



## MANAGEMENT LIABILITY INSURANCE

# ExecSurance™ ML Policy Document

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## PREAMBLE

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

The Sections of this Policy are identified by the **BLUE LINES** across the page with **WHITE UPPER CASE PRINT**. Clause headings in **BLUE UPPER CASE PRINT** are for information only and do not form part of the cover given by this Policy. Other terms in **bold lower case print** are defined terms and have a special meaning as set forth in the **DEFINITIONS** section and elsewhere. Words stated in the singular shall include the plural and vice versa.

**IMPORTANT: INSURING CLAUSES 1, 2, 3, 4 (SECTIONS A and B only)** provide cover on a claims made and reported basis. Under these **INSURING CLAUSES** a **claim** must be first made against **you** and notified to **us** during the **period of the policy** to be covered. These **INSURING CLAUSES** do not cover any **claim** arising out of any prior or pending litigation on or before the Prior and Pending Litigation Date specified in the Declarations.

In consideration of the Premium and in reliance upon the information that **you** have provided to **us** prior to commencement of this insurance and which is deemed to form the basis of this insurance, **we** agree to provide the cover as set out below.

## INSURING CLAUSES

### INSURING CLAUSE I: DIRECTORS AND OFFICERS LIABILITY

#### SECTION A: INDIVIDUAL COVER

**We** agree to pay on behalf of the **insured persons** all sums they become legally obliged to pay as a result of any **claim** first made against them and notified to **us** during the **period of the policy** arising out of any **wrongful act** committed or alleged to have been committed by the **insured persons** acting in their capacity as **insured persons** or any matter claimed against them solely by reason of them serving in this capacity.

**We** will also pay **costs and expenses** on behalf of the **insured persons**.

#### SECTION B: COMPANY REIMBURSEMENT COVER

**We** agree to pay on behalf of the **company** all sums it becomes legally obliged to pay as a result of any **claim** first made against an **insured person** and notified to **us** during the **period of the policy** arising out of any **wrongful act** committed or alleged to have been committed by an **insured person** acting in their capacity as an **insured person** or any matter claimed against them solely by reason of them serving in this capacity, but only to the extent that the **company** has indemnified the **insured person** for the **claim**.

**We** will also pay **costs and expenses** on behalf of the **company**.

#### SECTION C: ENTITY COVER

**We** agree to pay on behalf of the **company** all sums it becomes legally obliged to pay as a result of any **claim** first made against it and notified to **us** during the **period of the policy** arising out of any **wrongful act** committed by **you** or on **your** behalf in the normal course of **your** business activities.

**We** will also pay **costs and expenses** on behalf of the **company**.

#### SECTION D: INVESTIGATION COSTS COVER

**We** agree to pay on behalf of the **insured persons** all **costs and expenses** they incur as a result of an **investigation** first initiated against them in writing and notified to **us** during the **period of the policy**.

However, **we** shall not pay any **costs and expenses** in respect of **investigations** affecting the wider business environment or the industry in which **you** conduct **your** normal business activities, as opposed to **investigations** solely affecting the **company**.

#### SECTION E: OUTSIDE DIRECTORSHIP LIABILITY

**We** agree to pay on behalf of the **insured persons** all sums they become legally obliged to pay as a result of any **claim** first made against them and notified to **us** during the **period of the policy** arising out of any **wrongful act** committed or alleged to have been committed by the **insured persons** acting in any **outside directorship position** or any matter claimed against them solely by reason of them serving in this capacity, provided that:

- a) cover shall not extend to the benefit of the **outside entity** or any other director, officer, trustee, council or committee member of the **outside entity**; and
- b) cover shall be in excess of any other insurance policy protecting an **insured person** while holding this position; and
- c) cover shall be in excess of any indemnification which the **outside entity** has agreed, or is bound by law, to provide to the **insured persons**.

**We** will also pay **costs and expenses** on behalf of the **insured persons**.

#### SECTION F: ADDITIONAL LIMIT FOR THE NON-EXECUTIVE DIRECTORS

**We** agree, upon exhaustion of the **limit of liability** or **aggregate limit of liability**, to pay on behalf of the non-executive directors of the **company** all sums they become legally obliged to pay as a result of any **claim** first made against them and notified to **us** during the **period of the policy** arising out of any **wrongful act** committed or alleged to have been committed by the non-executive directors of the **company** acting in a director position or any matter claimed against them solely by reason of them serving in this capacity, provided that:

- a) the **company** has not indemnified the non-executive directors of the **company**; and
- b) all valid and collectible insurance available to the non-executive directors of the **company** covering the **claim**, in whole or in part, has been exhausted.

**We** will also pay **costs and expenses** on behalf of the non-executive directors of the **company**.

Any payment made by **us** under this **SECTION F** will not erode the **aggregate limit of liability** in any section of **INSURING CLAUSE I**, or the **aggregate limit of liability** for all of the **INSURING CLAUSES** combined.

#### SECTION G: EXTRADITION AND APPEAL COSTS

**We** agree to pay on behalf of an **insured person**, where permitted by law, all **costs and expenses** they incur in bringing legal proceedings to appeal, overturn, challenge, or revoke a court order first registered during the **period of the policy** relating directly to:

- a) the extradition of an **insured person**; or
- b) the deportation of an **insured person** following revocation of the otherwise proper, current and valid immigration status for a reason other than the **insured person's** criminal conviction; or
- c) the confiscation, assumption of ownership and control or freezing of any asset of the **insured person**; or
- d) a charge over an asset of the **insured person**; or
- e) a prohibition imposed on the **insured person** from holding the office of or performing the function of an **insured person**; or
- f) a restriction of the **insured person's** liberty to a specified domestic residence or confinement in custodial premises.

## SECTION H: FAMILY COSTS

We agree to reimburse any reasonable travel costs and associated expenses incurred by an **insured person** to enable their **family members** to attend court or a tribunal, arbitration, adjudication, mediation or other hearing where the **insured person** is appearing as a witness in connection with a **claim** covered under **SECTION A, B or E** of this **INSURING CLAUSE** for which **you** have purchased cover.

## INSURING CLAUSE 2: EMPLOYMENT PRACTICES LIABILITY

### SECTION A: EMPLOYEE COVER

We agree to pay on **your** behalf all sums **you** become legally obliged to pay as a result of any **claim** first made against **you** and notified to **us** during the **period of the policy** brought by an **employee**, a prospective employee or an independent contractor arising out of any actual or alleged:

- a) wrongful dismissal, discharge or termination of employment whether actual or constructive, including breach of an express or implied contract; or
- b) employment related misrepresentations; or
- c) sexual or other harassment in the workplace (including the creation of a hostile working environment); or
- d) wrongful deprivation of a career opportunity, employment or promotion or failure to grant tenure; or
- e) wrongful demotion, evaluation or failure to adopt adequate employment or workplace policies and procedures; or
- f) breach of, violation of or non-compliance with data protection laws relating to **employee** data; or
- g) **retaliation**; or
- h) infliction of emotional distress; or
- i) employment related libel, slander, humiliation or defamation; or
- j) disciplinary action; or
- k) negligent evaluation; or
- l) discrimination; or
- m) invasion of privacy; or
- n) violation of any law concerning employment or discrimination in employment.

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

### SECTION B: WAGE AND HOUR COVER

We agree to pay on **your** behalf all sums **you** become legally obliged to pay as a result of any **claim** first made against **you** and notified to **us** during the **period of the policy** brought by an **employee** arising out of any actual or alleged breach of any law or duty relating to **wage and hour**.

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

### SECTION C: THIRD PARTY COVER

We agree to pay on **your** behalf all sums **you** become legally obliged to pay as a result of any **claim** first made against **you** and notified to **us** during the **period of the policy** brought by any person other than an **insured person**, an **employee** or a prospective employee arising out of any actual or alleged:

- a) sexual or other harassment; or
- b) infliction of emotional distress; or
- c) discrimination.

