

# LTC

INSURANCE FOR PROVIDERS OF LONG TERM CARE

## MedSurance<sup>®</sup> LTC Policy Document

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## PREAMBLE

This Policy is a contract of insurance between **you** and **us**. **Your** Policy contains all the details of the cover that **we** provide, subject always to **our** receipt of the Premium. 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 **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 to 7** provide cover on a claims made basis. Under these **INSURING CLAUSES** a **claim** must be first made against the company named as the Insured in the Declarations or any **subsidiary** during the **period of the policy** and notified to **us** during the **period of the policy** to be covered.

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:

## INSURING CLAUSES

### INSURING CLAUSE 1: ERRORS & OMISSIONS

#### SECTION A: PROFESSIONAL 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 the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of **injury** caused by a **healthcare incident** in the course of **your business activities**. **We** will also pay **costs and expenses** on **your** behalf.

#### SECTION B: MEDICAL PRACTITIONER 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 the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of **injury** caused by a **medical practitioner** in the course of **your business activities**. Where the **injury** arises from continuous or repeated exposure to substantially the same general conditions, the **injury** shall be deemed to have occurred when the first exposure to those conditions took place. **We** will also pay **costs and expenses** on **your** behalf.

However, cover shall only apply under this **SECTION** where:

- a) The **medical practitioner** was independently professionally licensed by the State in which they were providing services for **you** or on **your** behalf at the time of the **injury**; and
- b) The **medical practitioner** was an **employee**; or
- c) If the **medical practitioner** was not an **employee**:
  - i. a **claim** is made against the company named as the Insured in the Declarations or any **subsidiary** arising out of the activities of the independent **medical practitioner**, and
  - ii. **you** retain on file a copy of the liability insurance policy held by the **medical practitioner** which is in force at the time of the **claim**.

#### SECTION C: POLLUTION 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 the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of:

- a) pollution or contamination of the atmosphere, or of any water, land, buildings or other property;

- b) any enforcement action in connection with the containment, clean-up, removal or treatment of such pollution or contamination.

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

#### SECTION D: COMPUTER VIRUS AND HACKING ATTACK

**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 the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** as a direct result of:

- a) any **third parties'** financial losses arising directly from a **hacking attack** or **virus** that has emanated from or passed through **your** computer systems, or
- b) any **third parties'** financial losses arising directly from their inability to access **your** computer systems in the way in which **you** have authorised them to as a direct result of **your** computer systems' failure or impairment due to a **hacking attack** or **virus**, or
- c) any **third parties'** financial losses arising directly from the loss or theft of **your** data or data for which **you** are responsible or held to be responsible arising directly from a **hacking attack** or **virus**.

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

### INSURING CLAUSE 2: SEXUAL MISCONDUCT AND PHYSICAL ABUSE LIABILITY

**We** agree to pay on **your** behalf to the extent the law allows all sums which the company named as the Insured in the Declarations or any **subsidiary** becomes legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** and notified to **us** during the **period of the policy** arising out of **sexual misconduct** or **physical abuse** in the course of **your business activities**. Where an act of **sexual misconduct** or **physical abuse** occurs more than once, the **sexual misconduct** or **physical abuse** shall be deemed to have occurred when the first occurrence took place. **We** will also pay **costs and expenses** on **your** behalf.

### INSURING CLAUSE 3: CONTRACTUAL 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 the company named as the

Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** under a contract with a **third party** where the company named as the Insured in the Declarations or any **subsidiary** has assumed the tort liability of that **third party** and arising out of **injury, advertising injury, damage, sexual misconduct or physical abuse** in the course of **your business activities**. Where an act of **sexual misconduct** or **physical abuse** occurs more than once, the **sexual misconduct** or **physical abuse** shall be deemed to have occurred when the first occurrence took place. **We** will also pay **costs and expenses** on **your** behalf.

However, we shall not make any payment under this **INSURING CLAUSE** where:

1. The contract was made after the **injury, advertising injury, damage, sexual misconduct or physical abuse** occurred; or
2. The **injury, advertising injury, damage, sexual misconduct or physical abuse** arose out of the **third party's** sole negligence.

#### INSURING CLAUSE 4: EMPLOYEE BENEFITS 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 the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of any negligent act, error or omission committed by **you** or on **your** behalf in the **administration of your employee benefit program**. **We** will also pay **costs and expenses** on **your** behalf.

#### INSURING CLAUSE 5: GENERAL 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 the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of:

- a) **injury** caused by an event other than a **healthcare incident**, or
- b) **advertising injury**, or
- c) **damage**,

in the course of **your business activities**. Where the **injury, advertising injury or damage** arises from continuous or repeated exposure to substantially the same general conditions, the **injury, advertising injury or damage** shall be deemed to have occurred when the first exposure to those conditions took place. **We** will also pay **costs and expenses** on **your** behalf.

For the avoidance of doubt, **we** will not make any payment under this **INSURING CLAUSE** in respect of a **claim** arising out of **injury** caused by a **healthcare incident**.

#### INSURING CLAUSE 6: TENANTS' 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 the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of **damage** caused by fire, explosion, smoke or leaks from automatic fire protection systems to premises leased to, hired by, on loan to or held in trust by **you** or otherwise in **your** care, custody or control in the course of **your business activities**. **We** will also pay **costs and expenses** on **your** behalf.

#### INSURING CLAUSE 7: NON-OWNED AND HIRED AUTOMOBILE 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 the company named as the

Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of **injury or damage** caused by the use or operation of any automobile in the course of **your business activities** that is:

- a) not owned in whole or in part by, or licensed in the name of, the company named as the Insured in the Declarations, or premises **you** own or rent; or
- b) on ways next to premises **you** own or rent; or leased or hired in the name of the company named as the Insured in the Declarations.

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

As a precedent to coverage under this **INSURING CLAUSE** **you** agree and warrant that all **employees** who operate an automobile in the course of **your business activities** will maintain in full force and effect for the **period of the policy** primary automobile liability insurance in an amount equal to or greater than the minimum primary automobile liability limits required in the state of registration of the automobile. If a **claim** is made and the **employee** is determined to have failed the minimum limits required then the coverage under this **INSURING CLAUSE** will respond as excess coverage as though the minimum limits were in full force and effect, whereby **you** agree to pay all sums within and up to the required minimum limit.

