

I. INSURING AGREEMENT

The Insurer will pay on behalf of the **Insured** that **Loss**, in excess of the retention and up to the applicable limit of liability, that the **Insured** shall become legally obligated to pay resulting from any **Claim** first made against the **Insured** during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act** by the **Insured Entity**, by an **Insured Person** within the scope of such individual's duties on behalf of the **Insured Entity** or by someone for whose **Wrongful Act** the **Insured** is legally responsible, provided that:

- A.** prior to the inception date of this Policy, or the first technology and telecommunications liability policy issued and continuously renewed by any insurer, of which this Policy is a replacement or renewal, whichever is earlier:
 - 1. no **Insured** gave notice to any prior insurer of such **Claim** or any **Related Claim**;
 - 2. no **Insured** gave notice to a prior insurer of any such **Wrongful Act** or any **Interrelated Wrongful Act**; and
 - 3. no **Insured** had a basis to believe that any such **Wrongful Act**, or any **Interrelated Wrongful Act**, might reasonably be expected to be the basis of such **Claim**;
- B.** the **Wrongful Act** occurred on or after the **Retroactive Date** for the Technology and Telecommunications Liability **Coverage Part** as set forth in the Professional Liability Declarations and prior to the end of the **Policy Period**; and,
- C.** such **Claim** is reported in accordance with Section **XXII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE** of the General Terms and Conditions.

II. EXCLUSIONS

The Insurer shall not be liable to pay any **Loss** under this **Coverage Part** in connection with any **Claim** made against any **Insured**:

A. Bodily Injury/Property Damage

for any actual or alleged bodily injury (including death), sickness, disease, emotional distress, mental anguish, of any person, or **Property Damage**;

B. Claims by Insureds

by or on behalf of any **Insured** in any capacity provided, however that this exclusion shall not apply to any **Claim**:

- 1. 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; or
- 2. 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;

C. Deliberate Acts/Commingling or Misappropriation of Funds

based upon or arising out of any actual or alleged dishonest, fraudulent, criminal or malicious act or omission, commingling, misappropriation or misuse of funds, or intentional wrongdoing, including the intentional misappropriation of trade secrets, by an **Insured** if a final judgment, ruling or other finding of fact in any proceeding establishes that such act, omission, commingling, misappropriation, misuse or intentional wrongdoing was committed. 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**.

For purposes of determining the applicability of this exclusion:

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

D. Injunctive Relief

for the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement. However, the Insurer shall provide a defense for any **Claim** seeking injunctive relief. Such defense will not waive any of the Insurer's rights under this Policy;

E. Mechanical or Electrical Failure and Service Interruptions

based upon or arising out of any:

1. mechanical or electrical failure of any **Technology Products** caused by a third party, acting independently of the **Insured**, including any such failure caused by electrical power interruption or surge, brownout, blackout, short circuit, over voltage, induction or power fluctuations;
2. planned or unplanned service interruption caused by or at the direction of any entity, other than an **Insured Entity**, that provides third parties with access to the Internet or provides third parties with any services available on the Internet; or
3. interruption, surge, brownout, blackout, short circuit, over voltage, induction or power fluctuations to any governmental or private utilities or elements of infrastructure, including gas, water, or telephone (on-line, wireless or other);

F. 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;

G. Owned Entity

by any entity that is not an **Insured** under this Policy, if at the time of the **Wrongful Act** giving rise to such **Claim**:

1. any **Insured** controlled, owned, operated or managed such entity; or
2. any **Insured** was an **Executive** or **Employee**;

For the purpose of this exclusion, a 10% or more owner of the voting stock of a publicly held corporation or a 50% or more owner of the voting stock of a privately held corporation shall be deemed to own such entity;

H. Patent Infringement

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

I. Pollutants

based upon or arising out of:

1. any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**;
2. 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
3. any actual or alleged **Property Damage**, bodily injury, sickness, disease or death of any person, or financial loss;

J. Satellite Failure

based upon or arising out of the failure of any satellite;

K. Securities Claims

based upon or arising out of:

1. the 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. the filing of a prospectus under any provincial or federal securities legislation;
3. the public offering of securities, including any liability imposed either at common law or under or in connection with the Securities Act of 1933 (USA); the Securities and Exchange Act of 1934 (USA), any provincial or federal securities legislation; and the rules and regulations of the Securities Exchange Commission, of any provincial or federal securities commission or regulator, or of any investment industry regulatory organization;

L. Support or Maintenance

based upon or arising out of the intentional discontinuance or cessation of the provision, support or maintenance of any **Technology Products**, except for otherwise covered **Wrongful Acts** occurring prior to the intentional discontinuance or cessation;

M. Unauthorized Access

based upon or arising out of the failure to prevent the **Unauthorized Access** to electronic systems, networks or programs that the **Insured Entity** maintains to administer its business; provided however, that this exclusion shall not apply to **Claims** arising out of **Technology Products** or **Technology Services** provided to others, including such **Technology Products** or **Technology Services** hosted by any system, network or program of the **Insured**;

N. 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;
2. price fixing, monopolization or restraint of trade;
3. violation of:
 - a. the Competition Act (Canada);
 - b. the Federal Trade Commission Act (USA);
 - b. the Sherman Act (USA), the Clayton Act (USA), or any federal, provincial, state or local statutory law or common law regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade;
 - c. the Racketeer Influenced and Corrupt Organizations Act (USA);
 - d. any rules or regulations promulgated under or in connection with the above statutes; or
 - e. any federal, provincial, state, or local statutory law or common law similar to the above statutes; or
4. false or deceptive advertising or misrepresentation in advertising,

not directly related to a **Claim** alleging a **Personal/Proprietary Rights Injury** as defined in paragraphs 5 and 6 of the definition of **Personal/Proprietary Rights Injury**;

O. Unsolicited Communication

based upon or arising out of:

1. any actual or alleged violation of any federal or state anti-spam statute or regulation, including the CAN-SPAM Act of 2003 (USA), as amended; or
2. any actual or alleged violation of any federal, provincial, state, or local statute or regulation prohibiting the dissemination of unsolicited electronic communications to multiple third parties, including any violation of the Telephone Consumer Protection Act of 2001 (USA), as amended;

P. Withdrawal/Recall

for any costs or expenses incurred by any **Insured**, or others:

1. for the recall, removal, disposal or withdrawal of the **Insured's Technology Product** or any products which incorporate the **Insured's Technology Product**; or **Technology Services**; or
2. to repair, replace, upgrade, supplement, improve, or complete the **Insured's Technology Product** or any products which incorporate the **Insured's Technology Product** or **Technology Services**.

However, this exclusion shall not apply to **Claims** for the actual or alleged loss of use of such **Technology Product**;

Q. Wrongful Employment Practice/Discrimination/Humiliation/Harassment

for any actual or alleged **Wrongful Employment Practice** or any other discrimination, humiliation or harassment;

III. VICARIOUS LIABILITY COVERAGE
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Any entity the **Insured Entity** is required by contract to include as an insured for liability of such entity 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 for a **Wrongful Act** of an **Insured**, and only so long as the written contract is entered into before such **Wrongful Act** occurs. Any coverage afforded by this Section is subject always to all of the Policy's terms and conditions, provided however:

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