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

### SECTION D: IMMIGRATION INVESTIGATION COSTS COVER

We agree to pay on **your** behalf all **costs and expenses** incurred as a result of an **investigation** first initiated against **you** in writing and notified to **us** during the **period of the policy** into the actual or alleged hiring or harboring of illegal aliens.

However, we shall not pay any **costs and expenses** in respect of **investigations** affecting the wider business environment or the industry in which **you** conduct **your** normal business activities, as opposed to **investigations** solely affecting the **company**.

## INSURING CLAUSE 3: FIDUCIARY LIABILITY

### SECTION A: INDIVIDUAL COVER

We agree to pay on behalf of any fiduciary or trustee of a **benefit plan** all sums they become legally obliged to pay as a result of any **claim** first made against them and notified to **us** during the **period of the policy** arising out of any:

- a) **wrongful act**; or
- b) maladministration, breach of statutory provisions or breach of warranty of authority; committed or alleged to have been committed by any fiduciary or trustee acting in their capacity as a fiduciary or trustee of a **benefit plan** or any matter claimed against them solely by reason of them serving in this capacity.

We will also pay **costs and expenses** on behalf of the fiduciary or trustees of a **benefit plan**.

### SECTION B: COMPANY COVER

We agree to pay on behalf of the **company** all sums it becomes legally obliged to pay as a result of any **claim** first made against it and notified to **us** during the **period of the policy** arising out of any:

- a) **wrongful act**; or
- b) maladministration, breach of statutory provisions or breach of warranty of authority;

committed or alleged to have been committed by the **company** in the establishment or maintenance of a **benefit plan**.

We will also pay **costs and expenses** on behalf of the **company**.

### SECTION C: INVESTIGATION COSTS COVER

We agree to pay on behalf of any fiduciary or trustee of a **benefit plan** all **costs and expenses** they incur as a result of an **investigation** first initiated against them in writing and notified to **us** during the **period of the policy**.

However, we shall not pay any **costs and expenses** in respect of **investigations** affecting the wider business environment or the industry in which **you** conduct **your** normal business activities, as opposed to **investigations** solely affecting the **company**.

### SECTION D: OVERPAYMENTS AND EXONERATION COVER

We agree to reimburse the **company** for all **overpayments** as a direct result of any:

- a) **wrongful act**; or
- b) maladministration, breach of statutory provisions or breach of warranty of authority;

first discovered and notified to **us** during the **period of the policy**.

We also agree to waive subrogation rights against any fiduciary or trustee of a **benefit plan** in relation to **overpayments**.

## INSURING CLAUSE 4: CYBER & PRIVACY

### SECTION A: CYBER LIABILITY

We agree to pay on **your** behalf all sums **you** become legally obliged to pay as a result of any **claim** first made against **you** and notified to **us** during the **period of the policy** for any:

- a) **third party** financial loss arising directly from a **hacking attack** or **virus** that has emanated from or passed through **your** computer systems or a **cloud computing provider's** systems; or
- b) **third party** financial loss arising directly from their inability to access **your** computer systems in the way in which **you** have authorized them to as a direct result of **your** computer systems' failure or impairment, or a **cloud computing provider's** systems failure or impairment, due to a **hacking attack** or **virus**; or
- c) **third party** financial loss arising directly from the loss or theft of **your** data, or data for which **you** are responsible or held to be responsible, whether stored by **you** or by a **cloud computing provider**, arising directly from a **hacking attack** or **virus**.

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

## SECTION B: PRIVACY LIABILITY

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** (regardless of who caused the **claim**) and notified to **us** during the **period of the policy** arising out of a **security breach** which results in:

- a) an actual or suspected breach of any personally identifiable information (PII), including credit card information, or personal healthcare information (PHI); or
- b) **your** failure to adequately warn affected individuals or provide a timely breach notification; or
- c) a breach of any rights of confidentiality as a direct result of **your** failure to maintain the confidentiality of any data pertaining to an **employee**; or
- d) a breach of any rights of confidentiality, including a breach of any provisions of a non-disclosure agreement or breach of a contractual warranty relating to the confidentiality of commercial information or PII; or
- e) a breach of any part of **your** website's privacy statement; or
- f) a breach of any written contract between **you** and a **third party** governing the processing and storage of credit card information including any breach of the Payment Card Industry Data Security Standard (PCI DSS); or
- g) a breach of **your** data or data for which **you** are responsible that is located on a **cloud computing provider's** systems.

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

## SECTION C: PRIVACY BREACH NOTIFICATION COSTS

**We** agree to reimburse **you** for **privacy breach costs** as a result of a privacy breach first discovered by **you** and notified to **us** during the **period of the policy** subject to **our** prior written agreement (such agreement not to be unreasonably withheld):

- a) that **you** are legally obliged to incur; or
- b) that **you** are not legally obliged to incur, but where the reimbursement of these **privacy breach costs** will effectively mitigate or avoid a **claim** for which **you** would have been entitled to indemnity under **SECTION B of INSURING CLAUSE 4** had such **privacy breach costs** not been incurred; or
- c) that **you** are not legally obliged to incur, but where the reimbursement of these **privacy breach costs** will effectively mitigate material damage to **your** brand or reputation.

## SECTION D: SYSTEM DAMAGE

**We** agree to reimburse **you** for **rectification costs**, subject to **our** prior written agreement (such agreement not to be unreasonably withheld) which **you** incur:

- a) in retrieving, restoring or replacing any of **your** computer programs or any other data (or any other computer programs or any other data for which **you** are responsible) as a result of damage to them first discovered by **you** and notified to **us** during the **period of the policy**; or
- b) in repairing, restoring or replacing any of **your** computer systems as a result of damage to them first discovered by **you** and notified to **us** during the **period of the policy**.

## SECTION E: SYSTEM BUSINESS INTERRUPTION

**We** agree to reimburse **you** for **your loss** of revenue, including advertising revenue, that **you** reasonably project has been lost solely and directly as a result of a failure in **your** capability to use **your** computer systems, less the costs that **you** would have incurred, but which **you** have saved as a result of not making those sales, including the cost of raw materials and other saved costs, incurred as the direct result of:

- a) a **hacking attack**; or
- b) a **virus**; or
- c) malicious damage to **your** computer systems by an **employee**; or
- d) the failure of a **third party** or a **cloud computing provider** who is hosting **your** computer systems which is the direct result of a **hacking attack** or **virus**;

first discovered by **you** and notified to **us** during the **period of the policy**.

## INSURING CLAUSE 5: CRIME

### SECTION A: EMPLOYEE CRIME

**We** agree to reimburse **you** for **loss** first discovered by **you** and notified to **us** during the **period of the policy** arising out of the unauthorized taking of property, money, checks, bankers drafts or share or bond certificates by an **employee**, other than through the use of or manipulation of any computer systems or data.

### SECTION B: CYBER CRIME

**We** agree to reimburse **you** for **loss** first discovered by **you** and notified to **us** during the **period of the policy** arising out of:

- a) the unauthorized taking of money, checks, bankers drafts or share or bond certificates by an **employee**; or
  - b) the fraudulent instruction issued to a financial institution directing the transfer, payment or delivery of money, checks, bankers drafts or share or bond certificates from an account of **yours** without **your** knowledge or consent; or
  - c) the electronic theft of **your** identity;
- through the use of or manipulation of any computer systems or data.

