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THIS IS A CLAIMS MADE POLICY AND, SUBJECT TO ITS PROVISIONS, APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED IN ACCORDANCE WITH SECTION VI. CONDITIONS, PARAGRAPH B. CLAIM EXPENSES ARE WITHIN THE LIMIT OF LIABILITY. PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

In consideration of the payment of the premium and in reliance upon all statements made in the **Application** furnished to the Insurer designated in the Declarations, a stock insurance corporation (the "Insurer"), the Insurer and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

A. ENTERPRISE LIABILITY COVERAGES

If the Insuring Agreement has been purchased, as indicated in the Declarations, the Insurer will pay on behalf of the **Insured** all sums, in excess of the retention and up to the applicable limit of liability, that the **Insured** shall become legally obligated to pay:

1. Technology and Professional Liability

as **Damages** and **Claim Expenses** resulting from any **Claim** first made against the **Insured** during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging **Wrongful Acts** by the **Insured**, or by someone for whose **Wrongful Acts** the **Insured** is legally liable;

2. Media Liability

as **Damages** and **Claim Expenses** resulting from liability imposed by law or **Assumed Under Contract** resulting from any **Claim** first made against the **Insured** during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging **Wrongful Acts** by the **Insured**, or by someone for whose **Wrongful Acts** the **Insured** is legally liable;

3. Network Security Liability

as **Damages** and **Claim Expenses** resulting from any **Claim** first made against the **Insured** during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging **Wrongful Acts** by the **Insured** or by someone (including a **Rogue Employee** or **Third Party Custodian**) for whose **Wrongful Acts** the **Insured** is legally liable;

4. Privacy Injury Liability

as **Damages** and **Claim Expenses** resulting from any **Claim** first made against the **Insured** during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging **Wrongful Acts** by the **Insured** or by someone (including a **Rogue Employee** or **Third Party Custodian**) for whose **Wrongful Acts** the **Insured** is legally liable;

5. Privacy Regulation Proceeding

as **Damages** (including **Privacy Regulation Fines**) and **Claim Expenses** resulting from any **Privacy Regulation Proceeding** first made against the **Insured** during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging **Wrongful Acts** by the **Insured** or by someone (including a **Rogue Employee** or **Third Party Custodian**) for whose **Wrongful Acts** the **Insured** is legally liable.



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B. REIMBURSEMENT COVERAGES

If the Insuring Agreement has been purchased, as indicated in the Declarations, the Insurer will reimburse the **Insured Entity**:

1. Privacy Event Expense Reimbursement

for **Privacy Event Expenses**, up to the **Privacy Event Expenses** limit of liability and in excess of the **Privacy Event Expenses** retention;

2. Extortion Demand Reimbursement

for **Extortion Payments** up to the **Extortion Payment** limit of liability and in excess of the **Extortion Payment** retention;

3. Privacy Regulation Investigation

for **Privacy Regulation Investigation Expense** up to the **Privacy Regulation Investigation Expense** limit of liability and in excess of the **Privacy Regulation Investigation Expense** retention.

C. FIRST PARTY BUSINESS INTERRUPTION COVERAGE AND EXTRA EXPENSE

If the Insuring Agreement has been purchased, as indicated in the Declarations, the Insurer will pay the **Insured Entity** all **First Party Loss** in excess of any applicable retention and up to the applicable limit of insurance that the **Insured Entity** incurs due to an **Exploit** that causes **Network Impairment** during the **Policy Period**.

D. HOW COVERAGE APPLIES

1. The coverages provided under paragraph **A.** above apply only if:
 - a. prior to the inception date of this Policy or the first such policy issued and continuously renewed by the Insurer, of which this Policy is a renewal, whichever is earlier;
 1. no **Executive Officer** knew or should have known that any such **Wrongful Act**, or **Related Wrongful Acts**, might result in such **Claim**;
 2. such **Wrongful Act** has not been the subject of any notice given under any prior policy;
 - b. such **Wrongful Act** occurred on or after the applicable **Retroactive Date** as set forth in the Declarations and prior to the end of the **Policy Period**; and,
 - c. the **Claim** is reported to the Insurer in accordance with Section **VI. CONDITIONS**, paragraph **B. NOTICE OF CLAIM OR CIRCUMSTANCE/PRE-CLAIMS ASSISTANCE/DATE OF CLAIM**.
2. The coverages provided under paragraph **B.** above apply only if:
 - a. the **Privacy Event** is first discovered, the **Extortion Demand** is first made or **Privacy Regulation Investigation** is first initiated during the **Policy Period**; and,
 - b. the **Privacy Event Expenses**, **Extortion Payments** or **Privacy Regulation Investigation Expenses** are incurred within twelve months after the date that the **Insured** reports the **Privacy Event**, **Privacy Regulation Investigation** or **Extortion Demand** in accordance with Section **VI. CONDITIONS**, paragraph **B. NOTICE OF CLAIM OR CIRCUMSTANCE/PRE-CLAIMS ASSISTANCE/DATE OF CLAIM**, and such amounts are consented to in writing by the Insurer, such consent not to be unreasonably withheld.



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E. VICARIOUS LIABILITY

1. Third Party Vicarious Liability Coverage

Any entity or natural person the **Insured Entity** is required by written contract to include as an insured for liability of such entity or natural person for an **Insured's Wrongful Acts** shall be insured under this Policy but solely to the extent that a **Claim** is made against such entity or natural person for a **Wrongful Act** of an **Insured**, and only so long as the written contract is entered into before such **Claim** occurs, provided:

- a. there shall be no coverage afforded to such entity or natural person for its **Wrongful Acts**; and,
- b. nothing herein shall serve to confer any rights or duties to such person or entity under this Policy, other than as provided in this paragraph.

2. Assumed Liability of Insured

The **Insured Entity** is insured for liability it assumes in a written contract or agreement under which it assumes the tort liability (liability that would be imposed by law in the absence of any contract or agreement) of another party incurred by such third party as a result of an **Insured's Wrongful Act** provided the **Wrongful Act** gives rise to a **Claim** and occurs subsequent to the execution of such contract or agreement. Solely for the purposes of liability assumed by the **Insured Entity** in such contract or agreement reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an **Insured** are deemed to be **Damages** provided:

- a. liability to such party for, or for the cost of, that party's defense has also been assumed in such contract or agreement; and,
- b. such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which **Damages** to which this insurance applies are alleged.

Any coverage afforded by this paragraph is subject always to all of the Policy's terms, conditions and exclusions.

II. DEFINITIONS

The following defined words shall have the same meaning throughout this Policy, whether expressed in the singular or the plural.

Application means all signed applications, any attachments to such applications, other materials submitted therewith or incorporated therein, and any other documents submitted in connection with the underwriting of this Policy by the Insurer, or any other policy underwritten by the Insurer or its affiliates of which this Policy is a direct or indirect renewal or replacement.

Assumed Under Contract means liability of others, for **Matter** furnished by the **Insured**, that the **Insured** agrees to assume under a hold harmless or indemnity agreement but only to the extent such liability arises out of any **Wrongful Act**.

Claim means:

- A. a written demand (other than an **Extortion Demand**) for monetary damages or non-monetary relief, including a demand for injunctive or declaratory relief;
- B. a civil proceeding in a court of law or equity or any alternative dispute resolution proceeding;
- C. a **Privacy Regulation Proceeding**, against an **Insured**, alleging a **Wrongful Act** including any appeal therefrom.



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Claim also means a written request received by the **Insured** to toll or waive a statute of limitations in connection with a **Claim** as defined by paragraphs **B.** and **C.** above.

However, a **Claim** does not include any criminal proceeding or criminal or civil investigation. Nor does a **Claim** include any regulatory proceeding except if the regulatory proceeding is a **Privacy Regulation Proceeding**.

