



**MSIG Insurance (Vietnam) Company Limited**

Head Office: 10<sup>th</sup> Floor, CornerStone Building, No.16, Phan Chu Trinh Street,

Phan Chu Trinh Ward, Hoan Kiem District, Hanoi, Vietnam

Tel: (84.24) 3936 9188 ~ 3936 9200, Fax: (84.24) 3936 9187

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## CYBER INSURANCE POLICY

**WHEREAS** the **Named Insured** by an **application** and declaration which is the basis of and is deemed to be incorporated within this contract has applied to **Us** for the insurance contained in this **Policy** and has paid or agreed to pay the premium as consideration for such insurance.

We will provide the cover described in the **Policy**, subject to its terms and conditions, for the **policy period**. Except as otherwise provided herein this **Policy** only covers **damages, regulatory penalties, claims costs, and regulatory costs** in respect of **claims** or **regulatory actions** first made against **you** and reported to **us** in the **policy period**; or **loss** in respect of **loss events** reported to **us** during the **policy period**. All **claims** and **loss events** are subject to the applicable limits of liability and the applicable **retention(s)** as stated in the **Schedule**. The **Policy** Limit of Liability is inclusive of all **claim costs** or **regulatory costs** where applicable, expenses and any other amounts covered by this **Policy** except as otherwise might be provided within any attached endorsements. Terms that appear in bold are defined terms in this **Policy** and have special meaning, please refer to Section II Definitions.

### I. INSURING AGREEMENTS

We agree to indemnify **you** or pay on your behalf in excess of the applicable **retention** the following

#### 1. INVESTIGATION COSTS

Pay on **your** behalf **IT forensic investigation costs**.

#### 2. RESPONSE COSTS

Pay on **your** behalf **Privacy response costs** incurred as a result of (B) below.

#### 3. RESTORATION COSTS

Indemnify **you** for **Data restoration costs** incurred.

#### 4. INTERRUPTION

Indemnify **you** for **Business interruption loss** incurred after the **waiting period** and during the **business impact period**, due to

- i. **your** inability to reliably use **your data assets** that have been corrupted or encrypted and fail to perform their intended function;
- ii. the availability of **your computer system** or **your data assets** being impaired.

#### 5. LIABILITY

Pay on **your** behalf **Damages** that **you** are legally obliged to pay and related **claim costs** as a result of (A) - (C) below and for (C) below, it must result in

- i. the transmission of **malicious code** from **your computer systems** to a **third party**;
- ii. the unauthorized destruction, corruption, erasure or encryption of **third party data assets** stored on **your computer systems**;
- iii. the unauthorized use of **your computer systems** for the purpose of participating in a **denial of service attack** directed against the **computer systems** of a **third party**;
- iv. the prevention of authorized access to **your computer systems** by an authorized **third party**.



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## 6. EXTORTION LOSS

Indemnify **you** for **Extortion Loss** incurred as a direct result of a credible threat to

- i. disclose, publish or sell **personally identifiable information** or **corporate information**;
- ii. destroy, corrupt, erase or encrypt **your data assets** or withhold decryption keys that
  - a. has resulted in encryption of **your data assets** by an unauthorized **third party**;
  - b. enables an unauthorized **third party** to destroy, corrupt, erase, encrypt **your data assets**, and/or introduce **malicious code** to **your computer systems**;
- iii. impair the availability of **your computer system**.

## 7. REGULATORY

Pay on **your** behalf **Regulatory penalties** that **you** are legally obligated to pay and related **regulatory costs** as a result of a **regulatory action** arising from (B) below.

arising as a direct consequence of contingencies hereunder:

- (A) a **Breach of Confidentiality**; and/or
- (B) a **Breach of Privacy**; and/or
- (C) a **Security Breach** and/or failure to prevent **Security Breach**

subject to such contingency or contingencies first occurring on or after the **retroactive date** and

Item 1 - 4, for contingency or contingencies first discovered by **you** and reported to **us** in writing during the **policy period** or in accordance with Section V.10. of this **Policy** if applicable.

Item 5 - 7 for contingency or contingencies for which a **claim** or **extortion threat** is first made against **you** and reported to **us** in writing during the **policy period** or in according with Section V.10. of this **Policy** if applicable.

## II. DEFINITIONS

### 1. APPLICATION

Means all application forms, supplemental application forms, questions or question sets, any attachments thereto and all other materials submitted to **us** by **you** or on **your** behalf in connection with the underwriting of this **Policy**, any endorsement thereto or a policy for which this **Policy** is a renewal or replacement.

### 2. BREACH OF PRIVACY

Means any actual or suspected access to or acquisition of **personally identifiable information** in a manner that is either not authorized by the **insured organization** or negligently authorized by the **insured organization**.

### 3. BREACH OF CONFIDENTIALITY

Means any actual or suspected access to or acquisition of **corporate information** in a manner that is either not authorized by the **insured organization** or negligently authorized by the **insured organization**.

### 4. BREACH NOTICE LAW

Means any statute or regulation of any country, state, province or jurisdiction that requires notice to persons whose **personally identifiable information** has been affected by a **breach of privacy**.

### 5. BUSINESS IMPACT PERIOD

Means a period of time:

- i. for the purposes of Section I.4.i. and/or Section VI.1.i. (if insured and as may be specified in the **Schedule**) only, at the first minute that **your data assets** are corrupted or encrypted and ending:
  - a. at the time when **your data assets** are recovered, restored, input, reconfigured and/or replaced;  
or
  - b. at the time when **business interruption loss** ceases to be incurred;  
but not exceeding 90 days in total.



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- ii. for the purposes of Section I.4.ii. and/or Section VI.1.ii. (if insured and as may be specified in the **Schedule**) only, the period of time commencing from the first minute during which the availability of **your computer system** or **your data assets** is impaired and ending:
  - a. at the time when **your computer systems** or **your data assets** availability ceases to be impaired; or
  - b. at the time when **business interruption loss** ceases to be incurred; but not exceeding 90 days in total.

**6. BUSINESS INTERRUPTION LOSS**

Means:

- i. **increased costs of working;**
- ii. **net profit; plus fixed operating expenses;**
- iii. **Claims preparation costs.**

Both **net profit** and **fixed operating expenses** will be reduced by the amount of any recovery of such loss represented by any **net profit** that is deferred to a period following the **business impact period** or **reputational impact period** that is equal to a minimum of five times the **business impact period** or **reputational impact period** or such longer period where in **our** reasonable opinion **you** continue to earn deferred **net profit** that would otherwise have been earned during the **business impact period** or **reputational impact period** in addition to the expected **net profit** earned during this period.

**7. CHANGE OF CONTROL**

Means any person, entity or group of persons or entities that acquires greater than 50% of the equity of the **named insured** and/or the right to elect or appoint the majority of the board of directors of the **named insured** or persons to an equivalent management function.

**8. CLAIM**

Means:

- i. a written demand for monetary **damages** or non-monetary relief made against **you**;
- ii. service of suit or the institution of arbitration or other dispute resolution proceedings against **you**;
- iii. a request for agreement to toll or waive a statute of limitations.

**Claim** does not mean and does not include a **PCI claim**, a **regulatory action**, or an **extortion threat**.

**9. CLAIMS COSTS**

Means:

- i. all reasonable and necessary fees, costs, expenses and disbursements incurred by **us** or by **you** with **our** prior written consent in the investigation, adjustment, defense and appeal of a **claim** in accordance with Section IV.2. of this **Policy**;
- ii. premiums on appeal bonds, attachment bonds or similar, except that **we** have no obligation to provide or obtain such bonds.

**Claims costs** does not mean:

- i. **PCI claims costs;**
- ii. **regulatory costs;** or
- iii. the salaries, wages or any additional remuneration of **your employees** or **responsible officers**, general business expenses and overheads.

**We** have no obligation to pay any salaries, wages, overheads and other expenses that **you** incur in the course of **your** cooperation in the investigation and defense of any **claim**.