However, **we** shall not make any payment under this **INSURING CLAUSE** as a result of any **claim** arising out of **injury or damage** to a passenger of any automobile used in the course of **your business activities**.

#### INSURING CLAUSE 8: MEDICAL EXPENSES

**We** agree to pay **medical expenses** for **injury** caused by an accident occurring during the **period of the policy**:

- a) on premises **you** own or rent;
- b) on ways next to premises **you** own or rent; or
- c) because of **your business activities**;

provided that:

- a) the injured person, at the time of the accident, is not entitled to benefits under any workers compensation or disability benefits law or similar law; and
- b) the **medical expenses** are incurred and notified to **us** within one year of the date of the accident; and
- c) the injured person submits to examination, at **our** expense, by physicians of **our** choice as often as **we** reasonably require.

**We** will make these payments regardless of fault.

#### INSURING CLAUSE 9: LOSS MITIGATION

**We** agree to pay any reasonable costs necessarily incurred by **you** with **our** prior written consent in respect of measures taken by **you** for the sole purpose of avoiding or mitigating a **claim** or potential **claim** for which **you** would be entitled to indemnity under any of **INSURING CLAUSES 1 to 7** of this Policy had such measures not been taken.

#### INSURING CLAUSE 10: COURT ATTENDANCE COSTS

**We** shall reimburse **you** for **your** reasonable costs (including legal representation costs) incurred with the prior written consent of the Claims Managers to attend court or any arbitration or adjudication hearing or inquiry in connection with **your business activities**.

#### INSURING CLAUSE 11: BRAND PROTECTION

**We** agree to pay costs reasonably incurred with **our** prior written consent on the services of a public relations consultancy for the purpose of averting or mitigating damage to any of **your** brands caused by a **claim** that is covered under any **INSURING CLAUSE** of this policy for which **you** have purchased coverage and that the

Claims Managers have accepted under this Policy and that constitutes a **newsworthy event**.

The public relations consultancy shall be chosen by the Claims Managers who shall take into account the nature of the **claim** 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 such a company.

### INSURING CLAUSE 12: INDEMNITY TO MORTGAGEES, LANDLORDS OR LESSORS OF LEASED EQUIPMENT

**We** agree to pay on behalf of any mortgagee, landlord or lessor of leased equipment of the company named as the Insured in the Declarations or any **subsidiary** all sums which they become legally obliged to pay (including liability for claimants' costs and expenses) in respect of **claims** arising solely out of **your business activities**, provided that had a **claim** been made against **you** then **you** would be entitled to indemnity under any of **INSURING CLAUSES 1 to 6** of this Policy.

The cover provided by this **INSURING CLAUSE** shall apply only where:

- a) **you** are required in a written contract to name the mortgagee, landlord or lessor of leased equipment as an additional Insured and where evidence of this requirement is on file with **us**, and
- b) the mortgagee, landlord or lessor of leased equipment has proved to **our** satisfaction that the **claim** arose solely out of **your business activities**.

### INSURING CLAUSE 13: COMMERCIAL PROPERTY

**We** agree to reimburse **you** up to the **amount insured** shown in the Declarations for:

- a) the cost of repairing **damage** occurring during the **period of the policy** to **your premises**, including landlord's fixtures and fittings, walls, gates and fences, yards, car parks and pavements, piping, ducting, cables, wires and associated control gear and accessories on the **premises** and extending to the public mains but only to the extent of **your** responsibility;
- b) **damage** occurring during the **period of the policy** to **contents of every description** contained at **your premises**;
- c) **damage** occurring during the **period of the policy** to **contents of every description** kept at the home of **your** directors, officers, partners or **employees** in the course of **your business activities**;
- d) **damage** occurring during the **period of the policy** to **contents of every description** temporarily elsewhere, including while in transit;
- e) the necessary and reasonable costs **you** incur following **damage** occurring during the **period of the policy** to glass which belongs to **you** or for which **you** are legally responsible for:
  - i) temporary boarding up;
  - ii) repair of window frames or removal or replacement of fixtures and fittings in the course of replacing the glass;
  - iii) replacement lettering or other ornamental work and alarm foil on glass;
- f) **damage** occurring during the **period of the policy** to **money** held in the course of **your business activities**:
  - i) at **your premises** during business hours, in transit or in a Bank Night Safe;
  - ii) at **your premises** outside business hours in a locked safe;
  - iii) at the home of **your** directors, officers, partners or **employees**;

- g) **damage** occurring during the **period of the policy** to the personal belongings of **your employees** or visitors to **your premises** provided they are not covered under any other insurance;
- h) the reasonable cost of compiling the documents, books of account, drawings, card index systems or other records including film, tape, disc, drum, cell or other magnetic recording or storage media for electronic data processing that **you** need to continue **your business activities** if these items have been lost or distorted as a direct result of **damage** covered under this **INSURING CLAUSE**;
- i) the costs **you** incur to replace locks and keys necessary to maintain the security of **your premises** or safes following theft of keys involving force and violence occurring during the **period of the policy**;
- j) the amount of any rent for **your premises** which **you** are legally obliged to pay for any period during which **your premises** or any part of it is unusable as a result of **damage** covered under this **INSURING CLAUSE**.

**We** also agree to pay:

- a) **costs and expenses** on **your** behalf;
- b) compensation as shown in the Declarations if any of **your** directors, officers, partners or **employees** who are aged between 16 and 70 on the Inception Date shown in the Declarations suffers an **injury** in the course of **your business activities** in a robbery or attempted robbery and suffers:
  - i. death, **permanent total disablement**, **loss of a limb** or **loss of sight** as a direct result of the **injury** within one year of the date of its occurrence;
  - ii. **temporary total disablement**. The compensation for **temporary total disablement** will be the amount shown in the Declarations per week, for a maximum of 104 weeks.

However, **we** will not pay compensation under more than one heading in the Declarations for the same **injury**.