## INSURING CLAUSE 6: KIDNAP AND RANSOM

### SECTION A: RANSOM REIMBURSEMENT

**We** agree to reimburse the **company** for all reasonable sums incurred as a direct result of a **kidnap event** first occurring and notified to **us** during the **period of the policy** in respect of:

- a) money or property paid as a ransom; and
- b) money or property intended to be paid as a ransom, but which has:
  - i) been destroyed; or
  - ii) disappeared; or
  - iii) been confiscated; or
  - iv) been stolen;

whilst the money or property is in the custody of a person authorized by **you** to convey the money or property to those responsible for the **kidnap event**, provided that it is established beyond reasonable doubt that the events listed in i) to iv) above were not committed by the person authorized by **you** to convey the money or property to those responsible for the **kidnap event**;

incurred by the **company** with **our** prior written consent, which will not be unreasonably withheld.

### SECTION B: KIDNAP AND EXTORTION EXPENSES

**We** agree to reimburse the **company** for all reasonable sums incurred as a direct result of a **kidnap event** first occurring and notified to **us** during the **period of the policy** in respect of:

- a) the interest for a loan from a financial institution made to **you** for the purposes of paying a ransom, provided that the loan is repaid within seven days of **you** receiving the ransom from **us**; and
- b) consultancy costs through **our** approved consultants; and
- c) advertising costs incurred solely to obtain the release of a **covered victim** or required during an **extortion** negotiation; and
- d) interpreter costs; and
- e) forensic analyst costs; and
- f) security guard services for up to fourteen days solely for an actual or attempted **kidnapping** or **extortion** providing that **our** consultants recommend the use of security guard services; and
- g) the reward paid by **you** to an informant, providing the information is not otherwise obtainable, and at a sum recommended by the local law enforcement agency; and
- h) an assessment of the **extortion** or **political threat** by a security consultant; and
- i) an assessment of the **extortion** by a computer network consultant if the threat is related to a **hacking attack** or **virus**; and
- j) medical, cosmetic, dental or psychiatric treatment of a **covered victim** needed after a **kidnap event**; and
- k) the salary, bonuses and benefits which a **company** continues to pay a **covered victim** or a new hire to replace the work of a **covered victim** for a period of sixty months after the **kidnap event**;

incurred by the **company** with **our** prior written consent, which will not be unreasonably withheld.



## SECTION C: KIDNAP AND EXTORTION LIABILITY

We agree to pay on behalf of the **company** all sums it becomes legally obliged to pay as a result of any **claim** first made against it by a **covered victim** and notified to **us** during the **period of the policy** arising out of any actual or alleged negligence in a hostage retrieval operation or the negotiations relating to a **kidnap event** or the actual or alleged failure to prevent a **kidnap event**.

We will also pay **costs and expenses** on behalf of the **company**.

## SECTION D: COVERED VICTIM PERSONAL ACCIDENT

We agree to compensate a **covered victim** for **bodily injury** suffered during a **kidnap event** first occurring and notified to **us** during the **period of the policy**.

The amounts **we** compensate a **covered victim** in respect of the types of **bodily injury** suffered are shown in the Declarations. However, **we** will only pay compensation for one of the types of **bodily injury** listed in the Declarations for any one **kidnap event**.

## SECTION E: EMERGENCY EVACUATION EXPENSES

We agree to reimburse the **company** for **emergency expenses** incurred as a result of an **emergency evacuation** first occurring and notified to **us** during the **period of the policy**.

### INSURING CLAUSE 7: COURT ATTENDANCE COSTS

We agree to reimburse **you**, subject to **our** prior written agreement (such agreement not to be unreasonably withheld), for **your** reasonable costs incurred to attend court or any tribunal, arbitration, adjudication, mediation or other hearing as a witness in connection with a **claim** or **loss** covered under any **INSURING CLAUSE** of this Policy for which **you** have purchased cover.

### INSURING CLAUSE 8: LOSS MITIGATION

We agree to pay any reasonable costs necessarily incurred by **you** in respect of measures taken by **you** for the sole purpose of mitigating a **claim**, potential **claim** or **loss** for which **you** would be entitled to indemnity under this Policy had these measures not been taken, provided that:

- you** have previously notified **us** of the **claim**, potential **claim** or **loss**; and
- the costs in respect of measures taken by **you** to mitigate the **claim**, potential **claim** or **loss** are less than the expected value of the **claim**, potential **claim** or **loss**; and
- the costs do not include any provision for salaries or other remuneration of **your employees**, any provision for **your** loss of profit or any provision for **your** normal operating expenses; and
- the costs are incurred with **our** prior written consent (such agreement not to be unreasonably withheld).

### INSURING CLAUSE 9: REPUTATION AND BRAND PROTECTION

We agree to pay costs reasonably incurred, subject to **our** prior written agreement (such agreement not to be unreasonably withheld), for the services of a public relations consultancy for the purpose of averting or mitigating damage to **your** reputation or brand caused by a **claim** or **loss** that is covered under any **INSURING CLAUSE** of this Policy for which **you** have purchased cover where an event has been publicised through the media, including but not limited to television, print, radio or the internet which might reasonably be considered to create a material threat to the **company's** reputation or share price.

The public relations consultancy shall be chosen by the Claims Managers who shall take into account the nature of the **claim** or **loss** and the cost and quality of the services that they can deliver, unless **you** have reasonable cause to request a different public relations consultancy and the Claims Managers and **you** mutually agree upon this company.

## HOW MUCH WE WILL PAY

Subject always to the **aggregate limit of liability**, the maximum amount payable by **us** shall not exceed the amounts shown in the Declarations in respect of each **SECTION** or **INSURING CLAUSE**.

Where more than one **claim** or **loss** arises from the same original cause or single source or event all those **claims** or **losses** shall be deemed to be one **claim** or **loss** and subject to the **aggregate limit of liability** only one **limit of liability** shall be payable in respect of all those **claims** or **losses**.

Where cover for any **claim** or **loss** is provided under multiple **SECTIONS** or multiple **INSURING CLAUSES** subject to the **aggregate limit of liability** only one **limit of liability** shall be payable in respect of that **claim** or **loss** and this shall be the highest **limit of liability** of the **SECTIONS** or **INSURING CLAUSES** under which cover is provided.

Where cover for any **claim** or **loss** is provided under **INSURING CLAUSE 2** and one or more of the other **INSURING CLAUSES**, the **claim** or **loss** shall be allocated to and payable under **INSURING CLAUSE 2**.

We may at any time pay to **you** in connection with any **claim** the amount of the **aggregate limit of liability** or **limit of liability** (after deduction of any amounts already paid). Upon that payment being made **we** shall relinquish the conduct and control of the **claim** and be under no further liability in connection with that **claim**.

This Policy shall apply to each **insured person** in the same manner and to the same extent as if a separate Policy had been issued to each **insured person**. Regardless of the number of **insured persons** involved, the total amount payable by **us** shall not exceed the **aggregate limit of liability**.

If due to an emergency, **our** written consent cannot reasonably be obtained prior to **costs and expenses** being incurred with respect to any **claim**, **we** can provide retrospective approval for those **costs and expenses** during the period of 14 days immediately following the date on which the **claim** was first made or instituted.

## YOUR DEDUCTIBLE

We shall only be liable for that part of each and every **claim** or **loss** which exceeds the amount of the Deductible stated in the Declarations. If any expenditure is incurred by **us** which falls within the amount of the Deductible stated in the Declarations, then **you** shall reimburse that amount to **us** on **our** request.

In the event that the **company** does not provide indemnification to the **insured persons**, regardless of being permitted or required to do so by law, **we** agree to reimburse the **losses** incurred by the **insured persons**. Where **we** reimburse the **losses** incurred to the **insured persons**, the **company** is obliged to reimburse the Deductible shown in the

Declarations to **us** upon **our** request, except where the **company** cannot grant indemnification because it is insolvent and is acting other than as the **insured persons**.

Where more than one **claim** or **loss** arises from the same original cause or single source or event all such **claims** or **losses** shall be deemed to be one **claim** or **loss** and only one Deductible will apply.