**10. CLAIMS PREPARATION COSTS**

Means the reasonable costs up to a maximum of [VND ...] per loss event, of an accountant for the preparation and presentation of a submission to **us** for the purpose of evidencing any covered **business interruption loss** under Sections I.4. and Section VI.1 (if insured and as may be specified in the **Schedule**) or Section VI.6., but only where these Section are shown as included in the **Schedule**. **Claims preparation costs** does not include the salaries, wages or additional remuneration of **your employees** or **responsible officers**, or any costs in respect of claims advocacy, dispute resolution, or the fees and costs for any person or company that provides consultation on coverage or negotiates claims, including but not limited to, providing advice on the amount reimbursable by **us**.



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## 11. CONTENT INJURY

Means:

- i. defamation, including libel, slander, trade libel, injurious falsehood, emotional distress or outrage or other tort related to disparagement of, or harm to, the reputation or character of any person or of any organization;
- ii. violation of a right to privacy of any individual, including false light, publication of private facts, intrusion upon seclusion;
- iii. infringement of copyright, trademark, trade dress, trade name, domain name, logo, title, service mark or service name;
- iv. plagiarism, piracy or misappropriation of ideas.

## 12. CORPORATE INFORMATION

Means information entrusted to **you** by a **third party**, for which **you** have a legal obligation to maintain confidence, provided that **Corporate information** does not include **personally identifiable information**.

## 13. CRISIS MANAGEMENT COSTS

Means the reasonable and necessary costs incurred by **us** or by **you** with **our** prior written consent for an external public relations consultant to provide advice and assistance for the purpose of mitigating any likely or actual harm to the **Insured organization's** reputation.

## 14. DAMAGES

Means a monetary settlement, judgment or award that **you** are legally obligated to pay, including pre-judgment interest, post judgment interest and claimant's costs, provided that **damages** does not mean actual or alleged:

- i. punitive and exemplary damages except where insurable at law in any applicable jurisdiction that most favors coverage;
- ii. liquidated damages or amounts payable by **you** under a contractual indemnity where such liquidated damages or indemnified amounts exceed the amount that **you** would have been liable to pay in the absence of an agreement to pay such liquidated damages or amounts;
- iii. fines, penalties, sanctions, taxes or damages that are a multiple of compensatory damages;
- iv. **regulatory penalties**;
- v. restitution, disgorgement of profits or unjust enrichment;
- vi. costs incurred in complying with an order for injunctive relief;
- vii. discounts, coupons, prizes or any other form of incentive offered to customers or any other third parties;
- viii. **PCI fines** or **PCI assessments**;
- ix. return, refund, offset or reduction in any fees, charges, commissions or other form of payment received or due to **you**, for services or goods provided or contracted to be provided;
- x. amounts that **you** are not legally obligated to pay.

## 15. DATA ASSETS

Means any non-physical, machine readable information in digital form, including **programs**.

## 16. DATA RESTORATION COSTS

Means the reasonable fees, costs, and expenses incurred by **you** for the recovery, restoration, input, configuration and/or replacement of **your data assets** that have been corrupted, erased, encrypted, damaged or destroyed. **Data restoration costs** do not include:

- i. the costs to re-perform any underlying work product that resulted in the creation of the **data assets**, including but not limited to any research and development activities;
- ii. the cost of replacement of **data assets** that are a material improvement or upgrade on the **data assets** that had been corrupted, deleted, encrypted, damaged or destroyed;
- iii. the economic market value of any **data assets** that had been corrupted, deleted, encrypted, damaged or destroyed.



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#### **17. DENIAL OF SERVICE ATTACK**

Means an intentional and malicious attack that utilizes computer processing capacity to impair or prevent legitimate authorized access to a computer system by directing an excessive volume of electronic data to that computer system.

#### **18. EMPLOYEE**

Means any individual in the **insured organization's** service who is engaged and directed by the **insured organization** in the ordinary course of the **insured organization's** business, including past, present, future, part time, seasonal, temporary or leased employees. **Employee** does not include **responsible officers**.

#### **19. EXTENDED REPORTING PERIOD**

Means the period of time after the end of the **policy period** for reporting **claims** or **loss events** as provided in Section V.10. of this **Policy**.

#### **20. EXTORTION LOSS**

Means:

- i. **your** payment or transfer of money, securities or property to satisfy a demand for such payment or transfer in return for terminating an **extortion threat**; and
- ii. the fees, costs and expenses of an external expert appointed by **us** where required to advise upon, investigate and respond to the **extortion threat** or to mitigate the amount of any money, securities or property demanded to terminate the **extortion threat**.

#### **21. EXTORTION THREAT**

Means any credible threat to disclose, publish or sell **personally identifiable information** or **corporate information**; or to destroy, corrupt, erase or encrypt **your data assets**; or to impair the availability of **your computer system**.

#### **22. FIXED OPERATING EXPENSES**

Means any operating expenses (including ordinary payroll) that must continue to be incurred and that cannot be reasonably avoided during the **business impact period** or **reputational impact period**.

#### **23. FIRST POLICY PERIOD**

Means either this **policy period** if this is the first **Policy** issued by **us** to **you** for this coverage or the **policy period** of the first **Policy** issued by **us** to **you** for substantially similar coverage, but only where this **policy period** is a renewal of an unbroken chain of consecutive policies from that first **Policy**.

#### **24. INCREASED COSTS OF WORKING**

Means the fees, costs and expenses that are reasonably and necessarily incurred by **you** to avoid, minimize or reduce the amount of **business interruption loss** (including by reducing the period during which **business interruption loss** is incurred), but only where:

- i. **business interruption loss** would have been incurred but for such expenditure; and
- ii. the fees, costs and expenses incurred do not exceed the proportion of **business interruption loss** that has been avoided or reduced as a direct result of such expenditure; and
- iii. such fees, costs and expenses incurred do not include **privacy response costs**.

#### **25. INSURED ORGANIZATION**

Means the **named insured** and **subsidiaries**.

#### **26. IT FORENSIC INVESTIGATION COSTS**

Means:

the reasonable and necessary costs incurred by **us** or by **you** with **our** prior written consent, for external IT security experts to confirm the existence or absence of a suspected **security breach**, to determine the cause of the **security breach** and to determine the extent of a **security breach** where it is suspected that such **security breach** has resulted in



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- i. a **breach of privacy** or **breach of confidentiality** and to establish the extent of affected **personally identifiable information** or **corporate information** following a **breach of privacy** or **breach of confidentiality**;
- ii. the corruption, erasure, encryption, damage or destruction of **your data assets**; or the transmission of **malicious code** from **your computer systems** to a **third party**; or the unauthorized destruction, corruption, erasure or encryption of **third party data assets** stored on **your computer systems**; or a threat to destroy, corrupt, erase or encrypt **your data assets** stored on **your computer systems**; or the unauthorized use of **your computer systems** for the purpose of participating in a **denial of service attack**;
- iii. the denial of authorized access to **your computer systems** by an authorized **third party**; or impairment to the availability of **your computer system**; or a threat to impair the availability of **your computer system**.

**IT forensic investigation costs** also includes the reasonable costs of legal advisors to appoint, oversee and guide external IT security experts.

## 27. LOSS

Means:

- i. **Business interruption loss**;
- ii. **Claims preparation costs**;
- iii. **Crisis management costs**;
- iv. **Data restoration costs**;
- v. Direct financial loss under Section VI.7. only;
- vi. **Extortion loss**;
- vii. **IT forensic investigation costs**;
- viii. **Privacy response costs**; or
- ix. **Regulatory penalties and/or Regulatory costs**.

## 28. LOSS EVENT

Means any **breach of privacy**, **breach of confidentiality**, **regulatory action**, **operational error**, **security breach**, **denial of service attack**, **payment card breach**, **extortion threat**, **personal information violation**, or **content injury** to the extent covered as specified in the **Schedule**.