### INSURING CLAUSE 14: BUSINESS INTERRUPTION

**We** agree to reimburse **you** up to the **amount insured** shown in the Declarations for **your loss of income**, **extra expense** and **accounts receivable** resulting solely and directly from an interruption to **your business activities** caused by:

- a) **insured damage** to **your premises** or **contents of every description** or to any other property used by **you** at **your premises**;
- b) **insured damage** to property in the vicinity of **your premises** which prevents or hinders **your** access to **your premises**;
- c) **insured damage** at the premises of one of **your** suppliers, other than a supplier of water, gas, electricity or telephone services;
- d) failure in the supply of water, gas, electricity, or telephone services to **your premises** for more than 24 consecutive hours caused by **insured damage** to any property;
- e) **your** inability to use **your premises** due to restrictions imposed by a public authority following:
  - i) a murder or suicide;
  - ii) an occurrence of a notifiable human disease;
  - iii) **injury** traceable to food or drink consumed at **your premises**;
  - iv) vermin or pests at **your premises**.

## HOW MUCH WE WILL PAY

The maximum amount payable by us for all **claims, losses, damage, costs and expenses** and **medical expenses** shall not exceed the amounts shown in the Declarations in respect of each **INSURING CLAUSE** unless limited below.

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 **limit of liability** shall be payable in respect of the aggregate of all such **claims** or **losses**.

Where cover is provided under multiple **SECTIONS** of **INSURING CLAUSE 1** only one Limit of Liability shall be payable in respect of that **claim**.

**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 such payment being made **we** shall relinquish the conduct and control of and be under no further liability in connection with such **claim** except for the payment of **costs and expenses** incurred prior to the date of such payment (unless the **aggregate limit of liability** or **limit of liability** is stated to be inclusive of **costs and expenses**).

In respect of **INSURING CLAUSE 13** only:

- a) At **our** option, **we** will pay for any **damaged** property on the following basis:
  - i) for **your premises**, the cost of rebuilding or replacing the **damaged** property

- ii) for **contents of every description**, the cost of repair or replacement as new.
- b) If, at the time the **damage** occurs, the **amount insured** is less than 85% of the total value of the **premises** or **contents of every description** insured, the amount **we** will pay will be reduced in the same proportion as the **amount insured** bears to the total value of the **premises** or **contents of every description** insured.
- c) The **amount insured** for **your premises** and **contents of every description** will be adjusted monthly in line with any increase in nationally published indices. **We** will not reduce the **amount insured** without **your** consent.

In respect of **INSURING CLAUSE 14** the amount **we** will pay will be:

- a) the difference between **your** actual **income** during the **indemnity period** and the **income** it is estimated **you** would have earned during that period or, if this is **your** first trading year, the difference between **your income** during the **indemnity period** and during the period immediately prior to the **loss**, less any savings resulting from the reduced costs and expenses **you** pay out of **your income** during the **indemnity period**; and
- b) any additional **costs and expenses**;
- c) any **accounts receivable**, provided **you** keep a record of all amounts owed to **you** and keep a copy of the record away from **your premises**.

## YOUR DEDUCTIBLE

**We** shall only be liable for that part of each and every **claim, loss** or **medical expenses** (which for the purpose of this clause shall be deemed to include all **costs and expenses** incurred) which exceeds the amount of the Deductible stated in the Declarations. Where more than one **claim, loss** or **medical expenses** arises from the same original cause or single source or event all such **claims, losses** or **medical expenses** shall be deemed to be one **claim, loss** or

**medical expenses** and only one Deductible will apply.

If any expenditure is incurred by **us** which by virtue of this clause is **your** responsibility then **you** shall reimburse such amount to **us** on **our** request or where possible **we** will deduct such amount from any payment **we** make to **you**.

## DEFINITIONS

### 1. "Accounts receivable"

means:

- a) all sums due to **you** from customers, provided **you** are unable to effect collection thereof as the direct result of **insured damage** to records of accounts receivable;
- b) interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such **insured damage**;
- c) collection expense in excess of normal collection cost and made necessary because of **insured damage**.

### 2. "Administration"

means:

- a) counseling **employees**, including their dependants and beneficiaries, with respect to **your employee benefit program**;
- b) handling records in connection with **your employee benefit program**;

- c) effecting enrolment or termination of any **employee's** participation in a plan included in **your employee benefit program**;
- d) interpreting **your employee benefit program**.

### 3. "Advertising injury"

means:

- a) oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- b) oral or written publication of material that violates a person's right of privacy;
- c) misappropriation of advertising ideas or style of doing business;
- d) infringement of copyright, title or slogan.

### 4. "Aggregate limit of liability"

means the maximum amount payable as stated in the Declarations by **us** in respect of all **claims**, or in respect of all accidents giving

rise to **medical expenses**.

5. **“Amount insured”**

means the maximum amount payable by **us** as shown in the Declarations in respect of each of **INSURING CLAUSES 13** and **14**. The amount applies to each incident of **loss** or **damage** occurring during the **period of the policy** provided always that after the first incident of **loss** or **damage** **you** comply with **our** recommendations to prevent any further incidents of **loss** or **damage**.

6. **“Business activities”**

means the business activities as stated in the Declarations and shall include, for the purpose of those business activities:

- i) the ownership, repair and maintenance of **your** property;
- ii) provision and management of canteen, social, sports and welfare organisations for the benefit of **your** directors, officers, partners or **employees** and medical, fire fighting, and security services.

7. **“Claim”**

means a demand received by **you** 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).

8. **“Contents of every description”**

means the contents of **your premises** used in connection with **your business activities** which are owned by **you** or for which **you** are legally responsible, including:

- a) computer and ancillary equipment (including monitors, keyboards, printers and software), television and video equipment, photographic, photocopying, surveying and telecommunications equipment;
- b) documents, briefs, manuscripts, plans, business books, computers systems records and programs;
- c) goods held in trust, stock and samples;
- d) wines, spirits and tobacco kept for entertainment purposes;
- e) works of art or precious metals;
- f) fixed glass in windows, doors and fanlights, glass showcases, glass shelves, mirrors and sanitary fixtures and fittings;
- g) heating oil for **your premises** contained in fixed tanks in the open at the address shown in the Declarations;
- h) tenant's improvements, decorations, fixtures and fittings including, if attached to the building, external signs, aerials and satellite dishes;
- i) pipes, ducting, cables, wires and associated control equipment at the address shown in the Declarations and extending to the public mains.