Claim Expenses mean:

- A.** fees charged by attorneys designated by the Insurer or by the **Insured** with the written consent of the Insurer;
- B.** all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim** if incurred by the Insurer including, but not limited to, premiums for any appeal bond, attachment bond or similar bond but without any obligation of the Insurer to apply for or furnish any such bond.

In the event the **Insured** is entitled by law to select independent counsel to defend the **Insured** at the Insurer's expense, **Claim Expenses** also include fees the Insurer must pay to such counsel provided that such fees are limited to fees charged in accordance with the rates the Insurer actually pays to counsel the Insurer retains in the ordinary course of business in the defense of similar **Claims** in the community where the **Claim** is being defended;

However, **Claim Expenses** do not include fees and expenses of independent adjusters or salaries of the Insurer's officials or employees.

Commerce Operations means the **Insured Entity's** income producing activities.

Consumer Redress Amounts means a sum of money which the **Insured** is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to an adverse judgment or settlement of a **Privacy Regulation Proceeding**. **Consumer Redress Amounts** do not include any sums paid which constitute taxes, fines, penalties, injunctions or sanctions.

Damages mean:

- A.** settlements, judgments (including any award of pre-judgment and post-judgment interest on a covered judgment), or other amounts for which the **Insured** is legally obligated to pay on account of a covered **Claim**;
- B.** punitive and exemplary damages and the multiplied portion of multiplied awards (subject to this Policy's other terms, conditions and limitations). Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiplied amounts;
- C.** **Consumer Redress Amounts** with respect to **Insuring Agreement A.5. Privacy Regulation Proceeding** only.

However, **Damages** do not include:

- 1. civil or criminal fines, penalties, taxes, sanctions or forfeitures, imposed on an **Insured**, except that this does not apply to **Privacy Regulation Fines** and **Consumer Redress Amounts**;
- 2. fees, costs and expenses paid or incurred or charged by any **Insured**, no matter whether claimed as restitution of specific funds, financial loss, mitigation expenses, set-off amounts or payments in the form of service credits or coupons or other non-cash consideration;
- 3. liquidated damages pursuant to a written contract or agreement in excess of the **Insured's** liability caused by the **Wrongful Act**;

4. the **Insured's** production costs, or the **Insured's** cost of reprinting, recalling, recovering, shipping, mailing, correcting, reprocessing, restoring, repairing, replacing, or reproducing erroneous, damaged or lost tangible property or **Matter**;
5. any amount attributable to the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature;
6. funds, monies, or securities that an **Insured** transferred or failed to transfer;
7. any loss of investment income;
8. any amounts assessed as royalty fees or payments;
9. any amount for which an **Insured** is absolved from payment by reason of any covenant, agreement or court order;
10. plaintiff's attorney fees or expenses associated with items 1. through 9. above.

Domestic Partner means any spouse and any person qualifying as a domestic partner under any federal, provincial, foreign or other law (including common law), statute or regulation or under the **Insured Entity's** employee benefit plans.

Denial of Service Attack means an attack executed over one or more **Networks** or the internet, which attack is designed and intended to disrupt the operation of one or more **Networks** and render the **Networks** inaccessible to authorized users.

Electronic Infection means the transmission of a computer virus.

ERISA or any Similar Act means the Employee Retirement Income Security Act of 1974, as amended, or any similar common or statutory law of Canada, the United States or their states, territories or provinces or any other jurisdiction anywhere in the world.

Executive Officer means:

- A. any duly elected or appointed Chief Executive Officer, Chief Financial Officer, Chief Information Officer, Chief Privacy Officer, Chief Security Officer, Chief Risk Officer, Chief Legal Officer, Risk Manager, General Counsel, in-house attorney designated to be in charge of litigation, or the functional equivalent of any of the foregoing, of the **Named Insured**;
- B. an official in an **Insured Entity** organized and operated in a **Foreign Jurisdiction** who is holding a position that is equivalent to an executive position listed in A. above.

Exploit means **Unauthorized Access**, **Electronic Infection** or a **Denial of Service Attack** by a third party.

Extortion Demand means an incident or series of related incidents occurring during the **Policy Period** where an **Insured Entity** receives a threat to launch an attack on, to suspend, or to otherwise disrupt a **Network**, disrupt or deface the **Insured Entity's** website or release or use **Protected Information** in the **Insured Entity's** care, unless monies are paid or specified action is taken, and an **Executive Officer** believes there is an imminent and probable danger of such action. An **Extortion Demand** does not include any demand seeking monies from the **Insured Entity** that are allegedly due and owing pursuant to contract or operation of law.

Extortion Payment means all reasonable and necessary expenses incurred by the **Insured Entity** with the Insurer's prior consent, in order to respond to an **Extortion Demand**, including payment of monies demanded by an extortionist. **Extortion Payments** do not include such expenses to the extent the **Insured Entity** has recovered such expenses or been reimbursed for them from any other source.



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Extra Expense means any reasonable and necessary expenses, in excess of the **Insured Entity's** normal operating expenses, that the **Insured Entity** incurs during the **Period of Restoration** associated with restoring and resuming **Commerce Operations**, including:

- A. reasonable expense incurred to minimize the interruption of **Commerce Operations** not covered elsewhere in this Policy; and,
- B. reasonable expense incurred to resume **Commerce Operations** on a temporary basis, including those associated with securing temporary third party Internet Service Provider services, temporary website and/or e-mail hosting services, rental of temporary **Networks**, other temporary equipment or service contracts.

First Party Loss means:

- A. the amount of net income, before interest, tax, depreciation or amortization, that the **Insured Entity** would have earned during the **Period of Restoration** but for the **Network Impairment**; and,
- B. **Extra Expense**.

However, **First Party Loss** does not include:

- 1. ordinary operating expenses incurred by the **Insured Entity** during the **Period of Restoration**;
- 2. costs or expenses to update, upgrade, enhance, or replace the **Insured's Network** beyond that which existed prior to the occurrence of the **Network Impairment**;
- 3. costs or expenses the **Insured Entity** incurs to prove or document **First Party Loss**;
- 4. **Privacy Event Expenses** and **Extortion Payments**.

Foreign Jurisdiction means any jurisdiction, other than Canada, the United States or any of its territories or possessions.

Insured means the **Insured Entity** and:

- A. any natural person who was, is or becomes an employee (including leased and temporary employees), director, officer, trustee, manager, member or partner of the **Insured Entity** but solely with respect to a **Wrongful Act** committed within the scope of such individual's duties on behalf of the **Insured Entity**;
- B. any natural person independent contractor of the **Insured Entity** but solely with respect to a **Wrongful Act** committed within the scope of such individual's duties on behalf of the **Insured Entity**;
- C. any natural person of an **Insured Entity** organized and operated in a **Foreign Jurisdiction** who is holding a position that is equivalent to an executive position listed in **A.** above.

Insured Entity means the **Named Insured** and any **Subsidiary** including any such entity:

- A. as a joint venturer but only with respect to such **Insured Entity's** interest in such joint venture;
- B. as a debtor in possession under Canadian bankruptcy law or an equivalent status under the law of any other country.

Internet Services means services to obtain, maintain or use the Internet, Intranet or extranet, including, but not limited to:

- A. services as an Internet access provider, application service provider, domain name registrar, domain name register, search engine, web browser;
- B. web hosting, e-commerce transaction services, electronic exchange and auction services, Internet media services, managed and network security services, public key infrastructure services and web portal services;

C. development, design and maintenance of chat rooms, websites, e-mail services, bulletin boards.

Management Control means owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of, or having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents, to elect, appoint or designate a majority of the Board of Directors of a corporation; the management committee members of a joint venture; or the members of the management board of a limited liability company, the general partners of a limited partnership or the partnership managers of a general partnership or the **Foreign Jurisdiction** equivalent of any such entity.

