

**LIBERTY SURPLUS INSURANCE CORPORATION**  
(a member of the Liberty Mutual Group and hereinafter "the Insurer")  
61 Broadway, New York, NY 10006

**INTERNET ADVANTAGE POLICY**

**DECLARATIONS**

**NOTICE: THE INTERNET LIABILITY COVERAGE PART, IF PURCHASED, COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR DISCOVERY PERIOD, IF APPLICABLE, AND REPORTED TO THE INSURER AS SOON AS PRACTICABLE BUT IN NO EVENT LATER THAN 60 DAYS AFTER THE END OF THE POLICY PERIOD OR DISCOVERY PERIOD, IF APPLICABLE. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.**

**AMOUNTS INCURRED AS DEFENSE COSTS SHALL REDUCE THE LIMIT OF LIABILITY AND SHALL BE APPLIED AGAINST THE APPLICABLE RETENTION.**

**THE INSURER DOES NOT HAVE ANY DUTY TO DEFEND ANY CLAIM.**

**POLICY NUMBER:** \_\_\_\_\_ **PRODUCER:** \_\_\_\_\_  
**RENEWAL OF:** \_\_\_\_\_

**ITEM I. NAME AND ADDRESS OF PARENT ORGANIZATION:**

**ITEM II. POLICY PERIOD:** Inception Date: \_\_\_\_\_ Expiration Date: \_\_\_\_\_  
(12:01 A.M. at the address set forth in Item I)

**ITEM III. COVERAGE PARTS PURCHASED:**

**ITEM IV. AGGREGATE LIMIT OF LIABILITY FOR ALL COVERAGE PARTS, COMBINED: \$** \_\_\_\_\_

**ITEM V. RETENTION**

- A. Internet Liability Coverage Part (if purchased): \$\_\_\_\_\_ each **Claim**
  
- B. Computer Extortion Coverage Part (if purchased): \$\_\_\_\_\_ **Single Loss**  
Retention Amount
  
- C. Internet Crime Coverage Part (if purchased): \$\_\_\_\_\_ **Single Loss**  
Retention Amount

**ITEM VI. DISCOVERY PERIOD**

- A. Additional Premium: \_\_\_\_\_% of **Annual Premium**
  
- B. Duration: \_\_\_\_\_

**ITEM VII. INTERNET LIABILITY COVERAGE PART PRIOR LITIGATION DATE:**

**ITEM VIII. COMPUTER EXTORTION COVERAGE PART RETROACTIVE DATE:**

**ITEM IX. INTERNET CRIME COVERAGE PART RETROACTIVE DATE:**

**ITEM X. ENDORSEMENTS TO POLICY AT ISSUANCE:**

This Declarations page, together with the **Application**, the attached General Conditions and Limitations and Coverage Part(s), and all endorsements thereto, shall constitute the contract between the Insurer and the **Insureds**. This Policy is valid only if signed below by a duly authorized representative of the Insurer.

\_\_\_\_\_  
Authorized Representative



**LIBERTY SURPLUS INSURANCE CORPORATION**  
 (a member company of Liberty Mutual Insurance Group  
 and hereinafter called “the Insurer”)

## **INTERNET ADVANTAGE POLICY**

(Words and phrases printed in **bold**, other than  
 in the headings, are defined in the General Terms  
 and Conditions or the applicable Coverage Part.)

In reliance upon the truthfulness and accuracy of the statements made in the **Application**, in consideration of, and subject to, the payment of premium when due, and subject to the terms, conditions, and exclusions of this Policy, the Insurer and the **Insureds** agree as follows:

### **GENERAL CONDITIONS AND LIMITATIONS**

**1. TERMS AND CONDITIONS:**

Except for these General Conditions and Limitations or unless stated to the contrary in any Coverage Part, the terms and conditions of each Coverage Part of this Policy apply only to that Coverage Part and shall not apply to any other Coverage Part of this Policy. Any term referenced in the General Conditions and Limitations which is defined in a Coverage Part shall, for purposes of coverage under that Coverage Part, have the meaning set forth in that Coverage Part. If any provision in the General Conditions and Limitations is inconsistent or in conflict with the terms and conditions of any Coverage Part, the terms and conditions of such Coverage Part shall control for purposes of that Coverage Part.