**“Contents of every description”** does not include **money** or the personal belongings of **your employees** or visitors to **your premises**.

9. **“Costs and expenses”**

means:

- a) in respect of **INSURING CLAUSES 1** to **12**,
  - i) **your** legal costs and expenses in the defence or settlement of any **claim** made against **you**, and
  - ii) the cost of bonds to release attachments but without any obligation to furnish these bonds, and
  - iii) interest on that part of any judgment **we** pay that accrues after entry of the judgment and before **we** have paid, offered to pay, or deposited in court the part of the judgment that is within the **limit of liability**.
- b) in respect of **INSURING CLAUSES 13** and **14**, the costs and expenses incurred by **you** or on **your** behalf in establishing that **you** have sustained a **loss** or **damage** and the quantum of such

**loss** or **damage** or the costs and expenses incurred by **you** or on **your** behalf in mitigating any such **loss** or **damage**.

- c) in respect of **INSURING CLAUSE 13** only, the necessary and reasonable costs and expenses **you** incur to remove debris from the premises or the area immediately adjacent, following **damage** covered under this **INSURING CLAUSE**.

Subject to all **costs and expenses** being incurred with the Claims Managers' written consent (such consent not to be unreasonably withheld).

If **costs and expenses** are shown in the Declarations to be in addition to the **aggregate limit of liability** or **limit of liability** in respect of any of **INSURING CLAUSES 1** to **12**, and if a payment in excess of the amount of indemnity available hereunder has to be made to dispose of any **claim** or number of **claims**, **our** liability for such **costs and expenses** shall be such proportion thereof as the amount of indemnity available hereunder bears to the amount required to dispose of such **claim** or **claims**.

**Costs and expenses** are always included in the **amount insured** in respect of **INSURING CLAUSES 13** and **14**.

10. **“Damage”**

means damage to, or destruction of, or loss of possession of, or loss of use of, or radioactive contamination of tangible property. For the avoidance of doubt, **damage** includes damage to, or destruction of, or loss of possession of, or loss of use of, or radioactive contamination of the property of a person to whom **you** are providing treatment or care services.

11. **“Employee”**

means any person employed by the company named as the Insured in the Declarations, or any **subsidiary**. **Employee** does not include any director, officer or partner of the company named as the Insured in the Declarations, or any **subsidiary**.

12. **“Employee benefit program”** means group automobile insurance, group homeowners insurance, group life insurance, group dental insurance, group health insurance, profit sharing plans, pension plans, early retirement offerings, employee investment subscription plans, Workers' Compensation, Unemployment Insurance, Social Security, Disability Benefit Insurance, travel, savings or vacation plans or any similar benefit programs.

13. **“Extra expense”**

means the necessary and reasonable extra costs and expenses **you** incur in order to continue **your business activities** during the **indemnity period**.

14. **“Hacking attack”**

means any malicious or unauthorised 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, software and ancillary equipment.

15. **“Healthcare incident”**

means the providing of or failure to provide **health care services**. **Health care services** means all services including **administration services** rendered or required to be rendered by **you** in the treatment or care of any person. It includes the furnishing of medical, nursing and other health care services, such as physical and occupational therapy. It also includes, but is not limited to, the furnishing or dispensing of drugs, blood, blood products, or medical, surgical, dental or psychiatric supplies, equipment, or appliances in connection with such care; the furnishing of food or beverages in connection with such care; the providing of counseling or other social services in connection with such care; and the handling of, or

the performance of post mortem examinations on, human bodies.

**Administration services** means planning, organizing, directing and controlling your business activities, including, but not limited to:

- a) retention and termination of **your employees**;
- b) any disciplinary action instituted against any of **your employees**;
- c) any training program or other educational activity provided to any of **your employees**;
- d) maintenance of the buildings, fixtures, or other non-equipment items located at **your premises**;
- e) maintenance of all equipment located at **your premises**, other than automobiles; and
- f) maintenance of all business records and other intellectual property in the possession of and pertaining to **your business activities**.

16. **“Income”**  
means **your** total income from **your business activities**.
17. **“Indemnity period”**  
means the period beginning at the date of the **damage**, or the date the restriction is imposed, and lasting for the period during which **your income** or expenditure is affected as a result of such **damage** or restriction, but for no longer than the number of months shown in the Declarations.
18. **“Injury”**  
means:  
  - a) death, bodily injury, mental injury, illness, disease, shock, mental anguish or humiliation; and
  - b) false arrest, detention or imprisonment; and
  - c) malicious prosecution; and
  - d) wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies.
19. **“Insured damage”**  
means **damage** to property provided that:  
  - a) the **damage** is covered under **INSURING CLAUSE 13**; or
  - b) an insurer has paid the claim, or has agreed to pay the claim, under any other insurance covering such **damage**.
20. **“Limit of liability”**  
means the maximum amount payable by **us** as stated in the Declarations in respect of each **claim** or **loss**, or in respect of each accident giving rise to **medical expenses**.
21. **“Loss of a limb”**  
means loss by physical separation of a hand at or above the wrist, of a foot at or above the ankle, and includes total and irrecoverable loss of use of a hand, arm or leg.
22. **“Loss of sight”**  
means total and irrecoverable loss of sight.
23. **“Loss”**  
means direct financial loss sustained by **you**.
24. **“Medical practitioner”**  
means any clinical professional including, but not limited to, any physician, surgeon, intern, extern, resident, certified registered nurse anesthetist, osteopathic physician and surgeon, podiatrist or dentist.
25. **“Money”**  
means cash, bank and currency notes, cheques, travellers' cheques, postal orders, money orders, crossed bankers' drafts, current postage stamps, savings stamps and certificates, trading stamps, gift tokens, customer redemption vouchers, company sales vouchers, credit card counterfoils, travellers tickets and contents of franking machines, all belonging to **you**.