Matter means any content regardless of its nature or form.

Named Insured means any entity named as such in the Declarations.

Network means a network owned or operated by or on behalf of or for the benefit of the **Insured Entity**, provided, however, **Network** does not include the Internet, telephone company networks, electrical grids, or other public infrastructure network.

Network Impairment means the disruption, modification, destruction or damage to the **Insured's Network** that results in the impairment of the **Insured Entity's Network** to such an extent that the **Insured Entity** is substantially unable to conduct **Commerce Operations**.

Nonpublic Corporate Information means proprietary and confidential information including trade secrets, of a third-party entity.

Period of Restoration means the period of time that:

- A. begins with the date and time that **Commerce Operations** have first been interrupted by a **Network Impairment** and after application of the Business Interruption Waiting Period Retention, as specified in the Declarations; and
- B. ends with the earlier of:
 - 1. the date and time **Commerce Operations** are restored to substantially the level of operation that existed prior to the **Network Impairment**; or,
 - 2. the date and time **Commerce Operations** would have been restored to substantially the level of operation that existed prior to the **Network Impairment** if the **Insured Entity** exercised due diligence in remediating such **Network Impairment**.

Personal Information means any information relating to an identified or identifiable natural person.

Policy Period means the period from the effective date of this Policy to the Policy expiration date stated in the Declarations, or its earlier cancellation date.

Pollutants means any substance exhibiting hazardous characteristics as is or may be defined or identified on any list of hazardous substances issued by the Canadian Environmental Protection Act (1999) or any provincial, local or foreign counterpart. Pollutants also means, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed), as well as any air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos, or asbestos products or any noise.

Privacy Event means any act, error or omission which, in the reasonable opinion of an **Executive Officer** did cause or is reasonably likely to result in the unauthorized disclosure or the unauthorized use of **Protected Information**.

Privacy Event Expenses means all reasonable and necessary fees, costs and expenses incurred by the **Insured Entity** and consented to by the Insurer:

- A. to directly effect compliance with a **Security Breach Notice Law** including notification to individuals or entities who are required to be notified;

- B. to provide voluntary notification to individuals or entities whose **Protected Information** may have been subject to a **Privacy Event**;
- C. to hire a computer forensics firm to investigate the existence and cause of a **Privacy Event** and to determine the extent such **Protected Information** has been or may have been disclosed;
- D. to hire an attorney or expert to determine the applicability of and the actions necessary to comply with **Security Breach Notice Laws**;
- E. to minimize harm to the **Insured Entity's** reputation from a **Privacy Event**, including but not limited to the costs to set up a call center or provide a credit monitoring service for those impacted by a **Privacy Event**.

However, **Privacy Event Expenses** do not include the costs, fees and expenses necessary to remediate any deficiencies that gave rise to the **Privacy Event**.

Privacy Injury means:

- A. unauthorized collection, disclosure, use, access, destruction or modification of **Protected Information**;
- B. failure to implement, maintain, or comply with policies and procedures stating the **Insured's** obligations with regard to **Protected Information**.

Privacy Regulation Fines means civil fines, sanctions or penalties insurable under applicable law and imposed under any **Privacy Regulation Proceeding** for a violation of any **Security Breach Notice Law** or any law, statute or regulation governing **Protected Information**.

Privacy Regulation Investigation means a civil, administrative or regulatory investigation or written request for information by a federal, provincial, local or foreign governmental authority in connection with any law governing **Protected Information** or any **Security Breach Notice Law**, and that is reasonably likely to give rise to a covered **Claim**.

Privacy Regulation Investigation Expenses means all reasonable and necessary expenses incurred by the **Insured Entity** with the Insurer's prior consent, in order to respond to or effectuate compliance with a **Privacy Regulation Investigation**. **Privacy Regulation Investigation Expenses** shall not include **Privacy Event Expenses**.

Privacy Regulation Proceeding means a civil, administrative or regulatory proceeding by a federal, provincial, local or foreign governmental authority, alleging a **Wrongful Act** as defined in paragraph **E.** of the definition of **Wrongful Act**.

Professional Services means those services performed for others that are specified in the attached "Professional Services Endorsement". If no "Professional Service Endorsement" is attached to this Policy, no **Professional Services** are covered under this Policy.

Property Damage means:

- A. physical injury to tangible property including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- B. loss of use of tangible property that is not physically damaged which is caused by an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Tangible property does not include electronic data. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.



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Protected Information means **Nonpublic Corporate Information** or **Personal Information**.

Related Claims mean all **Claims** based upon or arising out of a single **Wrongful Act** or any **Related Wrongful Acts**.

Related Wrongful Act means all **Wrongful Acts** that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.

Retroactive Date means the date set forth in the Declarations.

Rogue Employee means a past, present or future employee of the **Insured Entity** who acts outside of his or her scope of employment.

Security Breach Notice Law means any statute or regulation that requires an entity that maintains **Protected Information** to provide notice to specified individuals of any actual or potential unauthorized disclosure or potential disclosure of such **Protected Information**.

Subsidiary means any entity in which the **Named Insured** has **Management Control** directly or indirectly through one or more other **Subsidiaries**:

- A. on or before the effective date of this Policy;
- B. after the effective date of this Policy by reason of being created or acquired by the **Insured Entity** after such date, if and to the extent coverage with respect to the entity is afforded pursuant to Section VI. **CONDITIONS**, paragraph K. **COVERAGE FOR NEW SUBSIDIARIES**.

Takeover means:

- A. the acquisition of **Management Control** of the **Named Insured** by another entity or person, or group of entities or persons acting in concert;
- B. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity; or
- C. the consolidation of the **Named Insured** with another entity.

Technology Product means:

- A. hardware, firmware, software or source or object code;
- B. information technology equipment, electronic device, electronic component or computer peripheral;
- C. any wireless or wire line telecommunication equipment including, but not limited to, wireless, wireline, satellite or broadcast network equipment,

that is created, designed, manufactured, sold, or distributed by or on behalf of the **Insured Entity** or licensed or leased by the **Insured Entity** to others.

Technology Services means:

- A. information technology services including, but not limited to:
 - 1. designing, developing, programming, writing, testing, installing, servicing, supporting, maintaining, repairing and updating software including any modification and reengineering and providing training, updates and support;
 - 2. planning, designing, developing, engineering, installation and maintaining computer systems, computer networks and electronic systems;
 - 3. managing and operating computer systems, computer networks and facilities, as well as facilities support services;
 - 4. designing and publishing prepackaged and custom designed application and systems software;



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5. data processing, management, warehousing and data hosting including data entry, conversion, destruction and analysis;

B. Internet Services;

C. Telecommunications Services;

D. outsourcing, education, training, project management or consulting of or related to A. through C. above or on Technology Products.

Telecommunication Services means:

A. the offering of the electronic or digital transmission of information, including local, regional and long distance wireline and wireless dial tone access and switched services, cable, DSL, ISDN and VOIP services;

B. any value added services offered in conjunction with **A.** above including directory assistance, toll free services, voice mail, paging, call forwarding, call waiting, caller ID and emergency 911 services;

C. analysis, design, integration and conversion of telecommunication systems or wireless or wire line telecommunication equipment including satellite or broadcast network equipment.

Third Party Custodian means any third party to whom the **Insured Entity** entrusts **Protected Information**.

Unauthorized Access means any accessing of the **Insured Entity's Network** or information residing on the **Insured Entity's Network** by unauthorized persons or by authorized persons accessing or using **Insured Entity's Network** or information thereupon in an unauthorized manner.