**2. DEFINITIONS:**

**2.1** “**Application**” means all signed applications, including attachments and materials submitted therewith or as a part thereof, or incorporated therein, for this Policy and for any policy in an uninterrupted series of policies issued by the Insurer of which this Policy is a direct or indirect renewal or replacement. All such applications, attachments, and materials are deemed attached to and incorporated into this Policy.

**2.2** “**Change in Control**” means:

- (a) the acquisition by another entity or person, or group of entities and/or persons acting in concert, of securities or voting rights resulting in ownership or voting control by such other entities and/or persons of more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors or equivalent positions of the **Parent Organization**; or
- (b) the merger of the **Parent Organization** into another entity such that the **Parent Organization** is not the surviving entity, or the consolidation of the **Parent Organization** with another entity.
- 2.3. “**Covered Event**” means, with respect to any Coverage Part other than a **Liability Coverage Part**, the event or loss which must occur during the **Policy Period** to trigger coverage under such Coverage Part.
- 2.4 “**Discovery Period**” means the period of time set forth in Item VI(B) of the Declarations.
- 2.5 “**Insured Organization**” means any entity named in Item I of the Declarations and any **Subsidiary**, including any such entity operating as a debtor-in-possession.
- 2.6 “**Insureds**” means, with respect to any Coverage Part, all organizations and natural persons defined as Insureds thereunder.
- 2.7 “**Internet**” means the worldwide public network of computers or any similar intranet, extranet or virtual private computer network
- 2.8 “**Internet Related Revenue**” means all revenue derived from an entity’s use of the **Internet**
- 2.9 “**Interrelated Wrongful Acts**” means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions, or causes.
- 2.10 “**Liability Coverage Part(s)**” means the Internet Liability Coverage Part, if purchased.
- 2.11 “**Loss**” means, with respect to any Coverage Part, all loss covered under such Coverage Part.
- 2.12 “**Parent Organization**” means the **Insured Organization** first named in Item I of the Declarations.
- 2.13 “**Policy Period**” means the period from the Inception Date set forth in Item II of the Declarations to the Expiration Date set forth in Item II of the Declarations, or its earlier termination pursuant to Section 11 of these General Conditions and Limitations.
- 2.14 “**Pollutants**” means any substance exhibiting hazardous characteristics as is or may be identified on any list of hazardous substances issued by the United States Environmental

Protection Agency, or any state, local, or foreign counterpart. This definition shall include, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos-containing products, waste (including material to be recycled, reconditioned or reclaimed), and any electric, magnetic or electromagnetic field of any frequency, as well as any air emission, waste water, infectious medical waste, nuclear materials, nuclear waste, or any mold, mildew, or fungus.

**2.15 “Subsidiary”** means any entity in which more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors or equivalent positions is owned, in any combination, by one or more **Insured Organization** if such ownership commences:

- (a) prior to the inception date of the **Policy Period** and such entity is listed in the **Application**; or
- (b) after the inception date of the **Policy Period** and the assets of such entity do not exceed 10% of the total consolidated assets of the **Insured Organization** (as reflected in the **Parent Organization’s** then most recent audited consolidated financial statement); provided that, within the preceding 3 years, such entity and any person or other entity that otherwise qualifies as an **Insured** under this Policy have not sustained losses, and have not had claims made against them which are reasonably likely to result in losses, of the type covered by this Policy in excess of \$500,000; or
- (c) after the inception date of the **Policy Period** and the **Internet Related Revenue** of such entity does not exceed 25% of the total revenue of the **Insured Organizations** (as reflected in the **Parent Organization’s** then most recent audited consolidated financial statement); provided that, within the past 3 years, such entity and any person or other entity that otherwise qualifies as an **Insured** under this Policy have not sustained losses, and have not had claims made against them which are reasonably likely to result in losses, of the type covered by this Policy in excess of \$500, 000; or
- (d) after the inception date of the **Policy Period** and either the assets of such entity equal or exceed 10% of the total consolidated assets of the **Insured Organization** (as reflected in the **Parent Organization’s** then most recent audited consolidated financial statement), or, within the preceding 3 years, such entity and any person or other entity that otherwise qualifies as an **Insured** under this Policy have sustained losses, or have had claims made against them which are reasonably likely to result in losses, of the type covered by this policy, in excess of \$500,000, but only upon the condition that the **Parent Organization**:
  - (i) give written notice of such transaction to the Insurer within 60 days after the effective date of such transaction; and