## 29. MALICIOUS CODE

Means a virus, Trojan horse, worm, spyware, logic bomb, or any other executable program that is intentionally designed to cause harm.

## 30. MERCHANT SERVICES AGREEMENT

Means a written agreement between **you** and a **third party** to enable the acceptance, authorization, processing and settlement of payment card transactions, including but not limited to an acquiring bank, a card scheme or a payment card processor.

## 31. NAMED INSURED

Means the person, company or other entity named as such in Item 1 of the **Schedule**.

## 32. NET PROFIT

Means the amount of net profit before taxation that **you** could reasonably have projected to be earned for goods sold and for services rendered during the **business impact period** or **reputational impact period**, minus the actual net profit before taxation that **you** earned during the **business impact period** or **reputational impact period**. Such projection will be assessed by applying the same rate of net profit before taxation earned:

- i. during the same calendar period for the preceding financial year; or



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- ii. during the same time period immediately preceding the **business impact period** or **reputational impact period**; or
- iii. during the same hours on the last business day preceding the **business impact period** or **reputational impact period**; or
- iv. during the same hours on the last corresponding day of the week;

whichever is reasonably considered by us to be the most accurate measure of net profit before taxation that would have been earned, but for the **business impact period** or **reputational impact period** having occurred. Further adjustment will be made where appropriate to account for other circumstances that may influence the amount of net profit before taxation that could have been earned during the **business impact period** or **reputational impact period**.

This includes, but is not limited to seasonal variances, key earning dates, unprecedented customer offers and incentives.

**33. NEW PROGRAM**

Means a **program** that has not been previously installed on that part of **your computer system**, including a new version of a previously installed **program**. **New program** does not include any **program** that has been installed for 90 days or longer or any maintenance patches or other modifications to a **program** that has been installed for 90 days or longer.

**34. OPERATIONAL ERROR**

Means an accidental or unintentional act, error or omission committed by an **employee of yours** while:

- i. maintaining, inputting or modifying **your data assets** except for **new programs**; or
- ii. developing or installing **your data assets** except for **new programs**; or
- iii. operating or maintaining **your computer system**.

**35. PAYMENT CARD BREACH**

Means any actual or suspected access to or acquisition of credit, debit or prepaid card information in a manner that is not authorized by the **insured organization**.

**36. PCI CLAIM**

Means a written demand for the payment of **PCI fines** and/or **PCI assessments** under the terms of a **merchant services agreement**.

**37. PCI CLAIMS COSTS**

Means all reasonable and necessary fees, costs, expenses and disbursements incurred by **us** or by **you** with **our** prior written consent in the investigation, adjustment, defense and appeal of a **PCI claim** in accordance with Section IV.2. of this **Policy**.

**38. PCI FINE**

Means monetary fines or penalties that have been specifically defined and quantified as fixed monetary amounts in card scheme operating rules including, but not limited to those issued by VISA, MasterCard, Diners Club, American Express, JCB.

**39. PCI ASSESSMENT**

Means monetary amounts that **you** are legally obligated to pay under card scheme operating rules including, but not limited to those issued by VISA, MasterCard, Diners Club, American Express, JCB, for the recovery of costs incurred by the card scheme, issuing banks or acquiring banks to replace payment cards that have been compromised as part of a **payment card breach** and to refund fraudulent transactions that resulted from that **payment card breach**.

**40. PERSONALLY IDENTIFIABLE INFORMATION**

Means:

- i. information defined as private personal information under any statute or regulation intended to be utilized for the enforcement of the protection of such information as it relates to an individual;



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- ii. information defined as private personal information under any statute or regulation requiring notice to individuals;
- iii. Medical records or other healthcare information that relates to an identifiable individual; or
- iv. Governmental issued identification information including drivers licence number, state identification number, passport number, social security number; or
- v. payment card numbers or financial account numbers in combination with the corresponding security codes, access codes, pin numbers, passwords; or
- vi. any other non-public information either singularly or in combination with other information that can be used to reliably identify an individual.

#### **41. PERSONAL INFORMATION VIOLATION**

Means the unauthorized collection, use, modification, destruction or retention of **personally identifiable information** in violation of any statute, law or regulation or **your own written privacy policy**. **Personal information violation** does not include **breach of privacy**.

#### **42. POLICY**

Means this **Policy** wording, the **Schedule**, the **application** and any Endorsement attaching to and forming part of the **Policy** either at commencement or during the **insurance period**.

#### **43. POLICY PERIOD**

Means the period of time shown in the **Schedule** and does not include any applicable **extended reporting period** as provided in Section V.10.

#### **44. PRIVACY RESPONSE COSTS**

Means

- i. **crisis management costs**;
- ii. the reasonable and necessary costs incurred by **us** or by **you** with **our** prior written consent for external legal advisors to determine the scope of **your** obligations and the actions necessary to comply with applicable **breach notice law**;
- iii. the reasonable and necessary costs incurred by **us** or by **you** with **our** prior written consent to notify individuals affected by the **breach of privacy** where notification is either required under applicable **breach notice law** or where in the absence of a **breach notice law** requirement, **we** and **you** agree that notification will mitigate the risk of significant financial, reputational or other harm to the individual;
- iv. the reasonable and necessary costs incurred by **us** or by **you** with **our** prior written consent to provide the services of a call center to take inbound calls from individuals that **you** have notified under iii. above and to provide information and answer questions related to the incident. Unless otherwise required by applicable law or regulation, call center services will be provided for a maximum of 90 days following the issuance of all notifications under iii. above;
- v. the reasonable and necessary costs incurred by **us** or by **you** with **our** prior written consent for individuals notified under iii. above to redeem an offer contained in such notification to provide a credit file monitoring product or an identity monitoring product for a period of one year or any longer period if required by applicable law or regulation.

#### **45. PROGRAM**

Means a set of information formulated to direct the operation and function of computers.

#### **46. REGULATORY ACTION**

Means an official written request for information, civil investigative proceeding or civil demand made against **you** by a governmental entity including any federal, state or local governmental entity in any country.

#### **47. REGULATORY COSTS**

Means all reasonable and necessary fees, costs, expenses and disbursements incurred by **us** or by **you** with **our** prior written consent in the investigation, adjustment and defence of any **regulatory action**. **Regulatory**





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costs do not include the salaries, wages or additional remuneration of **your employees or responsible officers**, general business expenses and overheads.

**48. REGULATORY PENALTIES**

Means to the extent insurable by law:

- i. any civil fine or monetary penalty payable by **you** to a governmental entity including any federal, state or local governmental entity in any country; or
- ii. a monetary award including an amount to be deposited into a fund as equitable relief for the payment of consumer claims.

**49. REPUTATION IMPACT PERIOD**

Means the period of time from the first day of media reporting of a **breach of privacy** or **breach of confidentiality** until the earlier of the time the **business interruption loss** ends or the ninetieth day following the first day of media reporting.

**50. RESPONSIBLE OFFICER**

Means any person who holds or has previously held any of the following positions in the **insured organization**: Principal, President, Partner, Managing Partner, a member of the board of directors, executive officer, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Risk Officer, Risk Manager, Insurance Manager, Chief Security Officer, Chief Information Security Officer, Chief Privacy Officer, General Counsel, a legally qualified person working in the office of the General Counsel or any corporate legal function, or any individual holding or that has previously held a position substantially similar in function to those described in this paragraph regardless of the title ascribed to that person or role.

**51. RETENTION**

Means for all **claims, PCI claims or loss**, the amounts shown in Item 5 of the **Schedule**. For **business interruption loss**, the amount shown in Item 5 of the **Schedule** will be applied after the **waiting period** has been exhausted. The **waiting period** does not apply to **increased costs of working**.

**52. RETROACTIVE DATE**

Means the date specified in Item 7 of the **Schedule**.

**53. SCHEDULE**

Means The **Schedule** attached to this **Policy** or any **Schedule** subsequently substituted for it during the **insurance period** and duly signed, stamped and dated by an authorized representative of **us**.