Wrongful Act means:

A. with respect to **Insuring Agreement A.1. Technology and Professional Liability** only, a **Wrongful Act** means any actual or alleged act, error or omission:

1. committed solely in the conduct of **Professional Services** or **Technology Services** for others; or
2. resulting in the failure of the **Insured's Technology Products** to perform the function or serve the purpose intended;

B. with respect to **Insuring Agreement A.2. Media Liability** only, **Wrongful Act** means:

1. gathering, acquiring, obtaining, researching, developing, editing, preparing, producing, filming, videotaping and recording **Matter**; or
2. the dissemination or utterance of **Matter**, through any medium and by any means, including:
 - a. publishing, printing, advertising, marketing, promoting, exhibiting;
 - b. broadcasting, telecasting, webcasting, cablecasting;
 - c. syndicating, selling, leasing, licensing, distributing, serializing or releasing;
 - d. public appearances or performances;
 - e. blogging, tweeting or other forms of online, digital or electronic dissemination,

that results in:

- i. any form of defamation or other tort related to disparagement or harm to the character, reputation or feelings of any person or organization, including but not limited to libel, slander, product disparagement or trade libel;



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- ii. any form of invasion, infringement or interference with rights of privacy or publicity, including but not limited to false light, public disclosure of private facts, intrusion and commercial appropriation of name or likeness;
 - iii. wrongful entry or eviction, trespass, eavesdropping or other invasion of the right of private occupancy;
 - iv. false arrest, detention or imprisonment, abuse of process or malicious prosecution;
 - v. infringement of title, slogan, logo, trademark, trade name, trade dress, service mark or service name;
 - vi. infringement of copyright or any plagiarism, violation of moral rights (droit moral) or passing off, piracy, misappropriation of ideas under implied contract or other misappropriation of property rights, ideas or information;
 - vii. infliction of emotional distress, outrage or outrageous conduct, or any prima facie tort;
 - viii. negligence in connection with the content of **Matter**;
 - ix. unfair competition or unfair trade practices alleged in conjunction with paragraphs i. through viii. above, including but not limited to dilution, confusion, deceptive trade practices or unfair trade practices, civil actions for consumer fraud, false, disruptive or misleading advertising or misrepresentation in advertising; or
 - x. negligent supervision of an employee alleged in conjunction with paragraphs i. through viii. above;
- C. with respect to **Insuring Agreement A.3. Network Security Liability** only, **Wrongful Act** means any actual or alleged act, error or omission that results in a breach of security of the **Network** and gives rise to:
- 1. an unscheduled or unplanned inability of an authorized third party user to gain access to the **Network** to communicate with the **Insured Entity** or other computers or computer networks (other than any Internet service provider interruptions);
 - 2. disruption or degradation of a network owned or operated by or on behalf of or for the benefit of a person or entity other than the **Insured Entity** (other than Internet, telephone company networks, electrical grids, or other public infrastructure network) including but not limited to the infection of a third party network with malware or viruses; or
 - 3. the unauthorized use, disclosure, disruption, modification or destruction of or unauthorized access to any information (other than software) resident on the **Network** or the unauthorized use, modification or destruction of any software resident on the **Network**;
- D. with respect to **Insuring Agreement A.4. Privacy Injury Liability** only, **Wrongful Act** means any **Privacy Injury**;
- E. with respect to **Insuring Agreement A.5. Privacy Regulation Proceeding** only, **Wrongful Act** means any actual or alleged act, error or omission that results in a violation of any statute or regulation governing **Protected Information** or any violation of a **Security Breach Notice Law**.

III. EXCLUSIONS

This Policy does not apply to any **Claim**:

A. ASSUMED LIABILITY

based upon or arising out of any assumption of the liability of others under any contract or agreement, except that this exclusion does not apply to liability arising under Section I. **INSURING AGREEMENTS**,



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Paragraph **E. VICARIOUS LIABILITY** or, with respect to **Insuring Agreement A.2. Media Liability**, liability **Assumed Under Contract**;

B. BODILY INJURY/PROPERTY DAMAGE

based upon or arising out of any actual or alleged bodily injury (including death), sickness, disease, emotional distress, mental anguish, of any person, or **Property Damage**, provided however that this exclusion does not apply to:

1. allegations of emotional distress or mental anguish brought under **Insuring Agreement A.2. Media Liability**;
2. the wrongful infliction of emotional distress or mental anguish arising out of **Privacy Injury**;

C. CLAIMS BY INSUREDS

by or on behalf of any **Insured** provided, however that this exclusion does not apply to:

1. any **Claim** that is in the form of a crossclaim, third-party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy;
2. any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, liquidator, receiver or rehabilitator for an **Insured Entity** or any assignee of such trustee, examiner, liquidator, receiver or rehabilitator;
3. any **Claim** by an **Insured** (other than an **Insured Entity**) that alleges **Privacy Injury**;

D. DELIBERATE ACTS/COMMINGLING OR MISAPPROPRIATION OF FUNDS

based upon or arising out of any dishonest, fraudulent, criminal or malicious act or omission, commingling, misappropriation or misuse of funds, intentional wrongdoing or knowing violation of any contract or agreement by or on behalf of an **Insured**. The Insurer shall pay **Claim Expenses** of such **Claims** unless or until a final judgment, ruling or other finding of fact in any proceeding establishes that such act, omission, commingling, misappropriation, misuse or violation was committed. If such act, or such commingling, misappropriation, misuse or violation is so determined to have been committed, the **Insured** will reimburse the Insurer for all **Claim Expenses** paid. The Insurer will not defend any criminal act which was the subject of a criminal prosecution in which the **Insured** was found guilty or pleaded guilty, *nolo contendere* or no contest. Criminal proceedings are not covered under this Policy regardless of the allegations made against any **Insured**. Provided, however, that solely with respect to **Insuring Agreement A.2. Media Liability**, this exclusion does not apply to any such act if an attorney for the **Insured Entity** approves of such act in advance based upon a good faith belief that such act is protected by the First Amendment to the United States Constitution or any similar law of another jurisdiction;

For purposes of determining the applicability of this exclusion:

1. the facts pertaining to and knowledge possessed by any natural person **Insured** shall not be imputed to any other natural person **Insured**; and,
2. only facts pertaining to and knowledge possessed by any **Executive Officer** shall be imputed to the **Insured Entities**;

E. DISCRIMINATION

based upon or arising out of any actual or alleged discrimination, humiliation, harassment or misconduct that relate to an individual's race, creed, colour, age, sex, national origin, religion, handicap, marital status or sexual preference except that this exclusion does not apply to **Claims** brought under **Insuring Agreement A.2. Media Liability**;



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F. ERISA OR ANY SIMILAR ACT

based upon or arising out of any actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by **ERISA or any Similar Act**;

G. GOVERNMENTAL ORDERS

as a direct result of any action or order by any domestic or foreign law enforcement, administrative, regulatory or judicial body or other governmental authority;

H. LICENSING AND OWNERSHIP OF MATERIAL

by any joint venturer or on behalf of such party based upon or arising out of ownership disputes relating to **Matter** supplied;

I. MECHANICAL OR ELECTRICAL FAILURE AND SERVICE INTERRUPTIONS

based upon or arising out of any failure of:

1. electrical infrastructure;
2. telecommunications infrastructure; or
3. any satellite,

which is not under the **Insured Entity's** operational control;

J. OVER-REDEMPTION

based upon or arising out of price discounts, prizes, awards, coupons or any other valuable consideration given in excess of the total contracted or expected amount;

K. OWNED ENTITY

made against an **Insured** by any entity, if at the time of the **Wrongful Act** giving rise to such **Claim**:

1. any **Insured** controlled, owned, operated or managed such entity;
2. any **Insured** was an owner, partner, director, officer or employee of such entity;

For the purpose of this exclusion, a 5% or more owner of the voting stock of a publicly held corporation or a 40% or more owner of the voting stock of a privately held corporation shall be deemed to own such entity;