- (ii) provide the Insurer with such information as the Insurer may require (any coverage afforded to an entity or natural person in connection with this Section 2.15(d) is further subject to the **Insurers** receipt, review and acceptance of such required information, and must be endorsed onto this Policy by written endorsement to be effective) ; and
  - (iii) pay any additional premium required by the Insurer; or
- (e) after the inception date of the **Policy Period** and the **Internet Related Revenue** of such Entity equals or exceeds 25% of the **Internet Related Revenue** of the **Insured Organization** (as reflected in the **Parent Organization's** then most recent audited consolidated financial statement); provided that, within the past 3 years, such entity and any person or other entity that otherwise qualifies as an **Insured** under this Policy have not sustained losses, and have not had claims made against them which are reasonably likely to result in losses, of the type covered by this policy in excess of \$500, 000, but only upon the condition that the **Parent Organization:**
- (i) give written notice of such transaction to the Insurer within 60 days after the effective date of such transaction; and
  - (ii) provide the Insurer with such information as the Insurer may require (any coverage afforded to any entity or natural person in connection with this Section 2.15(e) is further subject to the Insurers receipt, review and acceptance of the required information and must be endorsed onto this Policy by written endorsement to be effective); and
  - (iii) pay any additional premium required by the Insurer.

AND FURTHER SUBJECT TO the Insurers' receipt review and acceptance of all the information and conditions listed in paragraphs d (i) and d (ii) and e (i) and e (ii) above.

### 3 LIMIT OF LIABILITY AND RETENTION:

- 3.1 For the purposes of this Policy, all **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed a one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against them, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**
- 3.2 The amount stated in Item IV of the Declarations shall be the maximum aggregate liability of the Insurer under all Coverage Parts, combined, regardless of the number of **Claims** or **Losses** or the time of payment by the Insurer.
- 3.3 The Limit of Liability for the **Discovery Period**, if exercised, shall be part of and not in addition to the Limit of Liability for the **Policy Period**. The purchase of the **Discovery**

**Period** shall not increase, nor reinstate the Limit of Liability, which shall be the maximum liability of the Insurer for the **Policy Period** and **Discovery Period**, combined.

- 3.4 **Defense Costs** shall be part of and not in addition to the aggregate Limit of Liability set forth in Item IV of the Declarations, and **Defense Costs** shall reduce such Limit of Liability. If the Limit of Liability is exhausted by payment of **Loss**, the Insurer's obligations under the Policy shall be completely fulfilled and extinguished. The Insurer is entitled to pay **Loss** as it becomes due and payable by the **Insureds** without consideration of other future payment obligations.
- 3.5 The Insurer's liability with respect to **Loss** arising from each **Claim** covered under one or more Liability Coverage Parts, and each single **Loss** covered under any other Coverage Part, if purchased, shall apply only to that part of **Loss** which is excess of the applicable Retention Amount set forth in Item V of the Declarations, and such Retention Amount shall be borne by the **Insureds** uninsured and at their own risk. If different parts of a single **Claim** or single **Loss** are subject to different Retentions, the applicable Retentions will be applied separately to each part of such **Claim** or **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.

