, summons or other process received by the **Insured** or the **Insured’s** representative.
- B. If during the **Policy Period** the **Insured** first becomes aware of any circumstance that could reasonably be the basis for a **Claim** it must give written notice to the Insurer in the form of a telecopy, or express or certified mail through persons named in Item 8.(a) of the Declarations as soon as practicable during the **Policy Period** of:
1. the specific details of the act, error or omission in the provision of **Professional Services, Media Activities** or **Technology Based Services** or relating to **Technology Products** that could reasonably be the basis for a **Claim**;

2. the injury or damage which may result or has resulted from the circumstance; and
3. the facts by which the **Insured** first became aware of the act, error or omission.

Any subsequent **Claim** made against the **Insured** arising out of such circumstance who is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to the Insurer.

- C. A **Claim** shall be considered to be reported to the Insurer when written notice is first received by the Insurer in the form of a telecopy, or express or certified mail through persons named in Item 8.(a) of the Declarations of the **Claim** or of an act, error, or omission, which could reasonably be expected to give rise to a **Claim** if provided in compliance with Clause B above.

XI. OPTIONAL EXTENSION PERIOD

- A. If this Policy is cancelled by the Named Insured or if the Insurer nonrenews this Policy, then the Named Insured shall have the right, upon payment of an additional premium calculated at that percentage shown in Item 7.(a) of the Declarations of the total premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** and reported in writing to the Insurer during the period of time set forth in Item 7.(b) of the Declarations after the end of the **Policy Period**, but only with respect to any act, error or omission committed on or after the Retroactive Date and before the effective date of cancellation or nonrenewal.
- B. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this Policy must have been paid. The right to purchase the **Optional Extension Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** is given to the Insurer within thirty (30) days after the effective date of cancellation or nonrenewal. If such notice and premium payment is not so given to the Insurer, there shall be no right to purchase the **Optional Extension Period**.
- C. In the event of the purchase of the **Optional Extension Period**, the entire premium for the **Optional Extension Period** shall be deemed earned at its commencement.
- D. The exercise of the **Optional Extension Period** shall not in any way increase the Limit of Liability of the Insurer.
- E. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this Clause XI.

XII. REPRESENTATIONS

By acceptance of this Policy, all **Insureds** agree that the statements contained in the **Application** are their agreements and representations, that they shall be deemed material to the risk assumed by the Insurer, and that this Policy is issued in reliance upon the truth thereof.

XIII. OTHER INSURANCE

This Insurance shall apply in excess of any other valid and collectible insurance available to any **Insured**, including any self insured retention or deductible portion thereof unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

XIV. ASSIGNMENT

The interest hereunder of any **Insured** is not assignable. If the **Insured** shall die or be adjudged incompetent, such insurance shall cover the **Insured's** legal representative as the **Insured** as would be permitted by this Policy.

XV. CANCELLATION/NONRENEWAL

- A. The Named Insured may cancel this Policy by surrender thereof to the Insurer, or by mailing to the Insurer written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
- B. The Insurer may cancel this Policy by mailing or delivering to the Named Insured written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. However, if the Insurer cancels this Policy because the **Insured** has failed to pay a premium when due, this Policy may be cancelled by the Insurer by mailing or delivering a written notice of cancellation to the Named Insured stating when not less than ten (10) days thereafter such cancellation shall be effective. The notice of cancellation shall state the reason for cancellation. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the Insurer shall be equivalent to mailing.
- C. If this Policy is cancelled pursuant to A. hereinabove, the Insurer shall retain the customary short rate portion of the premium hereon. If this Policy is cancelled pursuant to B. hereinabove, the Insurer shall retain the pro rata portion of the premium hereon. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation.
- D. If the Insurer decides not to renew this Policy, the Insurer shall mail or deliver written notice to the Named Insured at least sixty (60) days before the end of the **Policy Period**. The notice of nonrenewal shall state the reason for nonrenewal.

XVI. MERGERS AND ACQUISITIONS

- A. During the **Policy Period**, if the Named Insured or any **Subsidiary** acquires another entity whose annual revenues are more than ten percent (10%) of the Named Insured's total annual revenues as set forth in the most recent **Application** for insurance; then no **Insured** shall have coverage under this Policy for any **Claim** that arises out of any act, error or omission, whether committed either before or after such acquisition:
1. by the acquired entity or any person employed by the acquired entity; or

2. involving or relating to the assets, liabilities, or **Computer Systems** of the acquired entity;

unless the Named Insured provides written notice to the Insurer at least thirty (30) days prior to the acquisition, obtains the written consent of the Insurer to extend coverage to such additional entities, assets or exposures, and agrees to pay any additional premium required by the Insurer.

- B. If during the **Policy Period** the Named Insured consolidates or merges with or is acquired by another entity, or sells substantially all of its assets to any other entity, then coverage under this Policy shall continue until termination of this Policy, but only with respect to any **Claim** that arises out of any act, error or omission committed, attempted, or allegedly committed by the **Insureds** prior to such merger or consolidation. The Named Insured shall provide written notice of such merger or consolidation to the Insurer as soon as practicable, together with such information as the Insurer may require.

XVII. ASSISTANCE AND COOPERATION OF THE INSURED

The **Insured** shall cooperate with the Insurer in all investigations, including investigations regarding the **Application** for and coverage under this Policy. The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by the Insurer. The **Insured** agrees not to take any action which in any way increases the Insurer's exposure under the Policy.

Upon the Insurer's request, the **Insured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of acts, errors or omissions with respect to which insurance is afforded under this Policy; and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgement or award or dispose of any **Claim** without the written consent of the Insurer.

Expenses incurred by the **Insured** in assisting and cooperating with the Insurer, as described above, do not constitute **Claims Expenses** under the Policy.

XVIII. ACTION AGAINST THE INSURER

No action shall lie against the Insurer unless, as a condition precedent thereto, the **Insured** shall have fully complied with all terms of this Policy nor until the amount of the **Insured's** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and the Insurer. Nothing contained herein shall give any person or organization any right to join the Insurer as a party to any **Claim** against the **Insured** to determine their liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives in any **Claim**.

XIX. SUBROGATION

In the event of any payment under this Insurance, the Insurer shall be subrogated to all the **Insureds'** rights of recovery therefore against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages** and **Claims Expenses** paid by the Insurer, and third to the Each **Claim** Deductible. Any additional amounts recovered shall be paid to the Named Insured.

XX. ENTIRE AGREEMENT

By acceptance of the Policy, all **Insureds** agree that this Policy embodies all agreements between them and the Insurer relating to this Insurance. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Insurer from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by written endorsement issued to form a part of this Policy, signed by the Insurer.

XXI. VALUATION AND CURRENCY

All premiums, limits, deductibles, **Damages** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Damages** under this Policy is stated in a currency other than United States dollars or if **Claims Expenses** are paid in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Damages** is due or the date such **Claims Expenses** are paid.

XXII. BANKRUPTCY

Bankruptcy or insolvency of the Named Insured shall not relieve the Insurer of its obligations nor deprive the Insurer of its rights or defenses under this Policy.

XXIII. AUTHORIZATION

By acceptance of this Policy, the **Insureds** agree that the Named Insured will act on their behalf with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

XXIV. HEADINGS

The descriptions in the headings and subheadings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.