26. **“Medical expenses”**  
means reasonable expenses for:  
  - a) first aid administered at the time of an accident;
  - b) necessary medical, surgical, x ray and dental services, including prosthetic devices;
  - c) necessary ambulance, hospital, professional nursing and funeral services.
27. **“Newsworthy event”**  
means an event that has been publicised through any media channel, including television, print media, radio or electronic networks, including the internet, electronic mail, and the World Wide Web.
28. **“Physical abuse”**  
means:  
  - a) death, bodily injury, mental injury, illness, disease, mental anguish, or shock caused deliberately by **you**;
  - b) the negligent employment, investigation, supervision, hiring, training or retention of a person for whom **you** are or were at any time responsible and who commits **physical abuse** as defined by a) above;
  - c) **your** negligent reporting, or **your** failure to report, to the proper authorities the conduct of a person for whom **you** are or were at any time responsible and who commits **physical abuse** as defined by a) above.
29. **“Premises”**  
means the property (including any outbuildings) **you** occupy at the address shown in the Declarations as more fully described in the application form.
30. **“Period of the policy”**  
means the period between the Inception Date shown in the Declarations and the Expiry Date shown in the Declarations or until the Policy is cancelled in accordance with **GENERAL CONDITION 10** of this Policy.
31. **“Permanent total disablement”**  
means disablement which entirely prevents the **injured** person from attending to his business or occupation for twenty-four calendar months and at the expiry of that period being beyond hope of improvement.
32. **“Sexual misconduct”**  
means:  
  - a) any welcome or unwelcome conduct, physical acts, gestures or spoken or written words of a sexual nature, including, but not limited to, sexual intimacy (even if consensual), sexual molestation, sexual assault, sexual battery, sexual abuse, sexual harassment, sexual exploitation or any sexual act;
  - b) the negligent employment, investigation, supervision, hiring, training or retention of a person for whom **you** are or were at any time responsible and who commits **sexual misconduct** as defined by a) above;
  - c) **your** negligent reporting, or **your** failure to report, to the proper authorities the conduct of a person for whom **you** are or were at any time responsible and who commits **sexual misconduct** as defined by a) above.
33. **“Subsidiary”**  
means any company which the company named as the Insured in the Declarations controls 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 therein.

34. **“Temporary total disablement”**  
means disablement which entirely prevents the **injured** person from attending to his business or occupation.
35. **“Third party”**  
means any person or company who is not a director, officer, partner or **employee** of the company named as the Insured in the Declarations, or any **subsidiary**.
36. **“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, software and ancillary equipment.

37. **“We/our/us”**  
means the Underwriters named in the Declarations.
38. **“You/your”**  
means:  
a) the company named as the Insured in the Declarations, or any **subsidiary**, and  
b) any past, present or future **employee**, trainee, director, officer or partner of the company named as the Insured in the Declarations or any **subsidiary**.

## EXCLUSIONS

**We** will not

- make any payment on **your** behalf for any **claim**, or
- incur any **costs and expenses**, or
- reimburse **you** for any **loss, damage**, legal expenses, fees or costs sustained by **you**, or
- pay any **medical expenses**:

### EXCLUSIONS RELATING TO OTHER INSURANCES:

- Marine and aviation**  
arising directly or indirectly from the ownership, possession or use by **you** or on **your** behalf of any aircraft, hovercraft, offshore installation, rig, platform or watercraft.
- Auto**  
arising directly or indirectly from the ownership, possession or use by **you** or on **your** behalf of any motor vehicle or trailer other than **injury** or **damage**:  
a) caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;  
b) occurring beyond the limits of any carriageway or thoroughfare and caused by the loading or unloading of any motor vehicle or trailer;  
c) arising out of the use of any motor vehicle or trailer temporarily in **your** custody or control for the purpose of parking;

provided always that **we** will not make any payment on **your** behalf or incur any **costs and expenses** in respect of any legal liability for which compulsory insurance or security is required by legislation or for which a government or other authority has accepted responsibility.

However, this **EXCLUSION** shall not apply in respect of **INSURING CLAUSE 7**.

- Employment practices**  
arising out of or resulting from any employer-**employee** relations, policies, practices, acts, omissions, any actual or alleged refusal to employ any person, or misconduct with respect to **employees**.
- Employers' liability**  
arising directly or indirectly out of **injury** to **your** directors, officers, partners or **employees**.
- Directors' and Officers'**  
arising out of any personal liability incurred by **your** directors or officers when they are acting in that capacity or managing **you**, or arising from any statement, representation or information regarding **your** business contained within any accounts, reports or financial statements.

- Double insurance**  
for which **you** are entitled to indemnity under any other insurance except for  
a) any additional sum which is payable over and above such other 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** or **amounts insured** of the Policies.

### EXCLUSIONS RELATING TO THE CONDUCT OF YOUR BUSINESS:

- Advertising injury exclusions**  
arising from **advertising injury** arising directly or indirectly out of:  
a) oral or written publication of material, if done by **you** or directed by **you**, with **your** knowledge of its falsity;  
b) oral or written publication of material whose first publication took place prior to the **period of the policy**;  
c) the willful violation of a penal statute or ordinance by **you** or with **your** consent;  
d) breach of contract, other than misappropriation of advertising ideas under an implied contract;  
e) the failure of goods, products, or services to conform with advertised quality or performance;  
f) the wrong description of the price of goods, products or services;  
g) the activities of a **subsidiary** whose principal business activity is advertising, broadcasting, publishing or telecasting.
- Automobile use without owner's consent**  
arising out of or relating directly or indirectly to the use by **you** of any automobile or trailer without the consent of the owner.
- Benefit laws**  
arising directly or indirectly out of **your** failure to comply with the mandatory provisions of any law concerning workers compensation, unemployment insurance, social security, disability benefits or pension benefits.
- Circumstances known at inception**  
arising out of any circumstances or occurrences which could give rise to a **claim, loss** or **damage** under this Policy or any accidents giving rise to **medical expenses** of which **you** are aware, or ought reasonably to be aware, prior to the Inception Date of this Policy, whether notified under any other insurance or not.
- Commercial passenger vehicles**  
arising out of or relating directly or indirectly to the use by **you** of a commercial passenger vehicle including, but not limited to, a coach, bus or minibus, or any other vehicle containing 9 (nine) or



more people.