#### 4. **REPORTING REQUIREMENTS AND NOTICE:**

- 4.1 The **Insureds**, as a condition precedent to coverage under any Liability Coverage Part, shall report every **Claim** to the Insurer as soon as practicable, but in no event later than 60 days after the end of the **Policy Period** or **Discovery Period**, if applicable.
- 4.2 The **Insureds**, as a condition precedent to coverage under any other Coverage Part, shall report any **Loss** to the Insurer within 60 days after such **Loss** is first discovered by the president, chief financial officer, in-house general counsel or risk manager of the **Insured Organization**.
- 4.3 If during the **Policy Period** the **Insureds** become aware of any circumstance or **Wrongful Act** that reasonably may be expected to give rise to a **Claim**, and if such circumstance or **Wrongful Act** is reported to the Insurer during the **Policy Period** in writing with details as to the nature and date of such circumstance or **Wrongful Act**, the identity of any potential claimant, the identity of any **Insured** involved in such circumstance or **Wrongful Act**, and the manner in which the **Insured** first became aware of such circumstance or **Wrongful Act**, then any **Claim** subsequently arising from such circumstance or **Wrongful Act** shall be deemed under any Liability Coverage Part to be a **Claim** made during the **Policy Period** in which the circumstance or **Wrongful Act** was first duly reported to the Insurer.
- 4.4 Notice of any **Claim**, circumstance, **Wrongful Act** or **Loss** shall be forwarded to Liberty International Underwriters, 61 Broadway, 32<sup>nd</sup> Floor, New York, NY 10006, Attention: Internet Advantage Claims Department. All other notices to the Insurer under this Policy shall be given to the same addressee but to the attention of Internet Advantage Underwriting Department.

- 4.5 All notices under this Policy shall be sent in writing by mail, prepaid express courier, or facsimile and shall be effective upon receipt thereof by the addressee.
- 4.6 Any notice to the Insurer of any **Claim**, circumstance, **Wrongful Act** or **Loss** shall designate the Coverage Part(s) under which the notice is being given and shall be treated as notice under only the Coverage Part(s) so designated.

5. **DEFENSE, SETTLEMENTS AND COOPERATION:**

- 5.1 It shall be the duty of the **Insureds**, not the Insurer, to defend any **Claim**. The Insurer shall have the right to associate in the defense and settlement of any **Claim** reasonably likely to involve this Policy. The Insurer may investigate, as it deems appropriate, any **Claim**, circumstance, **Wrongful Act** or **Loss** involving the **Insureds**.
- 5.2 The **Insureds** shall not incur any **Defense Costs**, admit any liability, assume any obligation, agree to any settlement, or make any settlement offer with respect to any **Claim** without the Insurer's prior written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any **Defense Costs** incurred or any admissions, obligations, agreements, or settlements made by the **Insureds** without the Insurer's prior written consent.
- 5.3 The Insurer shall advance covered **Defense Costs** incurred by the **Insureds** in excess of the Retention as provided in Section 9 hereinafter, provided that to the extent it is finally established that any such **Defense Costs** are not covered under this Policy, the **Insureds**, severally according to their interests, agree to repay the Insurer such **Defense Costs**.
- 5.4 Notwithstanding the above, the **Insureds** may settle any **Claim** without the Insurer's prior written consent if the total **Loss** resulting from such **Claim** does not exceed 50% of the Retention amount applicable to such **Claim**. This provision shall not affect the **Insureds'** reporting obligations under Section 4, above. The **Insureds** shall promptly notify the Insurer of any settlement entered into pursuant to this Section 5.4 and provide any information in connection therewith that the Insurer reasonably requests.
- 5.5 As a condition precedent to the **Insureds'** rights under this Policy, the **Insureds** shall give to the Insurer all information, assistance and cooperation as the Insurer reasonably may require and shall do nothing that may prejudice the Insurer's position or its rights of recovery.
- 5.6 The **Insurer** may make any settlement of any **Claim** it deems expedient with respect to any **Insured** subject to such **Insured's** written consent. If any **Insured** withholds consent to such settlement, the **Insurer's** liability for all Loss on account of such claim shall not exceed the amount for which the **Insurer** could have settled such claim plus **Defense**

**Costs** incurred as of the date such settlement was proposed in writing by the **Insurer**. In any event, the **Insurer's** liability shall not exceed the Aggregate Limit of Liability noted in Item IV of the Declarations.

**6. APPLICATION REPRESENTATIONS:**

The **Insureds** represent that the statements and representations contained in the **Application** are true and shall be deemed material to the acceptance of the risk or the hazard assumed by the Insurer under this Policy. This Policy is issued in reliance upon the truth of such statements and representations. The **Insureds** agree that if the **Application** contains statements or representations that are untrue, this Policy shall be void and of no effect whatsoever.