L. PATENT INFRINGEMENT

based upon or arising out of actual or alleged infringement of patent;

M. POLLUTION/NUCLEAR

based upon or arising out of: any actual or alleged nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**; any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or any actual or alleged **Property Damage**, or bodily injury, sickness, disease or death of any person, or financial loss to the **Insured Entity**, their security holders, or their creditors resulting from any of the aforementioned matters;



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N. PRIOR WRONGFUL ACTS OF SUBSIDIARIES

based upon or arising out of any **Wrongful Act**:

1. by or on behalf of any **Subsidiary** whether such **Subsidiary** qualified as such prior to the inception date of the Policy, or after the inception date of this Policy by virtue of paragraph 1. of Section VI. **CONDITIONS**, paragraph K. **Coverage for New Subsidiaries** or by natural person **Insureds** of any such **Subsidiary**, where such **Wrongful Act** occurred in whole or in part before the date the **Insured Entity** first had **Management Control**;
2. occurring on or after the date the **Insured Entity** first had **Management Control** of any **Subsidiary** described in paragraph 1. above, which, together with any **Wrongful Acts** described in paragraph 1. above, would be considered **Related Wrongful Acts**;

O. SECURITIES AND INVESTMENT CLAIMS

based upon or arising out of any actual or alleged:

1. filing of any registration statement under the Securities Acts of 1933, or the Securities Exchange Act of 1934, any State Blue Sky Law, or any other state or local securities law;
2. violation of the Investment Advisers Act of 1940, the Securities Act of 1933, the Securities and Exchange Act of 1934, rules or regulations of the Securities Exchange Commission under either or both acts, similar securities laws or regulations of province, or any laws of any state relating to any transaction arising out of, involving, or relating to the public offering of securities;

Provided however that this exclusion does not apply to any **Claim** for **Privacy Injury**;

P. TRADE SECRETS

based upon or arising out of any actual or alleged misappropriation of trade secrets obtained by any natural person **Insured** prior to commencing employment with an **Insured Entity**;

Q. UNFAIR COMPETITION/ANTITRUST CLAIMS/RICO CLAIMS

based upon or arising out of any actual or alleged:

1. unfair competition, dilution, deceptive trade practices, civil actions for consumer fraud or false or deceptive advertising or misrepresentation in advertising;
2. charges of price fixing, monopolization or restraint of trade;
3. violation of:
 - a. the Federal Trade Commission Act;
 - b. The Competition Act, the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade;
 - c. the Racketeer Influenced and Corrupt Organizations Act;
 - d. any rules or regulations promulgated under or in connection with the above statutes, or any similar provision of any federal, provincial, foreign or other law (including common law) or statute,

except that paragraph 1. does not apply to any **Claim** under **Insuring Agreement A.2. Media Liability** and paragraphs 1. and 3.a. do not apply to any **Claim** under **Insuring Agreement A.5. Privacy Regulation Proceeding**;

R. Unsolicited Communication

based upon or arising out of:

1. any actual or alleged violation of any federal, provincial or foreign anti-spam statute or regulation, including the Fighting Internet and Wireless Spam Act, CAN-SPAM Act of 2003; or
2. any actual or alleged violation of any federal, provincial or foreign statute or regulation prohibiting the dissemination of unsolicited electronic communications to multiple third parties, including any violation of the National Do Not Call List, Fighting Internet and Wireless Spam Act, and the Telephone Consumer Protection Act of 2001;

IV. FIRST PARTY EXCLUSIONS

This Policy does not apply to any **First Party Loss**, regardless of any other cause or event that contributes concurrently or in any sequence to the **First Party Loss**, caused by or resulting from:

A. DEFECTS IN DATA AND SOFTWARE AND NETWORK

any defect of design, implementation, operation, incompatibility or any other fault of data and software or the **Insured Entity's Network**, or any part thereof where such defect or fault is introduced by the **Insured Entity's**:

1. use of a third party product, including but not limited to software and equipment, in a manner inconsistent with the manufacturer's intended use;
2. modification of a third party product or integration of components in violation of the manufacturer's warranty or other license terms;
3. integration of components in a manner inconsistent with any of the components' intended use as established by its manufacturer; or,

B. DELIBERATE ACTS

any deliberately dishonest, fraudulent or criminal act or omission, or any willful violation of any statute or regulation, by or on behalf of an **Insured**;

C. GOODWILL

any adverse impact on goodwill, reputation or potential future income;

D. GOVERNMENTAL ORDERS

any action or order by any domestic or foreign law enforcement, administrative, regulatory or judicial body or other governmental authority;

E. PROPERTY DAMAGE

direct physical loss of or damage to property;

F. VALUE OF STOCKS

any change in value of shares, stock or securities;

G. VENDOR ACTS

unauthorized and deliberate malicious act or omission by a vendor or other third party authorized by the **Insured Entity** to perform services on the **Insured Entity's Network**.

V. LIMITS OF LIABILITY/RETENTION

A. POLICY AGGREGATE

The amount set forth as the Policy Aggregate Limit of Liability in the Declarations shall be the maximum aggregate limit of liability of the Insurer for all **Damages, Claim Expenses, Privacy Event Expenses, Extortion Payments, Privacy Regulation Investigation Expenses** and **First Party Loss** under this Policy. The Scheduled Limits of Liability set forth in the Coverage Schedule in the Declarations are sub-limits which further limit and do not increase the Insurer's limit of liability under this Policy Aggregate Limit. The limits of liability set forth in paragraph **B.** below are subject always to this Policy Aggregate.

B. INSURING AGREEMENTS LIMITS OF LIABILITY

Each Insuring Agreement limit of liability set forth in the Coverage Schedule of the Declarations applies as follows:

1. **All Claims** in the Aggregate

The amount set forth in the Coverage Schedule in the Declarations is the limit of liability for all **Damages** and **Claim Expenses** for all applicable **Claims/Privacy Regulation Proceedings** combined.

2. **Privacy Regulation Fines Sublimit of Liability**

The amount set forth in the Coverage Schedule in the Declarations as the **Privacy Regulation Fines Sublimit of Liability**, is the limit of liability for all **Privacy Regulation Fines**, which limit is a sublimit of, and not in addition to, the **Privacy Regulation Proceeding** limit of liability set forth in the Declarations.

3. **Privacy Regulation Investigation Limit of Liability**

The amount set forth in the Coverage Schedule in the Declarations as the **Privacy Regulation Investigation Sublimit of Liability**, is the limit of liability for all **Privacy Regulation Investigation Expense**, which limit is a sublimit of, and not in addition to, the **Privacy Regulation Proceeding** limit of liability set forth in the Declarations.

4. **First Party Limit of Liability**

The amount set forth in the Coverage Schedule in the Declarations as the **First Party Loss** limit of Liability, is the limit of liability for all **First Party Loss**, regardless of the number of **Network Impairments** that occur during the **Policy Period**.

5. **All Privacy Event Expenses, Extortion Payments and Privacy Regulation Investigation Expenses in the Aggregate**

The amount set forth in the Coverage Schedule in the Declarations for **Privacy Event Expenses, Extortion Payments** and **Privacy Regulation Investigation Expenses** is the limit of liability for all covered **Privacy Event Expenses, Extortion Payments** and **Privacy Regulation Investigation Expenses**, as applicable.

C. RETENTIONS

1. Retentions set forth in the Declarations shall apply for each Insuring Agreement as set forth in the Declarations. The Insurer shall pay **Damages** and **Claim Expenses** in excess of any retention as it becomes due and payable to the **Insureds**.

2. The Insurer's obligation to pay **Damages** and **Claim Expenses** is in excess of any applicable retention. The Insurer will have no obligation to pay all or any portion of any applicable retention. Should the Insurer, in its sole discretion, pay any retention, then the **Named Insured** shall have the obligation to reimburse the Insurer for such amounts.