12. **Computer failure**

in respect of **INSURING CLAUSES 13** and **14** only, arising directly or indirectly from loss or distortion of **your** data or **damage to your** electrical or mechanical plant resulting from a failure of **your** computer or ancillary equipment (including monitors, keyboards, printers or software), television or video equipment, photographic, photocopying, surveying or telecommunications equipment. However, **we** will reimburse **you** up to the **amount insured** for damage occurring during the **period of the policy to your** computer and ancillary equipment, but only if **your** computer and ancillary equipment is subject to a manufacturer's guarantee or a maintenance contract providing free parts and labour in the event of a breakdown.

13. **Criminal acts**

arising out of any wilful, criminal or fraudulent act or omission committed by **you**, other than in respect of **INSURING CLAUSE 2**.

14. **Driving while intoxicated or unlicensed**

in respect of **INSURING CLAUSE 7** only, arising out of or relating directly or indirectly to the use of a vehicle by **you** where:

- a) the driver of that vehicle is driving under the influence of alcohol or other drugs (DUI), driving while intoxicated (DWI), operating while impaired (OWI), or operating the vehicle under the influence of alcohol or other drugs (OVI); or
- b) the driver of that vehicle does not hold the appropriate license to use the vehicle.

15. **Employee benefit program advice**

arising directly or indirectly from:

- a) advice given to any person to participate or not to participate in any plan included in **your employee benefit program**;
- b) the failure of any investment to perform as represented by **you**.

16. **ERISA**

arising out of or resulting from **your** acts 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 amendment to the Act or any violation of any regulation, ruling or order issued pursuant to the Act.

17. **Faulty workmanship**

arising from **damage to your premises** caused directly or indirectly by misuse, inadequate or inappropriate maintenance, faulty workmanship, defective design, the use of faulty materials or whilst being cleaned, worked on or maintained.

18. **Hazardous devices**

arising directly or indirectly from any **product** which with **your** knowledge is intended for incorporation into the structure, machinery or controls of any aircraft, other aerial device, military vehicle, hovercraft, waterborne craft or any medical equipment.

19. **Legal Action**

where action for damages is brought in a court of law outside the territories specified in the Declarations, or where action is brought in a court of law within those territories to enforce a foreign judgement whether by way of reciprocal agreement or otherwise.

20. **Limiting recovery rights**

arising directly or indirectly out of **your** failure to take reasonable steps to ensure that **our** rights of recovery against any **third party** are not unduly restricted or financially limited by a specific term in any contract or agreement.

21. **Liquor liability**

arising directly or indirectly from the provision of alcoholic beverages by **you**.

22. **Medical services whilst unlicensed or unregistered**

arising directly or indirectly out of services (including administration services) rendered or required to be rendered by **you** in the treatment or care of any person whilst the professional license or registration required to enable **you** to conduct **your business activities** was suspended, revoked, surrendered or otherwise terminated.

23. **Patents**

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

24. **Product liability**

arising directly or indirectly from a defective product other than, in respect of **INSURING CLAUSE 1**, arising directly from a drug or other pharmaceutical product dispersed by a pharmacist **you** provide.

25. **Professional boards**

arising directly or indirectly out of **your** acts, errors or omissions as a member of a formal accreditation or similar professional board or committee.

26. **Retroactive Date**

arising out of any actual or alleged act, error or omission committed before the date specified as the Retroactive Date in the Declarations.

27. **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 Organisation Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal, state or local law, whether such law is statutory, regulatory or common law.

28. **SEC**

for or arising out of the actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, or any similar state or federal law, or any amendment to the above laws or any violation of any order, ruling or regulation issued pursuant to the above laws.

29. **Unjust enrichment**

other than in respect of **INSURING CLAUSES 13** and **14**, for that part of any **claim** that results in **you** being in a better financial position as a direct result of the act or omission which gave rise to the **claim** than **you** would have been if **you** had not committed the act or omission.

**GENERAL INSURANCE EXCLUSIONS:**

30. **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 unless insurable under the applicable law.

31. **Asbestos**

arising from or contributed to by the manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos, or asbestos fibres or dust, unless arising directly from an act or omission committed by **you**:

- a) on or after 1st January 1990, or
- b) on or after the date specified as the Retroactive Date in the Declarations,

whichever is the later, in the course of **your business activities**.

### 32. Associated companies

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

### 33. Earthquake

in respect of **INSURING CLAUSES 13** and **14** only, caused by earthquake, except for:

- a) ensuing **loss** or **damage** which results directly from fire, explosion, smoke or leakage from fire protective equipment; or
- b) ensuing **damage** to **contents of every description** while in transit.

### 34. Electromagnetic fields

directly or indirectly arising out of, resulting from or contributed to by electromagnetic fields, electromagnetic radiation, electromagnetism, radio waves or noise.

### 35. Flood

in respect of **INSURING CLAUSES 13** and **14** only, caused by flood, including waves, tides, tidal waves, or the rising of, the breaking out, or the overflow, of any body of water whether natural or manmade, but this **EXCLUSION** does not apply to:

- a) ensuing **loss** or **damage** which results directly from fire, explosion, smoke or leakage from fire protective equipment; or
- b) ensuing **damage** to **contents of every description** while in transit.

### 36. Fines

for fines, penalties, civil or criminal sanctions and for punitive, multiple or exemplary damages unless insurable under the applicable law.

### 37. Insolvency

arising out of or relating directly or indirectly from **your** insolvency or bankruptcy, or the insolvency or bankruptcy of any **third party**. Furthermore, no coverage is provided under **INSURING CLAUSE 14** if **you** become insolvent or bankrupt.

### 38. Land or water

arising directly or indirectly from **damage** to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by **you** or otherwise in **your** care, custody or control.

### 39. Miscellaneous property exclusions

in respect of **INSURING CLAUSES 13** and **14** only, arising directly or indirectly from:

- a) wear and tear, inherent defect, rot, vermin or infestation, or any gradually operating cause;
- b) dryness or humidity, being exposed to light or extreme temperatures, unless the **damage** is caused by storm or fire;

- c) coastal or river erosion;
- d) theft from an unattended vehicle unless the item is out of sight;
- e) frost, other than **damage** due to water leaking from burst pipes forming part of the permanent internal plumbing provided **your premises** are occupied and in use;
- f) arising directly or indirectly from unexplained loss or disappearance or inventory shortage of your property;
- g) a **hacking attack** or **virus**.