**54. SECURITY BREACH**

Means:

- i. unauthorized access to **your computer system** or **your data assets**; or
- ii. the unauthorized use of **your computer system** or **your data assets**;
- iii. a **denial of service attack**;

by a **third party** or an **employee** including where access has been gained by using stolen authorized user credentials.

**55. SUBSIDIARIES**

Means any legal entity where the **named insured**:

- i. at the inception of the **Policy** directly or indirectly owns greater than fifty per cent of the of the equity and/or has the right to elect or appoint the majority of the board of directors or persons to an equivalent management function;
- ii. acquires or creates a legal entity during the **policy period**, but subject to the conditions and limitations set out in Section V.1.

**56. THIRD PARTY**

Means any person, company or other entity that is not **you**.



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#### **57. VENDOR**

Means any legal entity or individual that has a written agreement with **you** for the provision of products or services to **you** in return for a financial consideration.

#### **58. VERIFIED**

Means a method of authenticating the contents of a communication by:

- i. the sender by affixing a cryptographic authentication key to identify to **you** that the communication's origin is a **vendor**, a financial institution or that the communication originates from within the **insured organization**; or
- ii. a telephone call to a person that **you** know is ordinarily authorized to transmit such communication; or
- iii. the receipt of a valid username and password or PIN combination; or
- iv. the use of biometric authentication; or
- v. any other two factor authentication method ordinarily used for the reliable authentication of electronic communications.

#### **59. WAITING PERIOD**

Means the period of time stated in Item 6 of the **Schedule** that must be exceeded and applies to each and every **security breach**, **denial of service attack** or **operational error**. This **waiting period** shall commence:

- i. for the purposes of Section I.4.i. and/or Section VI.1.i. (if insured and as may be specified in the **Schedule**) only, at the first minute that **your data assets** are corrupted or encrypted;
- ii. for the purposes of Section I.4.ii. and/or Section VI.1.ii. (if insured and as may be specified in the **Schedule**) only, at the first minute during which the availability of **your computer system** is impaired.

#### **60. WE/US/OUR**

Means the underwriters named in the **Schedule**.

#### **61. YOU/YOUR**

Means:

- i. the **named insured** and any **subsidiaries** (together, the "**insured organization**");
- ii. a director or officer of the **insured organization**, but only with respect to the performance of his or her duties as such on behalf of the **insured organization**;
- iii. a full time, part time or temporary **employee**, but only with respect to the performance of his or her duties as such on behalf of the **insured organization**;
- iv. a principal, general or managing partner or owner where the **named insured** is a sole proprietorship, partnership, limited liability partnership or limited liability company, but only with respect to the performance of his or her duties as such on behalf of the **insured organization**;
- v. any person who previously qualified as **you** under ii., iii., or iv. above, but only with respect to the performance of his or her duties as such on behalf of the **insured organization**;
- vi. the estate, heirs, executors, administrators, assigns and legal representatives of **you** in the event of **your death**, incapacity, insolvency or bankruptcy, but only to the extent that **you** would otherwise be provided coverage under this **Policy**;
- vii. the lawful spouse or any natural person who qualifies under applicable law as the domestic partner of **you** under ii., iii., or iv. above, but solely by reason of an act, error or omission by such person under ii., iii., or iv. and not by such spouse or domestic partner.

#### **62. YOUR COMPUTER SYSTEM**

All computers and input or output devices owned or leased by **you** and under **your** direct operational control, whether offline or forming part of an interconnected network of computers and input or output devices.



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### 63. YOUR DATA ASSETS

All **data assets** that are owned by **you** or for which **you** have assumed responsibility and that are stored on **your computer systems**.

## III. EXCLUSIONS

This **Policy** does not apply and **we** shall have no liability or obligation for any **claim**, any **PCI claim** (unless insured and as may be specified in the **Schedule**), any **loss** or for the payment of any amounts arising out of, resulting from, or attributable to:

### 1. ASBESTOS

Asbestos or silica or any asbestos or silica related injury or **claim**; or any alleged act, error, omission or duty involving asbestos or silica, their use, exposure, presence, existence, detection, removal, elimination or avoidance or the use, exposure, presence, detection, removal, elimination or avoidance of asbestos or silica in any environment, building or structure.

### 2. BODILY INJURY

Any actual or alleged physical injury, sickness, disease, death, mental anguish, mental injury, shock, humiliation or emotional distress sustained by any person. However, this exclusion does not apply to the actual or alleged unintentional infliction of emotional distress or mental anguish arising out of a **breach of privacy, security breach or content injury**.

### 3. CONTRACTUAL LIABILITY

Any actual or alleged breach of a written or oral contract, warranty, guarantee, promise or agreement whether express or implied, or the liability of others assumed under any written or oral contract, warranty, guarantee, promise or agreement whether express or implied. However this exclusion does not apply to:

- i. liability that **you** would have in the absence of such contract, warranty, guarantee, promise or agreement;
- ii. any obligation that **you** have to maintain the confidentiality and security of **personally identifiable information or corporate information**;
- iii. **PCI fines and PCI assessments**, if insured as may be specified in the **Schedule**.

### 4. COSTS OF COMPLYING WITH AN ENFORCEMENT ORDER

Any non-monetary relief or costs to comply with the order of a court or regulator including, but not limited to injunctive relief, a requirement to improve data or computer system security or a continuing requirement to undertake audits, assessments or testing.

### 5. DIRECTORS' DUTIES

Any actual or alleged breach of duty by any director or officer acting in their capacity as such where a **claim** is brought by the **named insured, the insured organization, a responsible officer, employee or stockholders**. However this exclusion does not apply to an otherwise covered **claim** for a **breach of privacy** brought by an **employee** or stockholder where that **employee's** or stockholder's **personally identifiable information** has been accessed or acquired in a manner that is not authorized by the **insured organization**.

### 6. DISCRIMINATION

Any actual or alleged discrimination or harassment of any kind, including, but not limited to, race, creed, national origin, age, gender, pregnancy, marital status, sexual preferences or disability.



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## 7. DISHONEST ACTS

Any actual or alleged intentional or deliberate act, malicious, fraudulent, dishonest, or criminal conduct of any **responsible officer(s)** or any such conduct carried on by **you** with the knowledge of any **responsible officer(s)** whether acting alone or in collusion with others. Notwithstanding the foregoing, the insurance afforded by this **Policy** shall apply to **claims costs** incurred in defending any such **claim** until a final adjudication or an admission or plea of no contest, but shall not apply to any **damages** that **you** might become legally obligated to pay. **We** will have the right to recover those **claims costs** incurred from those parties that have admitted to or been found by a court, jury, or arbitrator to have committed such intentional or deliberate, malicious, fraudulent, dishonest, or criminal acts.

## 8. ELECTROMAGNETIC FIELDS

The existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property.

## 9. EMPLOYMENT PRACTICES

Any employer-employee relations policies, practices, acts, or omissions, any actual or alleged refusal to employ any person, or any misconduct with respect to employees. This includes, but is not limited to, **claims** arising under workers compensation or similar laws. However this exclusion does not apply to an otherwise covered **claim** under Section 1.5.

## 10. ENVIRONMENTAL HAZARDS

- i. Fungus(i) or spore(s), or any substance, vapour or gas produced by or arising out of any fungus(i) or spore(s), or any material, product, building component, building or structure that contains, harbors, nurtures or acts as a medium for any fungus(i) or spore(s) regardless of any other cause, event, material, or product. Fungus(i) includes but is not limited to, any form or type of mold, mushroom or mildew. Spore(s) means any reproductive body produced by or arising out of any fungus(i);
- ii. Any environmental hazard, microorganisms, biological organisms, bioaerosols, or organic contaminants including but not limited to mold, mildew, yeast or other toxins, mycotoxins, allergens, infectious agents, wet or dry rot or rust, carcinogens, noise or contaminants in the structure, soil, water, air, or any materials containing them at any time, regardless of the cause of growth, proliferation or secretion.