Where cover is provided under multiple **SECTIONS** or multiple **INSURING CLAUSES** only one Deductible will apply to that **claim** or **loss** and this shall be the highest Deductible of the **SECTIONS** or **INSURING CLAUSES** under which cover is provided.

## DEFINITIONS

1. **“Aggregate limit of liability”**  
means the maximum amount payable by **us** under this Policy as stated in the Declarations in respect of all **claims** or **losses**.
2. **“Benefit plan”**  
means any plan, (as defined by the Employee Retirement Income Security Act of 1974 or any subsequent amendments, or any similar state, provincial or foreign law), which has been, now is or shall become established or maintained by the **company** to provide benefits to **you** for pensions, superannuation, profit-sharing, educational, training or medical purposes.
3. **“Bodily injury”**  
means the death of, or a bodily injury suffered by, a **covered victim**.  
  
For the purposes of this **DEFINITION**, a **covered victim** shall be deemed to be dead if there has been no communication from the **covered victim** or those responsible for the **kidnap event** for 2 or more years following the **kidnap event**.
4. **“Claim”**  
means:  
  - a) a written demand received by **you** for money or services, including the service of suit or institution of arbitration proceedings; or
  - b) a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction) or declaratory relief; or
  - c) the institution of any civil or criminal proceeding commenced against **you**; or
  - d) an official request for extradition or disqualification proceedings; or
  - e) the initiation of an **investigation** against **you**; or
  - f) a written request by the **company** to toll or waive a statute of limitations relating to a potential **claim** described in a) to e) above.
5. **“Cloud computing provider”**  
means a **third party** provider of hosted computing services accessed across the internet including infrastructure, platform and application level services.
6. **“Company”**  
means the company named as the Insured in the Declarations or any **subsidiary**, including in their capacity as a sponsoring employer of a **benefit plan**.
7. **“Corporate takeover”**  
means:  
  - a) the acquisition by any person or entity of more than 50% of the outstanding securities of the **company** representing the present right to vote for the election of directors; or
  - b) the merger of the **company** into another entity such that the **company** is not the surviving entity.
8. **“Costs and expenses”**  
means:  
  - a) legal and professional expenses (including disbursements) reasonably incurred in the defense of **claims** or **investigations** or circumstances which could reasonably be expected to give rise to a **claim** or an **investigation**; and
  - b) the cost of appeal, attachment and similar bonds including bail and penal bonds.

Subject to all **costs and expenses** being incurred with the Claims Managers’ prior written consent (such consent not to be unreasonably withheld).
9. **“Covered victim”**  
means:  
  - a) all directors, officers and **employees** of the **company** and their **family members**; and
  - b) persons employed in the household of directors, officers or **employees** of the **company**; and
  - c) a guest or customer of directors, officers or **employees** of the **company** whilst on the premises; and
  - d) a guest or customer of directors, officers or **employees** of the **company** whilst at their home; and
  - e) a person who is temporarily engaged by the **company** to deliver money or property as a ransom.
10. **“Emergency evacuation”**  
means the return of an **insured person** to their normal country of residence following:  
  - a) the announcement by the appropriate government agency of the **insured person’s** normal country of residence that the **insured person** should immediately leave the country where they are a temporary resident or temporary business traveller due to a **political threat**; or
  - b) an **insured person** being expelled from or being declared a persona non grata by the government of the country where an **insured person** is a temporary resident or temporary business traveller; or
  - c) the seizure, confiscation or redistribution of the premises where **you** conduct **your** normal business activities in the country where an **insured person** is a temporary resident or temporary business traveller.
11. **“Emergency expenses”**  
means the reasonable costs incurred immediately following an **emergency evacuation**, including but not limited to:  
  - a) the travel of an **insured person** to the nearest place of safety or to their normal country of residence; and
  - b) the accommodation of an **insured person** for up to seven days; and
  - c) the salary, bonus and benefits the **company** continues to pay to the **insured person** for a period of up to three months, or until the **insured person** returns to work, whichever is the sooner.
12. **“Employee”**  
means any person who is a past or present employee, student, volunteer, seasonal or temporary employee of the **company**.  
  
**Employee** does not include independent contractors, sub contractors or employees leased to another employer.
13. **“Extortion”**  
means a threat or series of threats made solely and directly against the **company** or an **insured person** by a person or group of persons to:  
  - a) commit a **kidnap** of, do bodily harm to, or wrongfully detain or abduct a **covered victim**; or
  - b) damage or destroy tangible property owned or leased by the **company**; or
  - c) contaminate any products manufactured or handled by the **company**; or
  - d) publicise confidential information unique to the **company** and which is protected to prevent its disclosure; or
  - e) introduce a **virus** or instigate a **hacking attack**; or
  - f) to disseminate, divulge or utilise information contained or once contained in **your** computer systems; or
  - g) to damage, destroy or alter **your** computer systems.
14. **“Family member”**  
means a parent, spouse, domestic partner, civil partner or child of the **insured person**.
15. **“Hacking attack”**  
means any malicious or unauthorized electronic attack including but not limited to any fraudulent electronic signature, brute force attack, phishing, denial of service attack, that has been initiated by any **third parties** or by any **employees** and that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of computer systems.
16. **“Hijack”**  
means the illegal detention, other than a **kidnapping**, for a period in excess of four hours of a **covered victim** while travelling on any form of public or private transportation.

## 17. “Insured persons”

means:

- a) any past, present or prospective director, officer, general manager, in-house general counsel or manager of the **company** (or equivalent position in any jurisdiction) including de facto directors; and
- b) any **employee**:
  - i) acting in a managerial or supervisory capacity; or
  - ii) in an **outside directorship position**; or
  - iii) when named as co-defendant; and
- c) any person, who, as a consequence of being a director, officer or employee of the company is deemed a shadow director; and a Member of a Limited Liability Corporation; and
- e) the estates, heirs, legal representatives or assigns of **insured persons** described in a) to d) above in the event of their death, incapacity, insolvency or bankruptcy but only with respect to any act or omission committed or alleged to have been committed while these **insured persons** were serving in their capacity as **insured persons**; and
- f) **family members** of **insured persons** described in a) to d) above, but only in respect of any **claim** brought against them by reason of:
  - i) their status as a **family member** of the **insured person**; or
  - ii) the **family member's** ownership or interest in property which the claimant seeks as recovery for an alleged act or omission of the **insured person** while acting in their capacity as an **insured person**.

## 18. “Investigation”

means a formal hearing, official investigation, examination, inquiry or any other similar proceeding initiated by a governmental, regulatory, law enforcement, professional or statutory body.

## 19. “Kidnap/Kidnapping”

means the seizing, detaining, or abducting by force or fraud, or the claim of seizing, detaining, or abduction of a **covered victim** by a person or group demanding a payment from the **company** or an **insured person** for the release of the **covered victim**.

## 20. “Kidnap event”

means **kidnap, extortion, hijack, wrongful detention** or a **political threat**.

## 21. “Limit of liability”

means the maximum amount payable by **us** as stated in the Declarations in respect of each **claim** or **loss**.

## 22. “Loss”

means direct financial loss sustained by **you**.

## 23. “Outside directorship position”

means the position held by the **insured persons** or **employees** serving or acting in the capacity of director, officer, trustee, council member or committee member of an **outside entity**:

- a) at the specific request of the **company**; or
- b) with the knowledge and consent of the **company**.

## 24. “Outside Entity”

means any entity, non-profit organization, tax-exempt trade association, registered charity and any other company organization, institute or society, other than:

- a) the **company**; or
- b) any entity that has any of its securities publicly traded; or
- c) any entity that is a bank, clearing house, credit institution, investment firm or advisor, private equity or venture capital company, stock broker, insurance company or provides similar services.

## 25. “Overpayments”

means the amount that a **benefit plan** has paid or becomes liable to pay in benefits or mistaken benefits less the amount which the **benefit plan** would have been liable to pay in benefits under the trust deed and rules of the **benefit plan** if an act, error or omission had not occurred.