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3. A separate retention applies to each **Privacy Event, Extortion Demand** and **Privacy Regulation Investigation** in the amount and as specified in declarations. The Insurer shall only be liable for the amount of **Privacy Event Expenses, Extortion Payments** or **Privacy Regulation Investigation Expenses** in excess of the applicable retention amounts.
4. A separate retention applies to each **Network Impairment** under each First Party Business Interruption Coverage And Extra Expense Insuring Agreement in the amount and as specified in declarations. The Insurer shall only be liable for the amount of **First Party Loss** which is in excess of the applicable retention amounts.
5. In the event more than one retention applies, the maximum total retention amount applicable shall be the highest of such applicable retentions.

D. RELATED CLAIMS AND RELATED PRIVACY EVENT, EXTORTION DEMAND, PRIVACY REGULATION INVESTIGATION, OR NETWORK IMPAIRMENT

1. If **Related Claims** are subsequently made against the **Insured** and reported to the Insurer, all such **Related Claims**, whenever made, shall be considered a single **Claim** subject to the limit of liability applicable to the earliest such **Claim** first reported to the Insurer.
2. If there is more than one **Privacy Event, Extortion Demand, Privacy Regulation Investigation, or Network Impairment** involving the same act, error or omission or acts, errors or omissions that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision, then each such **Privacy Event, Extortion Demand, Privacy Regulation Investigation, or Network Impairment** shall be considered as one **Privacy Event, Extortion Demand, Privacy Regulation Investigation, or Network Impairment** which shall be subject to the **Privacy Event, the Extortion Demand, the Privacy Regulation Investigation, or the Network Impairment** limit applicable to the earliest such **Privacy Event, Extortion Demand, Privacy Regulation Investigation, or Network Impairment** reported to the Insurer under this Policy or under any prior policy.

E. MULTIPLE INSUREDS, CLAIMS AND CLAIMANTS

The limits of liability shown in the Declarations and subject to the provisions of this Policy is the amount the Insurer will pay for **Damages, Claim Expenses, Privacy Event Expenses, Extortion Payments, Privacy Regulation Investigation Expenses** and **First Party Loss** regardless of the number of **Insureds, Claims** made, **Privacy Events, Extortion Demands, Privacy Regulation Investigations,** persons or entities making **Claims**.

VI. CONDITIONS

A. SETTLEMENT/DEFENSE OF CLAIMS

1. Defense/Settlement

The Insurer shall have the right and duty to defend in the **Insured's** name and on the **Insured's** behalf a **Claim**, other than a **Privacy Regulation Proceeding**, even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Insurer has the right to make such investigation and conduct negotiations and enter into such settlement of any **Claim** as the Insurer deems necessary. The **Insureds** and not the Insurer have the duty to defend any **Privacy Regulation Proceedings**. The Insurer shall be entitled to effectively associate in the defense and the negotiation of any settlement of any **Privacy Regulation Proceeding** that involves or appears reasonably likely to involve the Insurer. Each **Insured** shall give the Insurer full cooperation and shall furnish the Insurer with copies of reports, investigations, pleadings, and all related papers, and such other information and assistance as the Insurer may reasonably request.

2. Consent to Settlement

The Insurer shall not settle any **Claim** without the prior written consent of the **Named Insured**. If however, the **Named Insured** refuses to consent to such settlement or compromise recommended by the Insurer and agreed to by the claimant, the Insurer's duty to defend shall then cease and the **Named Insured** shall thereafter at the **Named Insured's** own expense negotiate or defend such **Claim** independently of the Insurer, and the Insurer's limit of liability for such **Claim** shall be reduced to:

- a. the amount of the proposed settlement plus **Claim Expenses** incurred up to the date of the **Named Insured's** refusal to consent to such proposed settlement;

plus:

- b. fifty percent (50%) of **Claim Expenses**, in excess of the amount referenced in paragraph a. above.

3. Exhaustion of Limits

The Insurer shall not be obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle a **Claim** after the applicable limit of liability has been exhausted by payment of **Damages** or **Claim Expenses**, or any combination thereof. In such case, the Insurer shall have the right to withdraw from the further investigation, defense, payment or settlement of such **Claim** by tendering control of said investigation, defense or settlement of the **Claim** to the **Insured**.

B. NOTICE OF CLAIM, CIRCUMSTANCE OR NETWORK IMPAIRMENT/PRE-CLAIMS ASSISTANCE/DATE OF CLAIM

1. Notice of Claim, Extortion Demand, Privacy Event or Privacy Regulation Investigation

The **Insured**, as a condition precedent to the obligations of the Insurer shall give written notice of any **Claim**, **Extortion Demand** or **Privacy Event** to the Insurer as soon as reasonably practicable after any **Executive Officer** learns of such **Claim**, **Extortion Demand**, **Privacy Event** or **Privacy Regulation Investigation** but in no event later than ninety (90) days after termination or expiration of the **Policy Period** or any subsequent renewal **Policy Period** in an uninterrupted series of renewals, or prior to the expiration of the **Extended Reporting Period**, if applicable. Failure to give such notice as soon as reasonably practicable shall not invalidate coverage of such **Claim**, unless the failure to provide timely notice has prejudiced the Insurer or unless the notice is provided ninety (90) days after termination or expiration of the **Policy Period** or any subsequent renewal **Policy Period** in an uninterrupted series of renewals, or prior to the expiration of the **Extended Reporting Period**, if applicable.

2. Notice of Circumstance

If during the **Policy Period** the **Insureds** first become aware of any facts or circumstances which may reasonably be expected to give rise to a **Claim** and during such **Policy Period** give written notice to the Insurer of:

- a. the allegations anticipated as the basis of the potential **Claim** and the names of any potential claimants;
- b. the identity of the specific **Insureds** allegedly responsible for such specific facts and circumstances;
- c. the consequences which have resulted or may result from such specific facts and circumstances;
- d. the amount of the potential monetary damages or the nature of non-monetary relief which may be sought in consequence of such specific facts and circumstances; and

e. the circumstances by which **Insureds** first became aware of such specific facts and circumstances,

then any such covered **Claim** which is subsequently made and which arises out of such facts and circumstances shall be deemed to have been first made against the **Insured** and reported to the Insurer by the **Insureds** at the time such written notice was received by the Insurer.

3. Notice of Network Impairment

If a **Network Impairment** takes place or is reasonably likely to take place, the **Insured Entity** must do the following:

- a. provide notice to the Insurer as soon as practicable;
- b. such notice should include particular details as to the nature of the **Network Impairment**; and,
- c. immediately forward to the Insurer all information the **Insured Entity** possesses or receives in connection with the **Network Impairment**.

4. Pre-Claims Assistance

a. Insurer's Discretionary Investigation

Until the date a **Claim** is made, the Insurer may pay for all costs or expenses it incurs, at its sole discretion and without any obligation, as a result of investigating a circumstance that the **Insured** reports in accordance with subparagraph **2. Notice of Circumstance** above. Such costs and expenses are outside the limits or liability and not subject to the retention.

b. Insurer's Discretionary Remediation

If the Insurer elects to investigate a circumstance pursuant to paragraph **4.a.** above, and such investigation results in recommended remediation measures that both the Insurer and the **Named Insured** mutually agree to undertake, the Insurer shall reimburse the **Insured** for reasonable costs and expenses to enact such recommended remediation measures if such costs and expenses were approved by the Insurer in advance. Such costs and expenses are within the limits of liability, subject to the retention and the coinsurance percentage provided below and subject to a sublimit of liability in the amount of 10% of the aggregate limit of liability.