## 11. FUNDS TRANSFER

Any actual or alleged loss, transfer or theft of funds, monies, securities or tangible property of others from or to an account in **your** care custody and control. For the purposes of this exclusion, the term "accounts" shall include, but is not limited to, deposit, credit, debit, prepaid and securities brokerage accounts.

## 12. GOVERNMENT ACTIONS

Any action of, or restrictions or requirements imposed by a government authority, including government enforcement of or investigation under any state or federal regulation. However this exclusion does not apply to an otherwise covered **claim** under Section 1.7.

## 13. ILLEGAL PROGRAMS

The use of illegal or unlicensed **programs** that are in violation of the provisions or laws referring to software protection where such use is known to a **responsible officer**.

## 14. INFRASTRUCTURE

- i. The failure of, impairment to, or interruption in supply from any utility including gas, water, electricity;
- ii. The failure of, impairment to or interruption in service from any telecommunication provider or satellite;
- iii. Electrical or mechanical failure, impairment or interruption, including electrical disturbance, spike, brownout or blackout.



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**15. INSOLVENCY OF INSURED OR A THIRD PARTY**

The insolvency, bankruptcy, or financial default by the **insured organization** or any **third party** and the failure to provide any bond or security.

**16. INSURED vs. INSURED**

Any **claim** made by any of **you** against another of **you**. However, this exclusion does not apply to any **claim** brought by an **employee**.

**17. INTELLECTUAL PROPERTY**

- i. The actual or alleged infringement of any patent or patent rights; or
- ii. The misappropriation of any trade secret or **corporate information** by **you** or by a **third party** acting on **your** behalf.

**18. PCI FINES AND ASSESSMENTS**

Any **PCI fine** or **PCI assessment** unless insured as may be specified in the **Schedule**.

**19. PHYSICAL EVENT**

Fire, smoke, explosion, lightning, wind, water, hail, flood, tidal wave, earthquake, landslide, volcanic eruption or any other physical, natural weather or seismic event, howsoever caused.

**20. POLLUTION**

The discharge, dispersal, release, seepage, migration, or escape of **pollutants** or contamination of any kind or any governmental or regulatory directive or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollution or contamination of any kind. **Pollutants** shall include without limitation any air emission, particulate matter, odor, waste water, oil, or oil products, infectious, biological or medical waste, asbestos or asbestos products, lead, silica, noise, fungus including mold, mildew and any mycotoxins, spores, scents or by-products produced or released by fungi, and electric or magnetic or electromagnetic fields. **Pollutants** shall also include without limitation solids, liquids, gaseous, thermal biological, nuclear or radiological irritants or contaminants, or smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials (including materials to be recycled, reconditioned or reclaimed). **Pollutants** shall include greenhouse gases including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, or any other emission or substance defined by applicable law as a greenhouse gas.

**21. PRIOR ACTS**

- i. Any act, error, omission, fact, incident, circumstance, or **loss event** first committed or occurring prior to inception of the **first policy period** that a **responsible officer** knew or should have reasonably known could result in a **claim** or **loss**.
- ii. Any **claim** or **regulatory action**, notified to **you** or brought against **you** prior to the inception of the **first policy period**.
- iii. Any act, error, omission, **loss event** or other matter that has been notified to any insurer of any other insurance policy in force prior to the inception date of this **policy period**.

**22. PROPERTY DAMAGE**

Any physical injury to, or destruction of tangible property including the loss of use thereof. However, this exclusion does not apply to **your data assets** that have been corrupted, erased, damaged or destroyed as a result of physical injury to or destruction of computer hardware.

**23. RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIOCHEMICAL AND ELECTROMAGNETIC WEAPONS EXCLUSION CLAUSE**

- i. ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
- ii. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof



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- iii. any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
- iv. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.
- v. any chemical, biological, bio-chemical, or electromagnetic weapon.

**24. RETROACTIVE DATE**

Any actual or alleged act, error, omission, fact, incident, circumstance or **loss event** or continuing actual or alleged acts, errors, omissions, facts, incidents, circumstances or **loss events** first committed or occurring prior to the **retroactive date**.

**25. TRADING LOSSES AND LIABILITIES**

- i. Any trading losses, trading liabilities (including commissions or fees) or unauthorized trading including trading in excess of authority levels or outside of approved parameters and product lines or other dealings in securities, commodities, derivatives, foreign or federal funds, currencies, foreign exchange, and the like;
- ii. The value of coupons, price discounts, prizes, awards or other valuable consideration given in excess of the total contracted or expected amount.

**26. UNFAIR AND DECEPTIVE PRACTICES**

Any actual or alleged:

- i. false, deceptive or misleading advertising, consumer fraud;
- ii. false, deceptive or unfair trade practices;
- iii. unfair competition, restraint of trade or antitrust violation.

**27. UNLAWFUL DATA PROCEDURES**

Any actual or alleged:

- i. unlawful and/or unsolicited distribution of email, direct mail, text messages or facsimiles;
- ii. unlawful telemarketing;
- iii. eavesdropping, wiretapping or audio or video recording;
- iv. unlawful collection, retention or use of **personally identifiable information** by you or by anyone on your behalf with the consent, knowledge or cooperation of a **responsible officer**.

**28. USA STATUTORY VIOLATIONS EXCLUSION**

The actual or alleged violation of any of the following laws:

- i. the Securities and Exchange Act of 1934, the Securities Act of 1933, the Investment Company Act of 1940, the Investment Advisors Act of 1940, or any state or provincial blue sky or securities law;
- ii. the Organized Crime Control Act 1970 (commonly known as "Racketeer Influenced and Corrupt Organizations Act");
- iii. the Sherman Antitrust Act, the Clayton Act, or Robinson-Patman Act or any other federal, state, local, foreign or common law or rules or regulations involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade, or otherwise regulating competition;
- iv. the Telephone Consumer Protection Act (TCPA), Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM), or any federal or
- v. state anti-spam statutes, or any other federal or state statute, law or regulations relating to a person's or entity's right of seclusion, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act of 2003;
- vi. the Fair Labor Standards Act of 1938, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act of 1970, the Worker Adjustment and Retraining Act of 1988, the Employee Retirement Income Security Act of 1974, the



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Pension Protection Act of 2006 and any pension, healthcare, welfare, profit sharing, mutual, or investment plans, funds or trust;  
including any amendment thereto or any similar provisions of any federal, state, local or foreign statute, regulation, common law or rule or regulation promulgated under any of the foregoing.

## 29. WAR

War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), hostile acts of sovereign or government entities, civil war, insurrection, rebellion, revolution, mutiny, military or usurped power, confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any public authority or government de jure or de facto, martial law, riots, strikes, civil commotion.

## 30. WEAR AND TEAR

The wear and tear or gradual deterioration of **your computer systems** or **your data assets** as well as any amounts incurred for the improvement or betterment of **your computer system** or **data assets**.

## IV. CLAIMS CONDITIONS

### 1. ASSISTANCE AND COOPERATION

- i. **You** must cooperate with **us** in all investigations. **You** must execute or cause to be executed all papers and render all assistance as requested by **us** or our representative. **You** must not take any action that in any way increases **our** financial exposure under this **Policy**.
- ii. **You** will permit **us** to examine and/or audit **your** books and records as they relate to any claim for **business interruption loss** during the **policy period** and for up to two years after it.
- iii. At **our** request **you** must assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to **you** with respect to which insurance is afforded under this **Policy**. **You** must attend hearings, depositions and trials and assist in securing and giving evidence and obtaining the attendance of witnesses where it is within **your** control at **your** own expense.
- iv. **You** will not admit liability, make any payment, assume any obligation, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **claim** without **our** prior written consent. However the prompt public admission of a **breach of privacy** as required by governmental privacy legislation or payment card association operating requirements will not be considered as an admission of liability requiring **our** prior consent. However **we** must be provided with notice as soon as practicable in accordance with Section IV.3. if such admission is a circumstance that could lead to a **claim** or **loss**.
- v. **We** have the right to make any investigations that **we** deem necessary, including but not limited to, any investigation with respect to the **application**, statements made in the **application** and any supplemental material submitted therewith. **You** will permit **us** to inspect **your** property, operations and records.
- vi. **You** agree to submit to examination under oath by **our** representatives and at **our** request in connection with all matters relating to this **Policy**.