## 26. “Period of the policy”

means the period between the Inception Date and the Expiry Date shown in the Declarations or until the Policy is cancelled in accordance with the Cancellation **CONDITION** of this Policy.

## 27. “Political threat”

means a politically motivated threat made solely and directly against the **company**, to do bodily harm to a **covered victim**, by a person or group with the tacit approval of any government or governmental entity, or acting or purporting to act on behalf of any insurgent organization.

## 28. “Pollutants”

means any solid, liquid, gaseous, radiological or thermal irritant, toxic or hazardous substance, or contaminant including, but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste materials, including recycled, reconditioned or reclaimed materials.

## 29. “Pollution”

means:

- a) the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants** into or upon lands, the atmosphere or any water course or body of water, whether the discharge, dispersal, release or escape is intentional or accidental; or
- b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **pollutants**, nuclear material or nuclear waste.

## 30. “Privacy breach costs”

means any sums reasonably required to:

- a) fulfil any obligation **you** have to notify **third parties** of an actual or suspected breach of privacy in relation to any personal information; or
- b) establish a credit monitoring service or identity theft helpline; or
- c) conduct an independent security audit of **your** computer systems to identify the source and scope of the privacy breach.

## 31. “Privacy obligations”

means **your** legal obligations arising directly from:

- a) any privacy statement governing the handling of information on **your** computer systems; or
- b) any written contract between **you** and a **third party** governing the processing and storage of credit card information on **your** computer systems; or
- c) any implied contractual duty to use reasonable care and skill in the handling of personal data or credit card information (including breaches of the Payment Card Industry Data Security Standard); or
- d) any legal obligation to notify individuals of an actual or potential breach of their private or confidential data; or
- e) statutory data protection regulations in the country or countries where **you** operate, including industry specific data protection and security regulations (e.g. the Healthcare Insurance Portability and Accountability Act 1996) as they currently exist and as amended.

## 32. “Rectification costs”

means those costs that **you** incur as a result of the use of external consultants, contractors or advisers or any additional costs that **you** incur to pay **your employees**.

For the avoidance of doubt, **rectification costs** do not include any hardware costs, basic salaries of **your employees** or **your** office expenses or any payments that **you** have paid or agreed to pay as part of any service or maintenance contract.

## 33. “Retaliation”

means any adverse action taken against an **employee** by **you** as a direct result of:

- a) a **claim** made by the **employee** against **you**; or
- b) a refusal by the **employee** to breach any law; or
- c) an actual or attempted exercise by the **employee** of their rights in law.

## 34. “Retired director or officer”

means any **insured person** who retired from the **company** before the end of the **period of the policy** provided the **insured person** was not the subject of a disqualification proceeding.

## 35. “Security breach”

means an actual or suspected breach of data security where information is unintentionally revealed whether by electronic means or in paper format.

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

## 36. “Senior executive officer”

means board members, executive officers, in-house lawyers, risk managers, chief operating officers, chief technology officers, chief information officers, and chief privacy officers of the **company**.

## 37. “Subsidiary”

means any entity which the **company** controls, directly or indirectly, through:

- a) holding 50% or more of the voting rights; or
- b) having the right to appoint or remove 50% or more of its board of directors; or
- c) controlling alone, pursuant to a written agreement with other shareholders or members, 50% or more of the voting rights.

## 38. “Third party”

means a company, other than the **company**, or any person, other than the **insured persons**.

## 39. “Virus”

means any malicious software code including but not limited to any logic bomb, Trojan horse or worm that has been introduced by any

**third parties** or by any **employees** and that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of computer systems.

## 40. “Wage and hour”

means:

- a) the calculation, amount, timelines or manner of payment of minimum wages or overtime pay; or
- b) the classification of **employees** for wage or hours of work; or
- c) withholding or other deductions from wages; or
- d) rights to leave or absence from work or rights to pay during the absence; or
- e) child labor; or
- f) pay equity or comparable worth.

## 41. “We/our/us”

means the Underwriters named in the Declarations.

## 42. “Wrongful act”

means any:

- a) negligent act, error, omission, advice, misstatement or misrepresentation; or
- b) breach of trust, neglect or breach of duty, including fiduciary or statutory duty.

## 43. “Wrongful detention”

means the illegal confinement of a **covered victim**, other than **kidnapping** or **hijacking** for a period of at least six hours.

## 44. “You/your”

means the **company**, the **employees**, the fiduciaries or trustees of a **benefit plan** and **insured persons**.

## EXCLUSIONS

We will not:

- a) make any payment on **your** behalf for any **claim**; or
- b) reimburse **you** for any **loss**, **rectification costs** or **overpayments**; or
- c) incur any **costs and expenses**; or
- d) make any payment for any other costs incurred by **you**:

## EXCLUSIONS RELATING TO DIRECTORS AND OFFICERS LIABILITY

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

1. **Breach of a securities contract**

arising out of a breach of any contract relating to the purchase or sale of, or relating to an offer to purchase or sell, any securities, except for the amount of **loss** the **company** would be legally liable to pay in the absence of the contract.

2. **Professional services**

arising directly or indirectly from carrying out, or failing to carry out, professional services for a fee or any act, error or omission relating to a professional service.

However, this **EXCLUSION** shall not apply to any **claim** arising out of the actual or alleged failure to supervise an **employee**.

3. **Publicly Traded Securities**

arising out of:

- a) any public offering of securities undertaken or consummated by or on behalf of the **company** or the solicitation, sale, purchase, distribution or issuance of any such securities; or
- b) any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act 1934, or any rule or regulations of the Securities Exchange Commission, or any federal, state, provincial or foreign law regulating securities, or any subsequent amendments to these laws, relating to a public offering or to any securities issued, sold or distributed pursuant to a public

offering.

However, this **EXCLUSION** shall not apply to **claims** arising from an offer, sale or purchase of securities in a transaction that is exempt from registration under the Securities Act of 1933, or any subsequent amendments.

## EXCLUSIONS RELATING TO ENTITY COVER

In respect of **INSURING CLAUSE I, SECTION C** only:

4. **Breach of client contract**

arising directly or indirectly out of any unintentional breach of a written contract.

However, this **EXCLUSION** shall not apply if **you** would be held liable if there was no written contract in place.

5. **Intellectual property rights infringement**

arising directly or indirectly out of any infringement, misappropriation or violation of any intellectual property rights, including, but not limited to, copyright, trademark, trade dilution, trade dress, design rights, domain name rights, moral rights, service mark or service name, patent or trade secret.

6. **Products liability**

arising directly or indirectly out of any goods or products which have been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered, processed, cleaned, renovated or repaired by **you** or on **your** behalf.

## EXCLUSIONS RELATING TO EMPLOYMENT PRACTICES LIABILITY

In respect of **INSURING CLAUSE 2** only:

7. **Benefit laws**

arising out of any actual or alleged failure to comply with any law governing workers compensation, unemployment, social security or



disability benefits, or any similar law.

However, this **EXCLUSION** shall not apply to any **claim** for **retaliation**.