### 40. Named windstorms

in respect of **INSURING CLAUSES 13** and **14** only, caused:

- a) directly or indirectly by a windstorm which is given a name by the National Hurricane Center, Miami, FL, regardless of any other cause or event that contributes concurrently or in any sequence to the **loss** or **damage**, or
- b) by rain, snow, sand or dust, whether driven by wind or not, if that **loss** or **damage** would not have occurred but for a windstorm which is given a name by the National Hurricane Center, Miami, FL. But if the windstorm results in a cause of **loss** or **damage** other than rain, snow, sand or dust, and that resulting cause of **loss** or **damage** is not otherwise excluded under this Policy, **we** will pay for that **loss** or **damage**. For example, if the windstorm damages a heating system and fire results, the **loss** or **damage** attributable to the fire is covered subject to any other applicable policy provisions.

### 41. Nuclear

arising directly or indirectly from or contributed to by:

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

### 42. Pollution

arising directly or indirectly out of:

- a) pollution or contamination of the atmosphere, or of any water, land, buildings or other property;
- b) any enforcement action in connection with the containment, clean-up, removal or treatment of such pollution or contamination;

but this **EXCLUSION** shall not apply in respect of:

- i) **INSURING CLAUSE 1, SECTION C**; or
- ii) premises leased to, hired by, on loan to or held in trust by **you** or otherwise in **your** care, custody or control in respect of:
  - a) **injury** caused by smoke, fumes, vapor or soot from equipment used to heat the building, or
  - b) **injury** or **damage** arising out of heat, smoke or fumes from a **hostile fire**. For the purpose of this **EXCLUSION** a **hostile fire** means one which becomes uncontrollable or breaks out from where it was intended to be.
- iii) **INSURING CLAUSES 13** and **14** to the backing up of sewers, sumps, septic tanks or drains.

### 43. Toxic mould / fungus

arising directly or indirectly from any loss, **injury**, **damage**, costs or expenses, including, but not limited to, losses, **damage**, costs or expenses related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by:

- a) any **fungus**, **mould**, mildew or yeast, or
- b) any **spore** or toxins created or produced by or emanating from such **fungus**, **mould**, mildew or yeast, or
- c) any substance, vapour, gas, or other emission or organic or inorganic body or substance produced by or arising out of any

- fungus, mould**, mildew or yeast, or
- d) any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbours, nurtures, or acts as a medium for any **fungus, mould**, mildew, yeast or **spore** or toxins emanating therefrom,

regardless of any other cause, event, material, product or building component that contributed concurrently or in any sequence to that loss, **injury, damage**, cost or expense.

However, this **EXCLUSION** shall not apply in respect of **INSURING CLAUSES 1 or 3** where the loss, **injury, damage**, costs or expenses arose directly from an act or omission committed by **you** in the course of **your business activities**.

For the purposes of this **EXCLUSION** the following definitions are added to the Policy:

**Fungus** includes, but is not limited to, any plants or organisms belonging to the major group Fungi, lacking chlorophyll, and including **moulds**, rusts, mildews, smuts and mushrooms.

**Mould** includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and **fungi** that produced moulds.

**Spore** means any dormant or reproductive body produced by or arising from or emanating out of any **fungus, mould**, mildew, plants, organisms or microorganisms.

#### 44. Trade Debt

arising out of or in connection with any trading losses or trading liabilities incurred by any business managed or carried on by **you**, or any loss of **your** profit arising from the loss of any client, account or business.

#### 45. War and terrorism

directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the **claim, loss, damage, costs and expenses** or **medical expenses**;

a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or

b) any **act of terrorism**.

For the purpose of this **EXCLUSION** an **act of terrorism** means an act, including but not limited to the use of force or violence or the threat thereof, of any person or groups of persons, whether acting alone or on behalf of or in connection with any organisations or governments, committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear.

This **EXCLUSION** also excludes **claims, losses, damage, costs and expenses** or **medical expenses** of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to a) or b) above.

This **EXCLUSION** does not apply to any **claim** or **loss** arising directly from a **hacking attack** or **virus**.

## CONDITIONS

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

Should any director, partner, or senior executive officer of the company named as the Insured in the Declarations and any **subsidiary** become aware of any **claim, loss** or **damage** or of any situation that could give rise to a **claim** or **loss** or should an allegation, complaint or **claim** be made or intimated against **you**, 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 **damage** which may be covered under this Policy. Neither must **you** incur any **costs** or **expenses** in connection with such a **claim, loss** or **damage** without **our** written consent.

However, **you** should arrange for any urgent repairs following **damage** covered under **INSURING CLAUSE 13** to be done immediately. Before any other repair work begins **we** have the right to inspect **your damaged** property. **We** will notify **you** if **we** intend to do this.

- b) The Claims Managers, as specified in the Declarations, must be notified as soon as is reasonably possible and in any event within 75 days if during the **period of the policy**
- i) **you** suffer any **loss** or **damage** that could be covered by this Policy or any allegation, complaint or **claim** is made or intimated against **you**, whether verbal or made in writing.
- ii) any director, partner, or senior executive officer of the company named as the Insured in the Declarations and any **subsidiary** become aware of the intention of any person to make a complaint allegation or **claim** against **you**, whether verbal or in writing. Once notice has been made to **us**, **we** will regard any subsequent **claim** that may arise as notified under this Policy.
- iii) **you** become aware of an action of **yours** that could give

rise to a **loss**, allegation, complaint or **claim** being made or intimated against **you**. Once notice has been made **we** will regard any subsequent **claim** that may arise as notified under this Policy.

- iv) **you** discover reasonable cause for suspicion of fraud or dishonesty whether this could give rise to a claim under this Policy or not and **we** shall not be liable under this Policy for any **claim** or **loss** sustained in consequence of any fraudulent or dishonest act or omission committed after the date of such discovery.

**We** have nominated the Claims Managers to accept notice on **our** behalf.

Due to the nature of the coverage offered by this Policy, any unreasonable delay by any director, partner, or senior executive officer of the company named as the Insured in the Declarations and any **subsidiary** in notifying the Claims Managers of (i), (ii), (iii) or (iv) above could lead to the size of the **claim, loss** or **damage** increasing or to **our** rights being restricted. **We** shall not be liable for that portion of any claim that is due to any unreasonable delay in any director, partner, or senior executive officer of the company named as the Insured in the Declarations and any **subsidiary** notifying the Claims Managers of any **claim, loss** or **damage** in accordance with this **CONDITION**.