The **Insureds** shall bear uninsured the percentage provided on the declarations as a coinsurance percentage applied to all costs and expenses incurred pursuant to this paragraph **b.** The coinsurance percentage is in addition to the applicable retention and the Insurer is only liable to pay the remaining percentage of costs and expenses in excess of the applicable retention and coinsurance percentage.

5. When a Claim is Deemed Made

Except as provided in subparagraph **2. Notice of Circumstance**, above, a **Claim** shall be deemed made:

- a. in the case of a written demand for monetary damages or non-monetary relief, on the earlier of the **Executive Officer's** or Insurer's receipt of notice of such demand;
- b. in the case of a civil proceeding in a court of law or equity or arbitration, on the date of service upon or other receipt by any **Executive Officer** a complaint against the **Insured** in such proceeding or arbitration;
- c. in the case of a **Privacy Regulation Proceeding**, on the date of receipt by such **Executive Officer** of a written notice from the investigating authority identifying such **Insured** as an individual or entity against whom a proceeding will be commenced.



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6. To Whom Notices are Sent

The **Insureds** shall give written notice to the Insurer under this Policy as specified in the Declarations. If mailed, the date the Insurer receives such notice shall constitute the date such notice was given. Proof of mailing shall be sufficient proof of notice.

C. CANCELLATION

1. Insurer’s Right to Cancel

We may cancel this policy or any of its individual Coverage Forms at any time by sending to the first Named Insured a notice 90 days (15 days in the event of non-payment of premium) in advance of the termination date. Our notice of cancellation will be mailed to the first Named Insured’s last known mailing address, and will indicate the date on which coverage is terminated. If notice of termination is mailed, proof of mailing will be sufficient proof of notice. When we cancel this contract, we shall refund as soon as practicable, the excess premium paid by you over the pro-rata premium for the expired time, but in no event will the pro-rata premium for the expired time be less than any minimum retained premium specified, if any, in the contract. The refund will accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund will be made as soon as practicable.

The refund may be made by money, postal or express company money order or cheque payable at par.

2. Named Insured’s Right to Cancel

The **Insureds** grant the exclusive authority to cancel this Policy to the **Named Insured**. The **Named Insured** may cancel this Policy by providing the Insurer written notice stating when thereafter such cancellation shall be effective. The mailing or delivery of such notice shall be sufficient. The unearned premium shall be computed on a pro-rata basis.

D. EXTENDED REPORTING PERIOD

1. Automatic Extended Reporting Period

The **Named Insured** shall have the right to a period of sixty (60) days following the effective date of such cancellation or non-renewal, in which to give written notice to the Insurer of **Claims** first made against the **Insured** during said sixty (60) days period for any **Wrongful Act** committed prior to the end of the **Policy Period** and otherwise covered by this Policy.

2. Optional Extended Reporting Period

If the **Named Insured** or Insurer cancels or non-renews this Policy, the **Named Insured** shall have the right to purchase, upon payment of an additional premium, an extension of this Policy, for any **Claim** first made or deemed to be first made during such period for **Wrongful Acts** committed before the earlier of the end of the **Policy Period** or the effective date of any **Takeover**. The additional premium shall be as set forth below.

<u>Policy Extension</u>	<u>Additional Premium (as a % of the Total Premium Paid for this Policy)</u>
1 Year	100%
2 Years	150%
3 Years	200%

This period shall be referred to as the “Optional Extended Reporting Period”.



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3. **Payment of Extended Reported Period Premium**

As a condition precedent to the right to purchase the Optional Extended Reporting Period, the total premium for this Policy must have been paid. The right to purchase such Optional Extended Reporting Period shall end unless the Insurer receives written notice of the **Named Insured's** election to purchase such Optional Extended Reporting Period and full payment of the premium for such period within sixty (60) days after the end of the **Policy Period**.

4. **Non-Cancelable/Premium Fully Earned**

If the Optional Extended Reporting Period is purchased, it is non-cancelable and the entire premium shall be deemed fully earned at its commencement without any obligation by the Insurer to return any portion thereof.

5. **No Separate Limit**

There is no separate or additional limit of liability for any Extended Reporting Period.

E. **TERRITORY**

Coverage shall apply to **Claims** made and **Wrongful Acts** committed anywhere.

F. **APPLICATION**

The **Insureds** represent and acknowledge that the statements contained in the **Application** and any materials submitted or required to be submitted therewith (which shall be maintained on file by the Insurer and be deemed attached to and incorporated into this Policy as if physically attached), are true and accurate and:

1. are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy; and,
2. shall be deemed material to the acceptance of this risk or the hazard assumed by the Insurer under this Policy.

This Policy is issued in reliance upon the truth and accuracy of such representations. In the event the statements, representations or information in the **Application**, including materials submitted or required to be submitted therewith, contains any misrepresentation or omission which materially affects either the acceptance of the risk or the hazard assumed by the Insurer under this Policy, this Policy shall be null and void.

G. **OTHER INSURANCE**

The Insurer will have no duty to defend any **Claim** that any other insurer has a duty to defend. If no other insurer defends, the Insurer will undertake to do so; but it will be entitled to the **Insured's** rights against all those other insurers. This Policy applies to the **Damages** or **Claim Expenses** that exceed the available limit of liability and any self insured retentions or retention amounts of any other insurance available to the **Insured**. If there is such other insurance covering the same **Damages** or **Claim Expenses**, the Insurer will pay only for the amount of covered **Damages** or **Claim Expenses** in excess of the amount due from that other insurance, but it will not pay more than the applicable Limit of Liability. This paragraph does not apply to any other insurance that was bought specifically to apply in excess of the Limits of Liability shown in the Declarations of this Policy.

H. **ESTATES, LEGAL REPRESENTATIVES AND DOMESTIC PARTNERS**

The estates, heirs, legal representatives and any **Domestic Partner** of a natural person **Insured** shall be considered **Insureds** under this Policy; provided, however, coverage is afforded to such estates, heirs, legal representatives and **Domestic Partners** only for a **Claim** arising solely out of their status as such and, in the case of a **Domestic Partner**, where such **Claim** seeks **Damages** from marital community



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property, jointly held property or property transferred from such **Insured** to the **Domestic Partner**. No coverage is provided for any act, error or omission of an estate, heir, legal representative or **Domestic Partner**. All terms and conditions of this Policy, including without limitation the retention, applicable to **Damages** or **Claim Expenses** incurred by the **Insured** shall also apply to **Damages** and **Claim Expenses** incurred by such estates, heirs, legal representatives, assigns and **Domestic Partners**.

I. NO ACTION AGAINST INSURER

No action shall be taken against the Insurer unless, as a condition precedent, there shall have been full compliance with all the provisions of this Policy nor until the amount of the **Insureds** obligation to pay shall have been finally determined either by final and nonappealable judgment against the **Insureds** after trial or by written agreement of the **Insureds**, the claimant and the Insurer.

No person or organization shall have any right under this Policy to join the Insurer as a party to any **Claim** against the **Insureds** to determine the **Insureds** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives in any such **Claim**.

J. ASSIGNMENT OF INTEREST

Assignment of interest under this Policy does not bind the Insurer unless the Insurer's consent to such assignment is endorsed to this Policy.

K. COVERAGE FOR NEW SUBSIDIARIES

1. Other than an entity described in paragraph 2. below, if, after the effective date of this Policy the **Insured Entity** first has **Management Control** of any entity then such entity and its subsidiaries, directors, officers, trustees, managers, members, partners or employees who otherwise would thereby become an **Insured**, shall be covered under this Policy, subject to its terms and conditions.
2. If, after the effective date of this Policy, the **Insured Entity** first has **Management Control** of an entity where the total revenues (as reflected in the most recent audited consolidated financial statements of such entity and the **Insured Entity**) exceeds ten percent (10%) of the combined total revenues of all **Insured Entities**, as of the inception date of this Policy, then the Insurer, at its sole option upon submission of such information as the Insurer may require, and payment of any additional premium or amendment of the provisions of the Policy, may agree to provide coverage for such entity and its subsidiaries, directors, officers, managers, members, partners or employees.