8. **Costs of compliance and modification**  
for modifying any premises or the providing of equipment to facilitate the needs of an **employee** with a disability or other protected status by law in any jurisdiction or the costs of compliance with any order to provide non-pecuniary relief.
9. **Labor or grievance arbitrations**  
arising out of any labor or grievance arbitration or proceeding which is the result of a collective bargaining agreement.
10. **Labor relations**  
arising out of:
- any actual or alleged breach of any law or duty relating to the rights of **employees** to engage in, or abstain from engaging in, union activities; or
  - the duty to notify, meet, discuss, consult or bargain with any **employee** or representative, including collective bargaining agreements; or
  - strikes, work stoppages, boycotts, picketing, lockouts or other industrial action.
11. **Redundancy**  
for a breach of any law (including the Worker Adjustment and Retraining Notification Act 1988) requiring an employer to notify, discuss or bargain with its employees or others in advance of any mass lay-off, or in respect of a branch, plant or facility closing or any similar requirement.
- However, this **EXCLUSION** shall not apply to any **claim** for **retaliation**.
12. **Wage and hour**  
arising out of any actual or alleged breach of any law or duty relating to **wage and hour**.
- However, this **EXCLUSION** shall not apply to:
- a **claim** for **retaliation**; or
  - INSURING CLAUSE 2, SECTION B**

#### EXCLUSIONS RELATING TO FIDUCIARY LIABILITY

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

13. **Failure to fund or collect**  
arising out of **your** failure to fund a **benefit plan** in compliance with a **benefit plan's** trust document or other similar provisions or the failure to collect contributions from the **company** owed to a **benefit plan**, unless the failure is due to the negligence of a fiduciary or trustee of a **benefit plan**.
14. **Multiemployer plans**  
arising directly or indirectly out of any multiemployer plan, as defined in the Employee Retirement Income Security Act of 1974 or any amendment thereto, or any similar state, provincial or foreign law.

#### EXCLUSIONS RELATING TO CYBER & PRIVACY

In respect of **INSURING CLAUSE 4** only:

15. **Telephone system hacking**  
arising out of any telephony or internet bandwidth costs arising directly out of a **hacking attack** to **your** telephone system or unauthorized use of **your** internet connection that has been initiated by any **third party**.
16. **Unlawful surveillance**  
arising out of any actual or alleged:
- eavesdropping; or
  - wiretapping; or
  - unauthorised audio or video recording;
- committed by **you** or with the knowledge and consent of **your senior executive officers**.

In respect of **INSURING CLAUSE 4, SECTIONS C and D** only:

17. **Core internet infrastructure failure**  
arising directly from a failure of any core element of the internet infrastructure that results in a countrywide or global outage of the internet, including a failure of the core DNS root servers or the IP addressing system.

#### EXCLUSIONS RELATING TO CRIME

In respect of **INSURING CLAUSE 5** only:

18. **Consequential loss**  
arising out of consequential loss which is a direct result of a crime.
19. **External professional services**  
arising out of any crime committed by **your** external professional advisers. However, this **EXCLUSION** shall not apply to **third parties** to whom **you** outsource **your** normal administrative functions under a written contract or engagement.
20. **Loss after date of discovery**  
incurred after the date of discovery of a dishonest act by **your employee**.
21. **Loss sustained by one company to the advantage of another company**  
arising out of **losses** sustained by one **company** to the advantage of another **company**.
22. **Shareholder crime**  
arising out of an **employee** committing a crime when owning more than 10% of the **company's** voting share capital. However, if the **loss** incurred would have been covered under this Policy, but for this **EXCLUSION**, we shall pay the amount of **loss** that exceeds the value of the **employee's** share value on the day preceding the date of discovery.

#### GENERAL INSURANCE EXCLUSIONS

23. **Antitrust**  
for or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive advertising.
24. **Bodily injury and property damage**  
for bodily injury, sickness, disease or death of any person, mental anguish, humiliation, emotional distress, or damage to or destruction of property.
- However, this **EXCLUSION** shall not apply to **INSURING CLAUSES 2, 4 and 6**.
25. **Circumstances known at inception**  
arising out of any circumstances or occurrences which could give rise to a **claim** or **loss** under this Policy of which a **senior executive officer** was aware prior to the Inception Date of this Policy, whether notified under any other insurance or not.
26. **ERISA**  
for any violation of the responsibilities, obligations or duties imposed by any pension or retirement legislation including but not limited to the Employee Retirement Income Security Act of 1974 or any subsequent amendments.
- However, this **EXCLUSION** shall not apply to **INSURING CLAUSE 3** or to any **claim** for **retaliation**.
27. **Fines**  
for fines, penalties, civil or criminal sanctions or punitive damages, unless insurable by the applicable law.
- However, we will apply the most favorable State law to **you** in determining whether such fines, penalties, civil or criminal sanctions or multiple damages are insurable.
28. **Insured vs Insured**  
brought by **you** or on **your** behalf, or brought by an **outside entity** in which an **insured person** acts in an **outside directorship position**.

However, this **EXCLUSION** shall not apply to:

- a) **costs and expenses** in respect of an **insured person**; or
- b) any **claim** which would otherwise be covered under **INSURING CLAUSE 2**; or
- c) any **claim** against an **insured person** or a fiduciary or trustee of a **benefit plan** pursued by an **insured person** or a fiduciary or trustee of a **benefit plan** for contribution or indemnity, but only where the **claim** directly results from another **claim** covered by this Policy; or
- d) any **claim** against an **insured person** or fiduciary or trustee of a **benefit plan** pursued by any past **insured person** or fiduciary or trustee of a **benefit plan**; or
- e) any **claim** against an **insured person** or fiduciary or trustee of a **benefit plan** pursued by an insolvency administrator, receiver, liquidator, creditor committee or similar official of a **company** or **outside entity**; or
- f) any **claim** against an **insured person** pursued by the **company**, or any **claim** against an **insured person** pursued by a shareholder of the **company** acting solely in their capacity as a shareholder (and not at the instigation of the **company** or an **insured person**).
- g) any **claim** against an **insured person** pursued by a whistleblower pursuant to any federal, state, provincial or foreign law.

#### 29. **Personal profit and deliberate acts**

arising out of:

- a) the gaining of any profit or advantage to which the **company** or an **insured person** was not legally entitled; or
- b) the committing of any deliberately dishonest or fraudulent act or omission by the **company** or an **insured person**.

However, **we** will pay **costs and expenses** on behalf of the **company** or an **insured person** until it is proven by final non-appealable adjudication, arbitral tribunal or a written admission by the **company** or an **insured person** of the illegal gaining of profit or a fraudulent or dishonest act or omission.

#### 30. **Pollution**

arising directly or indirectly out of **pollution**. However, this **EXCLUSION** shall not apply to:

- a) any **claim** brought by a shareholder or bondholder of the **company**, who is acting independently of the **company** and all **insured persons**, in their capacity as a shareholder or a bondholder of the **company**; or
- b) any **claim** which the **company** cannot indemnify the **insured person** due to the appointment by any state or federal official, agency or court of any receiver, liquidator or similar official to take control of supervise, manage or liquidate the **company**, or because of the **company** becoming a debtor-in-possession.

#### 31. **Other insurance**

for which **you** are entitled to indemnity under any other insurance

except for:

- a) any additional sum which is payable over and above the other valid and collectible insurance; or
- b) any contribution that **we** are obliged to make by law and that contribution shall be in proportion to the respective limits of liability of the Policies.

#### 32. **Prior and pending litigation**

arising directly from any prior and pending litigation as of the Prior and Pending Litigation Date shown in the Declarations, or alleging or deriving from the same or essentially the same facts as alleged in the prior and pending litigation. For the avoidance of doubt litigation, as used in this **EXCLUSION**, includes administrative or regulatory proceedings or official investigations.

#### 33. **RICO**

for or arising out of any actual or alleged violation of the Organised Crime Control Act of 1970 (commonly known as the Racketeer Influenced and Corrupt Organization Act or RICO), as amended, or any similar federal, state, provincial or foreign law.

However, this **EXCLUSION** shall not apply to any **claim** for **retaliation**.

#### 34. **Trading losses**

arising out of any unauthorized trading of money, securities or property, irrespective of whether or not the trading was in **your** name and irrespective of whether or not the transaction was genuine.

#### 35. **Unjust enrichment**

for that part of any **claim** that results in **you** being in a better financial position as a direct result of **your wrongful act** than **you** would have been if **you** had not committed the **wrongful act**.