- 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 damage**.

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 damage** where this action is deemed necessary, and **you** must comply with the advice given by such authorities.

If any of **your** computer or ancillary equipment is lost or stolen while it is temporarily removed from **your premises**, **we** will not make any payment unless **you** report the loss to the police within 48 hours after **you** become aware of it.

## 2. Continuous cover

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

- a) the indemnity will be subject to the applicable **aggregate limit of liability** or **limit of liability** of the earlier Policy under which the matter should have been reported or the **aggregate limit of liability** or **limit of liability** of the current Policy, whichever is the lower;
- b) **we** may reduce the indemnity entitlement by the monetary equivalent of any prejudice which has been suffered as a result of the delayed notification;
- c) the indemnity will be subject in addition, to all of the terms, **CONDITIONS, DEFINITIONS** and **EXCLUSIONS**, other than the **aggregate limit of liability** or **limit of liability**, contained in this current 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 defence of any **claim**. **We** shall also pay on **your** behalf **costs and expenses** incurred with **our** prior written consent (subject to the Limits of Liability and applicable Deductible shown in the Declarations) 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.
- b) incur any **costs and expenses** in the defence of any **claim** unless there is a reasonable prospect of success, taking into account the commercial considerations of the costs of defence.

**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 such means, **we** shall pay the amount which **you** are found liable to pay either in court or through arbitration proceedings, subject always to the Limit of Liability shown in the Declarations.

If **you** refuse to consent to a settlement that **we** recommend and that the claimant will accept, **you** must then defend, investigate or settle the **claim** at **your** own expense. As a consequence of **your** refusal, **our** liability for any **claim** shall not be more than the amount that **we** could have settled the **claim** for had **you** consented, plus any **costs and expenses** incurred prior to the

date of such refusal.

## 5. 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 enquiry 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**.

## 6. Your duty to advise us of changes

If **you** become aware that any of the information that **you** have given **us** in the Application Form or elsewhere in connection with **your** application for this insurance has materially changed then **you** must advise **us** as soon as is practicable. In this event, **we** reserve the right to amend the terms, conditions or premium of the Policy.

## 7. Risk management conditions

If **we** attach any additional conditions to **your** Policy regarding any risk survey or risk management timetable or any other similar conditions then it is **your** responsibility to ensure that these conditions are complied with by the deadlines shown in the conditions.

## 8. Our rights of recovery

If any payment is made under this Policy in respect of a **claim, loss or damage** and there is available to **us** any of **your** rights of recovery against any other party then **we** maintain all such rights of recovery. **We** shall not exercise these rights against any past, present or future **employee**, director, officer or partner of the company named as the Insured in the Declarations or any **subsidiary**, unless such payment is in respect of any wilful, malicious or dishonest acts or omissions.

**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 including **costs and expenses**;
- b) then to **you** as recovery of **your** Deductible or other amounts paid as compensation or costs and expenses.

## 9. Waiver of subrogation

Notwithstanding **CONDITION 8** above **we** agree to waive **our** rights of subrogation against a responsible **third party** client of **your** but only if **you** and **your** client have entered into a contract that contains a provision requiring **us** to do this.

## 10. Cancellation

This Policy may be cancelled:

- a) by **you** at any time on request; or
- b) by **us** if **we** give **you** 30 (thirty) days written notice, or
- c) by **us** if **we** give **you** 15 (fifteen) days written notice, should any amount in default not be paid within 15 (fifteen) 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 subject to a minimum amount of thirty percent (30%) of the Premium.

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. Prior subsidiaries

Should an entity cease to be a **subsidiary** after the Inception Date of this Policy, cover in respect of such entity shall continue as if it was still a **subsidiary**, until the termination of this Policy, but only in respect of any **claim** or **loss** that arises out of any act, error or omission committed by that entity prior to the date that it ceased to be a **subsidiary**.

### 12. Mergers and acquisitions

During the **period of the policy**, if the company named as the Insured in the Declarations or any **subsidiary**

- a) purchases assets or acquires liabilities from another entity in an amount greater than ten percent (10%) of the assets of the company named as the Insured in the Declarations as listed in its most recent financial statement; or
- b) acquires another entity whose annual revenues are more than ten percent (10%) of the annual revenues of the company named as the Insured in the Declarations for their last completed financial year;

then **you** shall have no coverage under this Policy for any **claim**, **loss** or **damage** that arises directly or indirectly out of the purchased or acquired entity unless the company named as the Insured in the Declarations gives **us** written notice prior to the purchase or acquisition, obtains **our** written consent to extend coverage to such additional entities, assets or exposures, and agrees to pay any additional premium required by **us**.

If during the **period of the policy** the company named as the Insured in the Declarations consolidates or merges with or is acquired by another entity, then all coverage under this Policy shall terminate at the date of the consolidation, merger or acquisition unless **we** have issued an endorsement extending coverage under this Policy, and the company named as the Insured in the Declarations has agreed to any additional premium and terms of coverage required by **us**.

### 13. Extended reporting period

An Extended Reporting Period of 60 days following the Expiry Date as shown in the Declarations shall be automatically granted hereunder at no additional premium. Such Extended Reporting Period shall cover **claims** first made 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 date of cancellation or non-renewal, 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.

### 14. Optional extended reporting period

In the event of:

- a) cancellation or non-renewal of this Policy by **us**, or
- b) cancellation or non-renewal of this Policy by **you** because **you** have ceased to trade as the direct result of the retirement or death of all of **your** directors, officers or partners;

then **you** 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 a 365 day Optional Extended Reporting Period 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 15 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 the Extended Reporting Period 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 the Extended Reporting Period or the Optional Extended Reporting Period increase **our** Limit of Liability, including **costs and expenses**, as shown in the Declarations.

### 15. 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 remove 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 Mendes & Mount LLP at the address 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. Mendes & Mount LLP are 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. Mendes & Mount LLP are hereby designated as the firm to whom the above-mentioned officer is authorized to mail such process or a copy thereof.