### 2. DEFENSE, SETTLEMENT AND SELECTION OF LEGAL REPRESENTATION AND EXTERNAL EXPERTS

- i. **We** have the right and duty to defend any covered **claim** or **regulatory action** brought against **you** even if such **claim** or **regulatory action** is groundless, false or fraudulent.
- ii. The selection of legal representation to defend a **claim** or **regulatory action** shall be made by mutual consent between **you** and **us**, but in the absence of agreement between **you** and **us**, **our** decision will be final. **We** shall pay covered **claim costs**, covered **regulatory costs** and covered **PCI claim costs** incurred with **our** prior written consent, but **we** shall have no obligation to pay **claim costs**, **regulatory costs** and **PCI claim costs** until **you** have satisfied the applicable **retention**.



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- iii. The selection of legal representation and all other external experts under **privacy response costs** or external experts under **IT forensic investigation costs** shall be made by mutual consent between **you** and **us**, but in the absence of agreement between **you** and **us**, **our** decision will be final. **We** shall have no obligation to pay **privacy response costs** and **IT forensic investigation costs** that have been incurred with any external expert that has not been approved in writing by **us**, except that **we** will not withhold **our** consent to **your** selection of any **vendor** that **we** have previously approved for use, either through the publication of an approved **vendor** panel or by explicit prior agreement with **you**, nor will you prejudice **your** rights under this **Policy** by selection of such approved **vendors**.
- iv. **We** shall pay covered **privacy response costs** and **IT forensic investigation costs** incurred with **our** prior written consent, but **we** shall have no obligation to pay **privacy response costs** and **IT forensic investigation costs** until **you** have satisfied the applicable **retention**.
- v. The applicable Limit of Liability stated in the **Schedule** available to pay **damages, regulatory penalties, PCI fines, PCI assessments** or any other covered amounts will be reduced and may be completely exhausted by the payment of **claim costs, regulatory costs** or **PCI claim costs** and any other amounts payable under this **Policy**.
- vi. **Our** duty to defend and **our** obligation to pay **damages, regulatory penalties, PCI fines** and **PCI assessments, claims costs, regulatory costs** or **PCI claims costs** or any other amounts under this **Policy** will terminate upon the exhaustion of the applicable Limit of Liability stated in the **Schedule**. Upon exhaustion **we** will have the right to withdraw from, and tender the defense to **you** and **you** agree as a condition to the issuance of this **Policy** to accept such tender. Where permissible by law, **we** reserve the right to recoup any and all **claims costs** related to the defense of any non-covered **claim** or the defense of any non-covered aspect of a **claim**.
- vii. **We** will seek **your** consent for any settlement that is acceptable to **us** and to the claimant, but if **your** consent is withheld and **you** elect to contest the **claim, PCI claim** or **regulatory action**, then **our** liability for such **claim** or **regulatory action** will not exceed the lesser of:
  - a. the amount for which the **claim** or **regulatory action** could have been settled, less the **retention**, plus the **claims costs, regulatory costs** or **PCI claims costs** incurred up to the first date on which **your** consent to settle was withheld; plus 50% of any **claims costs, regulatory costs** or **PCI claims costs** incurred after the first date on which **your** consent to settle was withheld; plus 50% of any **damages, regulatory penalties, PCI fines** and **PCI assessments** above the amount for which the **claim** or **regulatory action** could have been settled. The remaining 50% of any **claim costs, regulatory costs** or **PCI claim costs, damages, regulatory penalties, PCI fines** and **PCI assessments** must be borne by **you** at **your** own risk and uninsured under this **Policy**; or
  - b. the remaining portion of the applicable Limit of Liability stated in the **Schedule**.

### 3. NOTICE OF CLAIMS AND LOSS EVENTS

- i. Any **claim** first made against **you** or **loss event** first discovered by **you** must be notified to **us** as soon as practicable once the **claim** or **loss event** is known to a **responsible officer**. Such notice is to be provided by the **named insured** to **our** representatives named in Item 12 of the **Schedule**. In no event can such notice to **us** be provided after the end of the **policy period** or the end of the **extended reporting period** under Section V.10. of this **Policy**, if applicable. Except, however, notice can be provided to **us** up to 30 days after the end of the **policy period** for **claims** first made or **loss events** first discovered by **you** during the last 30 days of the **policy period**.
- ii. If during the **policy period** a **responsible officer** first becomes aware of any act, error, omission, fact or circumstance, that is likely to be the basis for a **claim, a PCI claim** or **regulatory action**, then the **named insured** must provide written notice to **our representatives** named in Item 12 of the **Schedule**. Such notice is to be provided as soon as reasonably practicable after the **responsible officer** first becomes aware of any such act, error, omission, fact or circumstance and include:
  - a. Specific details of the act, error, omission, fact or circumstance that is reasonably likely to be the basis for a **claim a PCI claim** or **regulatory action**; and





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- b. The potential **damages, regulatory penalties, PCI fines, PCI assessments** or other amounts potentially covered under this **Policy** that may result or has resulted from the act, error, omission, fact or circumstance; and
- c. The facts by which the **responsible officer** first became aware of the act, error, omission, fact or circumstance that is reasonably likely to be the basis for a **claim a PCI claim or regulatory action**.
- iii. Any subsequent **claim, PCI claim or regulatory action** made against **you** arising from the act, error, omission, fact or circumstance, that is the subject of the written notice in b. above will be deemed to have been made at the time when written notice of the act, error, omission, fact or circumstance, was provided in compliance with the requirements set out above.
- iv. The existence of a security vulnerability without any accompanying evidence of such vulnerability having been exploited does not constitute an act, error, omission, fact or circumstance reasonably likely to be the basis for a **claim, regulatory action or PCI claim** for the purposes of this clause 3.
- v. A **claim or loss event** will be considered as reported to **us** when written notice is first received by **our representatives** named in Item 12 of the **Schedule**.

#### 4. PROOF OF LOSS

- i. For all requests made under this **Policy** for the indemnification of **business interruption loss and/or data restoration costs** you must as a condition precedent to coverage submit to **us** a written, signed and sworn proof of loss for all known **business interruption loss and/or data restoration costs**. Such sworn proof of loss must be provided within ninety days of the **business interruption loss** ceasing, following the **business impact period or reputational impact period**, and within ninety days of the identification of **data assets** that have been corrupted, erased, encrypted, damaged or destroyed for all known **data restoration costs**. Such sworn proof of loss must be provided no later than eighteen months after expiry of this **Policy**. If we have not received such proof of **business interruption loss and/or data restoration costs** within eighteen months of the expiry date of this **Policy**, we will be discharged from all liability hereunder. Such proof of loss must include:
  - a. A full narrative description of the **loss event**, the precise timing of the **loss event** and any relevant location concerning where the **loss event** occurred, the location and description of **your data assets and your computer systems** affected;
  - b. A statement of your interest in the **data assets** and computer systems that form part of **your data assets and your computer systems** affected by the **loss event**;
  - c. All system logs, security logs, information or documents that are relevant to the consideration of the **loss and loss event**;
  - d. Statements from witness or other reports provided by experts engaged in connection with the **loss event or loss**;
  - e. The amount of any claimed **business interruption loss and/or data restoration costs**, accompanied by a detailed calculation.
- ii. In the event that **we** and **you** do not agree on the amount of the **business interruption loss and/or data restoration costs**, then **we** and **you** agree to resolve our difference pursuant to the terms and procedure outlined under Section V.7.