#### 36. **Violation of laws**

in respect of **INSURING CLAUSE 6, SECTION E** only, arising directly or indirectly out of any violation of the law of the country where the **insured person** is a temporary resident or temporary business traveller, including but not limited to the failure of the **insured person** to maintain the correct immigration status, work, residence or other visa requirements.

#### 37. **Workers' compensation**

arising directly or indirectly out of any workers' compensation, disability benefits, unemployment compensation law, social security or other employment benefits law or any similar federal, state, or local statute or law.

However, this **EXCLUSION** shall not apply to:

- a) the Consolidated Omnibus Budget Reconciliation Act of 1985; or
- b) the Occupational Safety and Health Act.

## CONDITIONS

### I. **What you must do in the event of a claim or loss**

Should a **senior executive officer** become aware of any **claim, loss** or **kidnap event** the following obligations must be complied with by **you**:

- a) **you** must not admit liability for or settle or make or promise any payment in respect of any **claim, loss** or **kidnap event** which may be covered under this Policy. Neither must **you** incur any costs in connection with the **claim, loss** or **kidnap event** without **our** prior written consent.
- b) The Claims Managers, as specified in the Declarations, must be notified as soon as is practicable if during the **period of the policy** or optional extended reporting period:
  - i) **you** suffer any **loss** that could be covered by this Policy or a **senior executive officer** becomes aware that a **claim** has been made against **you**, whether verbal or

made in writing; or

- ii) a **senior executive officer** discovers reasonable cause for suspicion of fraud or dishonesty whether this could give rise to a **claim** or **loss** under this Policy or not and **we** shall not be liable under this Policy for any **claim** or **loss** incurred in consequence of any fraudulent or dishonest act or omission committed after the date of discovery of the act or omission; or
- iii) **you** suffer a **kidnap event**.

**We** have nominated Claims Managers to accept notice on **our** behalf. Due to the nature of the coverage offered by this Policy, any unreasonable delay by **you** in notifying the Claims Managers of (i), (ii) or (iii) above could lead to the size of the **claim, loss** or costs incurred increasing or to **our** rights being restricted.

We shall not be liable for that portion of any **claim, loss** or costs incurred that is due to any unreasonable delay in **you** notifying the Claims Managers of any **claim, loss** or **kidnap event** in accordance with this clause.

- c) We will expect **you** to provide **us** with full and accurate information about any matter that **you** notify to **us** under **your** obligations set out above. Once notice has been made **you** must give the Claims Managers all the assistance and information that is reasonably required. **You** must follow their advice and do anything that they reasonably require **you** to do to avoid, minimise, settle or defend any **claim, loss** or **kidnap event**.

If you think a crime has been committed **you** must report it to the appropriate law enforcement authorities. **You** must also permit the Claims Managers and any other parties that are appointed by the Claims Managers to notify the appropriate law enforcement authorities of any **claim, loss** or **kidnap event** where this action is deemed necessary, and you must comply with the advice given by such authorities.

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

Should a **senior executive officer** become aware of:

- a) a situation that could give rise to a **claim**; or  
 b) an allegation or complaint made or intimated against **you**;  
 then **you** have the option of whether to report this circumstance to **us** or not. However, if **you** choose not to report this circumstance **we** shall not be liable for that portion of any **claim** that is greater than it would have been had **you** reported this circumstance.

If **you** choose to report this circumstance, **you** must do so within the **period of the policy**, or the period of any applicable Extended Reporting Period, for it to be considered under this Policy and **we** will require you to provide full details of the circumstance, including but not limited to:

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

Based on these details **we** will decide whether to accept this circumstance as one which could reasonably be expected to give rise to a **claim**. If we accept this circumstance, **we** will regard any subsequent **claim** that may arise as notified under this Policy.

## 3. Fraudulent claims

If **you** notify **us** of any claim knowing that claim to be false or fraudulent in any way, **we** shall have no responsibility to pay that claim or any other claims under this insurance and the Policy will be treated as if it had not been effected.

## 4. Agreement to pay claims

We have the right and duty to take control of and conduct in **your** name the investigation, settlement or defense of any **claim**. We shall also pay on **your** behalf **costs and expenses** incurred with the prior written consent of the Claims Managers (which shall not be unreasonably withheld) provided that **we** shall not:

- a) pay for the **costs and expenses** of any part of a **claim** that is not covered by this Policy except as provided for in the Allocation **CONDITION**; or  
 b) incur any **costs and expenses** in the defense of any **claim** unless there is a reasonable prospect of success, taking into account the commercial considerations of the costs of defense.

We shall always endeavour to settle any **claim** through negotiation, mediation or some other form of alternative dispute resolution and shall pay on **your** behalf the amount so agreed by **us** and the claimant. If **we** cannot settle by these means, **we** shall pay the amount which **you** are found liable to pay either in court or through arbitration proceedings.

If **you** refuse to consent to a settlement **we** recommend and the claimant will accept, **you** may continue the defense and investigation of that **claim**. However, the further **costs and expenses** incurred will be paid by **you** and **us** on a proportional basis, with 80% payable by **us** and 20% payable by **you**.

We shall pay **claims** in the order incurred. However, if a **claim** is payable under **INSURING CLAUSE 1, SECTION A** or **INSURING CLAUSE 3, SECTION A**, and one or more of the other **INSURING CLAUSES**, **we** shall first pay the part of the **claim** which is payable under **INSURING CLAUSE 1, SECTION A** or **INSURING CLAUSE 3, SECTION A**. **You** may elect through **your** board of directors to decline or defer payment under the other **SECTIONS** or **INSURING CLAUSES**, it being understood and agreed that **we** shall have no obligation to pay any **claim** or any **costs and expenses** after the exhaustion of the **aggregate limit of liability** or **limit of liability** regardless of whether payment has been declined or deferred.

Should a conflict of interest exist between any of the **insured persons** or the **company**, then at their request and always subject to the Claims Managers' prior written consent (which shall not be unreasonably withheld), separate lawyers may be appointed to protect their respective interests.

## 5. Automatic extended reporting period

An Extended Reporting Period of 60 days following the Expiry Date as shown in the Declarations shall be automatically granted at no additional premium. This Extended Reporting Period shall cover **claims** first made against **you** during the **period of the policy** and reported to **us** during this 60 day Extended Reporting Period but only in respect of any act, error or omission committed prior to the Expiry Date shown in the Declarations, and subject to all other terms, conditions and exclusions of the policy. No **claim** shall be accepted by **us** in this 60 day Extended Reporting Period if **you** are entitled to indemnity under any other insurance, or would have been entitled to indemnity under such insurance but for the exhaustion thereof.

## 6. Automatic extended reporting period for retired directors or officers

If **you** do not renew this Policy with **us** or with any other insurer, an Extended Reporting Period of 1 year following the Expiry Date as shown in the Declarations shall be automatically granted at no additional premium to any **retired director or officer**.

This Extended Reporting Period shall cover **claims** first made against the **retired director or officer** and reported to **us** during this 1 year Extended Reporting Period but only in respect of any act, error or omission committed prior to the Expiry Date shown in the Declarations, and subject to all other terms, conditions and exclusions of the policy.

## 7. Optional extended reporting period

If **we**, the **company** or the **insured persons** decline to renew or cancel this Policy then the **company** or the **insured persons** shall have the right, upon payment of the Optional Extended Reporting Period Premium shown in the Declarations in full and not proportionally or otherwise in part, to have issued an endorsement providing an Optional Extended Reporting Period for the duration shown in the Declarations which shall be effective from the cancellation or non-renewal date. Such Optional Extended Reporting Period shall cover **claims** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during this Optional Extended Reporting Period but only in respect of any **claim** arising out of any act, error or omission committed prior to the date of cancellation or non-renewal, and subject to all other terms, conditions and exclusions of the policy.