L. CHANGE OF STATUS OF INSUREDS

1. Takeover of the Named Insured

In the event of a **Takeover** of the **Named Insured**, coverage under this Policy shall continue until this Policy is otherwise terminated, but only with respect to **Claims for Wrongful Acts** occurring before the effective date of the **Takeover**, unless:

- a. the Insurer is notified in writing of the **Takeover** prior to the **Takeover** effective date and agrees in writing to provide coverage for **Wrongful Acts** occurring on or after such effective date; and,
- b. the **Named Insured** accepts any additional terms, conditions and exclusions and pays any additional premium charge required by the Insurer.

2. Cessation of Subsidiary

If any organization ceases to be a **Subsidiary**, coverage under this Policy or any renewal of this Policy, shall continue until this Policy is otherwise terminated, but only with respect to **Claims for Wrongful Acts** occurring before the effective date of such cessation, unless:

- a. the Insurer is notified in writing of such cessation prior to the effective date thereof and agrees in writing to provide coverage for **Wrongful Acts** occurring on or after such effective date; and,



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- b. the **Insured Entity** accepts any special terms, conditions and exclusions and pays any additional premium charge required by the Insurer.

M. SUBROGATION AND RECOVERY

To the extent it pays any **Damages** or **Claim Expenses**, the Insurer shall be subrogated to all the **Insureds** rights of recovery therefor, including without limitation an **Insureds** right to indemnification or advancement from the **Insured Entity**. The **Insureds** shall execute all papers necessary to secure such rights, including executing any documents necessary to enable the Insurer effectively to bring suit in their name, and shall take no action which impairs the Insurer's rights of subrogation or recovery.

N. NOTICES TO THE NAMED INSURED

Any notices to the **Named Insured** under this Policy shall be provided to the **Named Insured** at the last known address and to its last known insurance agent or broker. If properly mailed to the **Named Insured** at such address, the date of mailing shall constitute the date such notice was given.

O. CHANGES

Notice to or knowledge possessed by any agent or other person acting on behalf of the Insurer does not effect a waiver or a change in any part of this Policy or stop the Insurer from asserting any right under the provisions of this Policy, nor shall the provisions be waived or changed except by written endorsement issued to form a part of this Policy.

P. INSURED AUTHORIZATION

The **Insureds** agree that the **Named Insured** will act on behalf of the **Insureds** with respect to giving of all notices to the Insurer (except notices provided in Section VI. **CONDITIONS**, paragraph B. **NOTICE OF CLAIM, CIRCUMSTANCE OR NETWORK IMPAIRMENT/PRE-CLAIMS ASSISTANCE/DATE OF CLAIM**) the receipt of notices from the Insurer, the payment of the premiums, the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

Q. VALUATION

All premiums, limits, retentions, **Damages**, **Claim Expenses** and other amounts under this Policy are expressed and payable in Canadian currency. If any judgment, settlement or any part of **Damages** or **Claim Expenses** are expressed or calculated in any other currency, payment of such **Damages** or **Claim Expenses** due under this Policy will be made in the currency of Canada, at the rate of exchange published in The Globe and Mail on the date the Insurer's obligation to pay such **Damages** or **Claim Expenses** is established, or, if not published on that date, on the date of next publication.

R. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** shall not relieve the Insurer of any of its obligations hereunder.

If a liquidation or reorganization proceeding is commenced by the **Named Insured** and/or any other **Insured Entity** (whether voluntarily or involuntarily) under the Companies Creditors Arrangement Act or the Bankruptcy and Insolvency Act (as amended), or any similar provincial, local or foreign law (collectively "Bankruptcy Law") then, in regard to a covered **Claim** under this Policy, the **Insureds** hereby:

- A. waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the proceeds of this Policy under such Bankruptcy Law; and
- B. agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from any stay or injunction applicable to the proceeds of this Policy as a result of the commencement of such liquidation or reorganization proceeding.



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S. CONFIDENTIAL SOURCE/RETRACTION OF MATTERS

Solely with respect to a **Claim** under **Insuring Agreement A.2. Media Liability**, the **Insured's** rights under this Policy shall not be prejudiced by the **Insured's** refusal to reveal the identity of a confidential source or to disclose documents or information obtained by the **Insured** during the course of any **Wrongful Act** as set forth in paragraph **B.** of the definition of **Wrongful Act**. The **Insured** shall have full discretion to retract or clarify all **Matter**.

T. TRADE AND ECONOMIC SANCTIONS

This Policy does not provide coverage for **Insureds**, transactions or that part of **Damages** or **Claim Expenses** that is uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

U. PROOF, VALUATION AND PAYMENT OF FIRST PARTY LOSS

1. Proof of First Party Loss

The **Named Insured** must submit a written proof of **First Party Loss** providing details relating to the particulars and composition of the amounts claimed in the event of a **Network Impairment**. The proof of loss shall be submitted with reasonable promptness, but in no event later than 6 months after the date initial notice of **Network Impairment** was submitted to the Insurer. The amount of **First Party Loss** shall be payable by the Insurer, to the **Named Insured**, within 60 days after the Insurer's formal agreement to the amounts claimed in the proof of loss.

2. Examination of the Insured Books and Records

Solely with respect to verification of **First Party Loss**, the **Insured** agrees to allow the Insurer to examine and audit the **Insured Entity's** books and records that relate to this Policy, at any time during the **Policy Period** and up to 3 years thereafter.

3. Inspections and Surveys

The Insurer has the right but is not obligated to do the following, on its own or through its independent contractors:

- A. make remote electronic scan inspections of all or any part of the **Insured Entity's Network** or of the **Network** of any entities newly acquired by the **Insured** at any time;
- B. give the **Insured** reports on the conditions the Insurer finds;
- C. recommend changes to the **Insured Entity's Network**; or,
- D. conduct loss control and prevention activity.

Any inspections, surveys, reports, or recommendations relates only to insurability and the premiums to be charged. The Insurer, by such inspections, surveys, reports, or recommendations, does not warrant that the **Insured Entity's Network** is safe or in compliance with laws, regulations, codes or standards, domestic or foreign. This condition applies not only to the Insurer, but also to any rating, advisory, rate service, or similar organization which makes insurance inspections, surveys, reports or recommendations.

Such inspections or surveys will be arranged with mutual consent of the **Insured Entity** and Insurer.

4. First Party Loss and Arbitration

If the **Insured** and the Insurer disagree on the amount of **First Party Loss** sustained, either may make a written demand for an appraisal of such **First Party Loss**. If such demand is made, each party will select an appraiser. The appraisers will state separately the amount of **First Party Loss** sustained. If they fail to agree, the **Insured** and the Insurer will submit their differences to an impartial



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third appraiser jointly selected by both the **Insured Entity** and the Insurer. A decision agreed to by any two will be binding. The **Insured Entity** and the **Insurer** will each bear their own costs with respect to the selection and retention of their appraisals and any disputes arising out of the payment of **First Party Loss**. The Insurer and the **Insured Entity** shall jointly bear the costs of the third appraiser.

Any appraisal of **First Party Loss** shall still be subject to all other terms, conditions and exclusions of this policy.

V. APPLICABLE LAW AND FORUM

Unless an applicable statute of a Canadian province provides otherwise, all matters arising hereunder, including questions related to the validity, interpretation, performance, and enforcement of this Policy, shall be determined in accordance with the law of the province

W. HEADINGS

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

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its Chairman and Secretary at Chicago, Illinois, but the same shall not be binding upon the Insurer unless countersigned by a duly authorized representative of the Insurer.

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