#### V. GENERAL CONDITIONS

##### 1. ACQUIRED AND CREATED ENTITIES

If during the **policy period** you acquire or create a legal entity, then such legal entity shall be included as a **subsidiary**, but only for a **loss event** that first occurs after the acquisition or creation of such legal entity or for a **claim** for any act, error, omission, fact, incident or circumstance that first occurs after the acquisition or creation of such legal entity and only if:

- i. the **named insured** directly or indirectly owns greater than fifty per cent of the outstanding voting shares and/or the right to elect or appoint the majority of the board of directors or persons to an equivalent management function; and



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- ii. the activities of the acquired or created legal entity are substantially similar to that of the **named insured** or any existing **subsidiary**; and
- iii. the **named insured** has provided **us** with written notice of the new acquired or created legal entity within sixty days of the effective date of acquisition.
- iv. **We** have provided written agreement to the inclusion of any acquired legal entity where that legal entity's revenues exceed 10% of the **named insured's** revenues as stated in the **named insured's** most recently published annual financial statements and **you** have agreed to pay any additional premium charged by **us**.

## 2. ASSIGNMENT

The interest hereunder is not assignable by **you**. If **you** die or be adjudged incompetent, this insurance will apply to **your** legal representative to the same extent as **you** would be covered under this **policy**.

## 3. CANCELLATION

- i. **We** may cancel this **Policy** by mailing to the **named Insured** at the address shown in Item 2 of the **Schedule** stating when not less than sixty days thereafter such cancellation shall be effective. However, if **you** fail to pay the premium by the date on which it is due or if **you** intentionally make a material misrepresentation to **us** related to any **claim** or **loss event** notified to **us** under this **Policy**, then **we** may cancel this **Policy** by providing written notice of cancellation to the **named Insured** at the address shown in Item 2 of the **Schedule** in accordance with applicable law, but not less than ten days thereafter.
- ii. The **named insured** may cancel this **Policy** by providing advance written notice to **us** stating when thereafter the cancellation shall be effective.
- iii. Mailing of notice of cancellation will be sufficient proof of notice and the hour and date of cancellation stated in the notice of cancellation shall be the end of the **policy period**.
- iv. If **we** cancel this **Policy** and no **claims** or **loss events** have been notified to **us**, then **we** shall return to the **named insured** a pro rata unearned premium amount. If the **named insured** cancels this **Policy** then 30% of the premium shall be deemed earned upon inception and **we** will return pro rata the remaining unearned premium computed on a daily pro rata basis. If a **claim** or a **loss event** has been notified to **us** or to our representative as stated in Item 12 of the **Schedule** before the date of cancellation, then the entire premium is deemed fully earned. Payment or tender of any unearned premium is not a condition of cancellation, but payment shall be made as soon as practicable.

## 4. CHANGE OF CONTROL

If during the **policy period** the **named insured** is subject to a **change of control**, then this **Policy** shall remain in full force and effect until its natural expiration date, but only with respect to any act, error, omission, or **loss event** first committed or occurring on or after the **retroactive date** and prior to the effective date of the **change of control**. The **named insured** must provide **us** with written notice of the **change of control** as soon as practicable, but in any event, no later than 30 days from the effective date of the **change of control**. If the **named insured** fails to provide such written notice within such time period then this **Policy** will terminate effective from the date of the **change of control**.

## 5. CHOICE OF LAW

The interpretation of this **Policy** and any dispute relating to its construction, validity or operation shall be resolved by applying the law designated in Item 13 of the **Schedule**.

## 6. RIGHTS OF THIRD PARTIES

A person or organization who is not a party to this **Policy** shall have no right under the **Policy** to enforce any of its terms.

## 7. JURISDICTION

This **policy** is subject to the exclusive jurisdiction designated in Item 14 of the **Schedule**.



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## 8. DISPUTE RESOLUTION

- i. No action shall lie against **us**, unless as a condition precedent thereto, there has been full compliance with all of the terms of this **Policy** nor until the amount of **your** obligation to pay has been finally determined either by judgment or award against **you** after actual trial, arbitration, in a **regulatory action** or by written agreement of **you**, the claimant and **us**.
- ii. No person or organization or any legal representative thereof who has secured such judgment or award against **you**, or entered into a written agreement with **you** shall thereafter be entitled to make a claim under this **Policy** to the extent of the insurance afforded by this **Policy**. No person or organization shall have the right under this **Policy** to join **us** as a party to an action or other proceeding against **you** to determine **your** liability, nor shall **we** be impleaded by **you** or **your** legal representative. The bankruptcy or insolvency of the **named insured** or the bankruptcy or insolvency of the **named insured's** estate will not relieve **us** of **our** obligations hereunder.
- iii. If any dispute arises between **you** and **us** involving this **Policy** or a **claim** or **loss** or any other issue hereunder, then **we** and the **named insured** agree that such dispute will be referred to a qualified mediator in a good faith effort to negotiate a resolution of the dispute prior to the initiation of any arbitration or other proceedings. The party invoking the agreement to mediate will provide written notice to the other party setting forth its request to mediate and a brief statement regarding the issue to be mediated.
- iv. As a condition precedent to any right of action hereunder, in the event that a good faith effort to mediate pursuant to paragraph iii. above does not resolve a dispute between **you** and **us** in connection with this **Policy** or any **claim** or **loss** or any other issue hereunder, whether relating without limitation to formation, interpretation, performance, or breach of this **Policy**, it is mutually agreed that such dispute will be *resolved by arbitration at the Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industry (VIAC)] in accordance with its Rules of Arbitration. The number of arbitrators shall be three. The place of arbitration shall be Hanoi, Vietnam. The governing law of the Policy shall be the substantive law of Vietnam. The language to be used in the arbitral proceedings shall be English. The arbitral award will be the final judgment which is coercive, compulsory and legally binding to the parties.*

## 9. ENTIRE AGREEMENT

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

## 10. EXTENDED REPORTING PROVISION

In the event that **we** or **you** cancel or non-renew this **Policy**, then the **named insured** will have the right upon payment in full and not proportionately of an additional amount equalling 100% of the annual policy premium, in addition to the annualized amount of any premium paid during the **policy period**, to have issued an endorsement that provides an **extended reporting period** of 12 months provided that the **extended reporting period** only applies:

- a. to those Insuring Agreements and Additional Insuring Agreements shown as insured in the **Schedule**; and
- b. to any **claim** first made against **you** or **loss event** first discovered during the **extended reporting period** and arising from any **loss events** first occurring on or after the **retroactive date** and before the end of the **policy period**; and
- c. if the **named insured** provides notice of election and pays in full the premium for the **extended reporting period** within 30 days of the date of notice of cancellation or non-renewal. No right to purchase the **extended reporting period** will exist in the event that notice of election and payment of the full premium for the **extended reporting period** is not received within 30 days of the date of notice of cancellation or non-renewal; and
- d. if the **Policy** premium and any additional premiums has been paid in full and cancellation by **us** was not due to non-payment of the premium or amounts within the applicable **retention**.



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- i. The Limit of Liability for the **extended reporting period** will be part of and not in addition to the Policy limit of liability for the **policy period** and the purchase of the **extended reporting period** will not increase the Policy limit of liability under any Insuring Agreement and any Additional Insuring Agreement nor reinstate any used portion of the same.
- ii. All notices and premium payments with respect to the **extended reporting period** will be directed to us through your broker.
- iii. The entire premium for the **extended reporting period** will be deemed earned at the commencement of the **extended reporting period**. In the event that the **named insured** elects to terminate the **extended report period** for any reason prior to its natural expiration, we will not be liable to return any premium paid for the **extended reporting period**.

#### 11. HEADINGS

The titles of paragraphs, Sections, provisions or endorsements of or to this **Policy** are intended solely for convenience and reference and are not deemed in any way to limit or expand the provisions to which they relate and are not part of this **Policy**.