In order for **you** to invoke the Optional Extended Reporting Period option, the payment of the Optional Extended Reporting Period Premium shown in the Declarations for this Optional Extended Reporting Period must be paid to **us** within 45 days of the date of the non-renewal or cancellation.

At the commencement of this Optional Extended Reporting Period the entire premium shall be deemed earned and in the event that

**you** terminate the Optional Extended Reporting Period for any reason prior to its natural expiration, **we** will not be liable to return any premium paid.

The right to either of the Automatic Extended Reporting Periods or the Optional Extended Reporting Period shall not be available to **you** where:

- a) Cancellation or non-renewal by **us** is due to non-payment of premium, or
- b) Cancellation or non-renewal by **us** is due to **your** failure to pay such amounts in excess of the applicable Limit of Liability or within the amount of the applicable Deductible as is required by this Policy in the payment of claims.

At the renewal of this Policy, **our** quotation of different premium, Deductible or Limit of Liability or changes in policy language shall not constitute non-renewal by **us** for the purposes of granting this Optional Extended Reporting Period.

In no event shall the granting of either of the Automatic Extended Reporting Periods or the Optional Extended Reporting Period increase the **limit of liability** or **aggregate limit of liability**.

#### 8. Changes in exposure constituting a material fact

If **you** become aware that any of the information **you** provided to **us** prior to the commencement of this Policy has materially changed then **you** must advise **us** as soon as is practicable. In this event, **we** reserve the right to amend the terms and conditions of the Policy, or charge an additional premium. However, in the following circumstances cover will automatically continue:

- a) in the event of a **corporate takeover** after the Inception Date shown in the Declarations, this Policy shall continue to apply but only in respect of any act, error or omission committed prior to the **corporate takeover**; or
- b) in the event an entity ceases to be a **subsidiary** after the Inception Date shown in the Declarations, cover in respect of the **subsidiary** and its **insured persons** shall continue as if it was still a **subsidiary**, but only in respect of any act, error or omission committed prior to the date that it ceased to be a **subsidiary**; or
- c) in the event that the **company** decides to make a public offering of its securities, this Policy shall continue to apply but only in respect of any act, error or omission committed prior to the public offering to its securities; or
- d) in the event that the **company** decides to wind up a **benefit plan** or the **company** is wound up but only in respect of any act, error or omission, maladministration, breach of statutory provisions or breach of warranty of authority committed prior to the windup; or
- e) in the event of the **creation** or acquisition of a **subsidiary** or **benefit plan** during the **period of the policy**, cover shall automatically be extended in respect of the new **subsidiary** provided that:
  - i) the new **subsidiary** has total gross assets not exceeding 25% of the **company's** total gross assets as stated in the most recent annual financial statements; and
  - ii) the new **benefit plan** assets does not exceed 10% of the **company's** total **benefit plan** assets as stated in the most recent application form; and
  - iii) the new **subsidiary** does not have any of its securities listed on any exchange; and
  - iv) **your** total number of **employees** does not increase by more than 10%.

If **you** create or acquire a **subsidiary** that does not comply with i), ii), iii) and iv) above, **you** must provide **us** with full details of the created or acquired **subsidiary** or **benefit plan** prior to **us** providing cover under this Policy.

#### 9. Our rights of recovery

If any payment is made under this Policy in respect of a **claim, loss** or **kidnap event** and there is available to **us** any of **your** rights of recovery against any other party then **we** maintain all the rights of recovery. **We** shall not exercise these rights against any **employee, insured person** or a fiduciary or trustee of a **benefit plan**, unless

the payment is in respect of any fraudulent or dishonest acts or omissions as proven by final non-appealable adjudication or arbitral tribunal or a written admission by **you** or any **employee, insured person** or a fiduciary or trustee of a **benefit plan**.

**You** must do nothing to impair any rights of recovery. At **our** request **you** will bring proceedings or transfer those rights to **us** and help **us** to enforce them. Any recoveries shall be applied as follows:

- a) first, to **us** up to the amount of **our** payment on **your** behalf;
- b) then to **you** as recovery of **your** Deductible or other amounts paid.

#### 10. Cancellation

This Policy may be cancelled:

- a) by **you** at any time on request; or
- b) by **us** if **we** give **you** 30 days written notice, or
- c) by **us** if **we** give **you** 15 days written notice, should any amount in default not be paid within 15 days of the due date shown in the Debit Note that accompanies this Policy.

If **you** give **us** notice of cancellation in accordance with a) above, the earned Premium shall be computed at pro rata to the number of days that the Policy is in effect, provided that the Premium shall be deemed fully earned if any **claim, loss** or **kidnap event** has been notified under this Policy

If **we** give **you** notice of cancellation in accordance with b) or c) above, the Premium shall be computed at pro rata to the number of days that the Policy is in effect.

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

#### 11. Allocation

In the event that any claim involves both covered matters and non-covered matters or persons not covered under this Policy, a fair and proper allocation of costs, judgments or settlements shall be made between the **company**, the **insured persons** and **us** taking into account the relative legal and financial exposures attributable to covered matters and non-covered matters.

If a fair and proper allocation cannot be agreed, **we** shall advance **costs and expenses** that **we** determine to be fair and proper until a different amount is agreed upon.

Final allocation shall be determined by a lawyer agreed between the **company**, the **insured persons** and **us**. The determination will be based upon written submissions only and will be final and binding. Pending that determination **we** may at **our** sole discretion meet the claim on an interim basis. After the determination the **insured persons** or the **company** (whichever is appropriate) will refund **us** any amount which **we** have paid that exceeds the entitlement under this Policy.

The costs of any reference to a lawyer shall be borne by **us**.

#### 12. Innocent non-disclosure

**We** will not seek to avoid the Policy or reject any claim on the grounds of non-disclosure or misrepresentation except where the non-disclosure or misrepresentation was reckless or fraudulent or **you** failed to conduct a full inquiry prior to providing the information that forms the basis of this insurance. In the event that **we** seek to avoid the Policy or reject any **claim** on this basis the burden of proving otherwise rests solely with **you**.

#### 13. Severability

The Application Form for this insurance shall be construed as a separate Application Form by each of the **insured persons**. With respect to the declarations and statements contained in the Application Form, no statement, declaration or knowledge possessed by any **insured person** shall be imputed to any other **insured person** for the purpose of determining the availability of cover with respect to **claims** against any other **insured persons**.

Only declarations and statements contained in the Application Form and knowledge possessed by any **insured person**, who is the subject of a **claim** under this Policy shall be imputed to the

**company** for the sole reason of determining if cover is available under **INSURING CLAUSE 1** and **INSURING CLAUSE 3** with respect to the **insured person**.

14. **Choice of Law, legal action and service of suit**

In the event of a dispute between **you** and **us** regarding this Policy, the same shall be governed by the laws of the State of the United States of America shown in the Choice of Law section of the Declarations. **We** agree, at **your** request, to submit to the jurisdiction of a Court of competent jurisdiction within the United States of America.

Nothing in this **CONDITION** constitutes or should be understood to constitute a waiver of **our** rights to commence an action in any Court of competent jurisdiction in the United States of America, to move an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States of America or the laws of any State of the United States of America.

It is further agreed that service of process in such suit may be made upon the law firm shown in the Declarations and that in any suit instituted against **us, we** will abide by the final decision of such Court or of any Appellate Court in the event of an appeal. The law firm shown in the Declarations is authorized and directed to accept service of process on **our** behalf in any such suit and, at **your** request, to give a written undertaking to **you** that they will enter a general appearance on **our** behalf in the event such a suit is instituted.

Additionally, in accordance with the statute of any state, territory or district of the United States which makes such a provision, **we** hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as **our** true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by **you** arising out of this Policy. The law firm shown in the Declarations is hereby designated as the firm to whom the above mentioned officer is authorized to mail such process or a copy thereof.

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## MANAGEMENT LIABILITY INSURANCE



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