#### 12. LIMIT OF LIABILITY

The Policy Limit of Liability stated in Item 4 of the **Schedule** is the total Limit of Liability and the maximum that we will pay for all **loss, damages, claims costs, PCI claims costs, PCI fines and PCI assessments** (if insured and as may be specified in the **Schedule**) or any other amounts, regardless of the number of **claims** or **loss events** and regardless of the number of Insuring Agreements and Additional Insuring Agreements that apply and under which such **claims** or **loss events** attach.

The Limit of Liability for the **extended reporting period** under Section V.10. of this **Policy** is part of and not in addition to the Policy Limit of Liability stated in Item 4 of the **Schedule**. The **extended reporting period** does not reinstate or increase the Policy Limit of Liability.

#### 13. NAMED INSURED AS AGENT

The **named insured** is considered **your** agent and will act on **your** behalf for the purpose of receiving or providing notices under this **Policy**, the acceptance of any endorsement to this **Policy**, the payment of premiums or **retentions** and receipt of any return premiums that may be due. By acceptance of this **Policy** you agree that the **named insured** is instructed to act as **your** agent as stated in this paragraph.

#### 14. OTHER INSURANCE

The insurance under this **Policy** will apply in excess of any other valid and collectible insurance available to **you**, including any self-insured **retention** or deductible portion thereof unless such other insurance is written only as specific excess insurance over the **Policy** limit of liability or any other applicable limit of liability of this **Policy**.

#### 15. RELATED CLAIMS, LOSSES AND LOSS EVENTS

- i. All **claims** that arise out of a single **loss event** will be considered a single **claim**, regardless of the number of **you**, the number of **claims**, or the number of claimants. All such **claims** shall be deemed to have been made at the date on which the first such **claim** was made.
- ii. All **regulatory actions** that arise out of a single **loss event** will be considered a single **regulatory action**, regardless of the number of **you**, the number of **regulatory actions** or the number of regulators. All such **regulatory actions** shall be deemed to have been made at the date on which the first such **regulatory action** was made.
- iii. All instances of **loss** that arise out of a single **loss event** will be considered a single **loss**, regardless of the number of **you** or the number of **losses**.
- iv. All **claims, regulatory actions and losses** that arise out of a single **loss event** will be considered a single claim for coverage under this **Policy**, regardless of the number of **you**, the number of **claims, regulatory actions and losses** or the number of claimants or regulators. All such **claims, regulatory actions and losses** shall be deemed to have been made at the date on which the first such **claim** was made or **loss event** was discovered.



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## 16. RETENTION

- i. Your satisfaction of the **retention** is a condition precedent to **our** payment of any amounts covered under this **Policy**. We shall only be liable for covered amounts in excess of the applicable **retention**, but not exceeding the **Policy** Limit of Liability stated in Item 4 of the **Schedule**. You must make payments within the **retention** to appropriate parties designated by us.
- ii. The **retention** for Insuring Agreement and/or Additional Insuring Agreement shall be as stated in item 5 of the **Schedule**. The **retention** must be satisfied by your actual payment of **damages, claims costs, PCI fines, PCI assessments, PCI claims costs, loss** or any other amount covered by this **Policy**.
- iii. We have the right but not the obligation at our option to pay any part or all of the **retention** amounts to effect settlement of a **claim, PCI claim or regulatory action** and you shall promptly reimburse us for such part of the **retention** amount which we have paid.

## 17. SANCTIONS

We shall not be deemed to provide cover and we shall not be liable to make any payment or provide any benefit under this **Policy** to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose us to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States.

## 18. SINGULAR WORDS/CAPITALIZED WORDS

- i. Whenever the singular form of a word is used herein, the same shall include the plural when required by context.
- ii. Words used herein have the same meaning whether they are capitalized or not.

## 19. STATUTES AND LEGISLATION

All references to any legislation, statute or statutory provision shall include references to any legislation, statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and other subordinate legislation made under the relevant statute or statutory provision.

## 20. SUBROGATION

If payment is made under this **Policy** and there is available to us any of your rights of recovery against a **third party**, then we will maintain all such rights of recovery. You will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. You will do nothing after the **loss event** that gave rise to a **claim** or **loss** to prejudice such rights. Any recoveries will be applied first to subrogation expenses, second to **damages, claims costs, PCI fines, PCI assessments, PCI claims costs, loss** and any other amounts paid by us, and lastly to the **retention**. Any additional amounts recovered will be paid to the **named insured**.

## 21. TERRITORIAL LIMITS

This insurance applies to **claims, PCI claims or regulatory actions** that are made or **loss events** that occur anywhere in the world unless otherwise stated in Item 10 of the **Schedule**.

## 22. WARRANTY BY YOU

By acceptance of this **Policy**, all of you agree that the statements contained in the **application** are your agreements and representations that you deem material to the risk assumed by us and that this **Policy** is issued in reliance upon the truth thereof.

## VI. ADDITIONAL INSURING AGREEMENTS

In consideration of additional premiums being charged, this **Policy** extends to indemnify you or pay on your behalf in respect of the following for which such extensions shall be only applicable to the extent as may be specified in Item 8 of the **Schedule**



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#### 1. INTERRUPTION FROM OPERATIONAL ERROR

Indemnify **you** for **Business interruption loss** that exceeds the applicable **retention** and is incurred during the **business impact period**, due to

- i. **your** inability to reliably use **your data assets** that have been corrupted or encrypted and fail to perform their intended function;
- ii. the availability of **your computer system** or **your data assets** being impaired for a period that exceeds the applicable **waiting period** as a result of an **operational error** first occurring on or after the **retroactive date** that is first discovered by **you** and reported to **us** in writing during the **policy period** or in accordance with Section V.10 of this **Policy**.

#### 2. RESTORATION COSTS

Indemnify **you** for **Data restoration costs** that exceeds the applicable **retention** incurred by **you** as a result of an **Operational Error** first occurring on or after the **retroactive date** and first discovered by **you** and reported to **us** in writing during the **policy period** or in accordance with Section V.10 of this **Policy** if applicable.

#### 3. MEDIA LIABILITY

Pay on **your** behalf **damages** that **you** are legally obligated to pay and related **claims costs** that exceeds the applicable **retention** as a result of a **claim** first made against **you** and reported to **us** in writing during the **policy period** or in accordance with Section V.10. of this **Policy** for **Content injury** arising from the first publication on or after the **retroactive date** of any information in electronic form on **your website(s)**.

#### 4. PERSONAL INFORMATION VIOLATION

Pay on **your** behalf **damages** that **you** are legally obligated to pay and related **claims costs** that exceed the applicable **retention** as a result of a **claim** first made against **you** and reported to **us** in writing during the **policy period** or in accordance with Section V.10. of this **Policy** for a **personal information violation**.

#### 5. PAYMENT CARD INDUSTRY (PCI)

Pay on **your** behalf **PCI fines**, **PCI assessments** and related **PCI claims costs** that exceed the applicable **retention** as a result of a **PCI claim** first made against **you** and reported to **us** in writing during the **policy period** or in accordance with Section V.10. of this **Policy** for a **payment card breach** that has first occurred on or after the **retroactive date** as a consequence of **your** failure to comply with published Payment Card Industry Data Security Standards (PCI DSS).

#### 6. REPUTATIONAL INTERRUPTION LOSS

Indemnify **you** for **business interruption loss** incurred during the **reputation impact period**, directly and solely attributable to the impairment of **your** brand or reputation that has directly resulted from media reporting of a **breach of privacy** or a **breach of confidentiality**.

#### 7. CYBER CRIME

Indemnify **you** for direct financial loss sustained by the **insured organization** as a direct result of **your** having transferred funds or property due to **your** reliance on the fraudulent, dishonest or criminal input of any **verified** instructions to **your computer system** or **your data assets** where access to **your computer system** or **your data assets** has been gained as a result of a **security breach**.

**IMPORTANT**—The Insured is requested to read this Policy. If any error or misdescription be found, the Policy should be returned to the issuing office for correction.