## 7. DISCOVERY PERIOD:

- 7.1 If the Insurer or the **Insured** fails or refuses to renew a Liability Coverage Part or if the **Insured** cancels a Liability Coverage Part, the **Insured** shall have the right to an extension of the coverage granted by such Liability Coverage Part for the duration of time set forth in Item VI (B) of the Declarations following the effective date of such cancellation or non-renewal. Such extension of coverage shall apply solely with respect to **Wrongful Acts** taking place before the effective date of such cancellation or non-renewal. A written request for this extension, together with payment of the Discovery Period Premium set forth in Item VI(A) of the Declarations, must be made within 30 days after the effective date of cancellation or non-renewal of such Liability Coverage Part. Such Discovery Period Premium shall be deemed fully earned when paid. This extension shall not apply if such Liability Coverage Part is terminated by the Insurer for failure to pay any premium when due.
- 7.2 The offer by the Insurer of renewal terms, conditions, limits of liability and/or premiums different from those of the expiring policy shall not constitute refusal to renew. Any coverage under this Policy during the **Discovery Period** is specifically excess of any other insurance maintained by the **Insureds** during the **Discovery Period**.
- 7.3 The extension of coverage for the **Discovery Period** shall not in any way increase the Limit of Liability otherwise applicable to the **Policy Period**.

## 8. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES:

The estates, heirs, legal representatives, assigns and spouses of **Insured Persons** shall be considered an **Insured** under any Liability Coverage Part; but coverage is afforded to such estates, heirs, legal representatives, assigns and spouses only for a **Claim** arising solely out of their status as such and, in the case of a spouse, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign or spouse. All terms and conditions of this Policy, including without limitation the Retention, applicable to **Loss** incurred by the **Insured Person** shall also apply to loss incurred by such estates, heirs, legal representatives, assigns and spouses.

## 9. ALLOCATION:

- 9.1 If in any **Claim** under a Liability Coverage Part the **Insureds** who are afforded coverage under this Policy for such **Claim** incur **Loss** jointly with others (including **Insureds**) who are not afforded coverage under this Policy for such **Claim**, or incur an amount consisting of both **Loss** covered by this Policy and loss not covered by this Policy because such **Claim** includes both covered and uncovered matters, then the **Insureds** and the Insurer shall allocate such amount between covered **Loss** and uncovered loss based upon the relative legal exposure of the parties to such matters.

- 9.2 If there can be an agreement on an allocation of **Defense Costs**, the Insurer shall advance on a current basis **Defense Costs** allocated to covered **Loss**. If there can be no agreement on an allocation of **Defense Costs**, the Insurer shall advance on a current basis **Defense Costs** which the Insurer believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined. Any advancement of **Defense Costs** shall be subject to, and conditioned upon receipt by the Insurer of, a written undertaking by the **Insureds** that such advanced amounts shall be repaid to the Insurer by the **Insureds** severally according to their respective interests if and to the extent it is determined the **Insureds** shall not be entitled under the terms and conditions of this Policy to coverage for such **Defense Costs**.
- 9.3 Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim** or any other **Claim**.

10. **ACQUISITION OF PARENT COMPANY (AUTOMATIC RUN-OFF):**

- 10.1 In the event of a **Change in Control** during the **Policy Period**, coverage under this Policy shall continue until the end of the **Policy Period**, but only with respect to **Claims** for **Wrongful Acts** (under a Liability Coverage Part) or **Covered Event** (under any other Coverage Part) taking place prior to the effective date of such **Change in Control**. The entire premium for this Policy shall be deemed fully earned as of the effective date of such **Change in Control**.
- 10.2 The **Parent Organization** shall give written notice of such **Change in Control** to the Insurer as soon as practicable, together with such information as the Insurer may reasonably require.

11. **TERMINATION:**

- 11.1 The Insurer may cancel this Policy by mailing to the **Parent Organization** by certified mail at the address shown in Item 1 of the Declarations, written notice stating when, not less than ninety (90) days thereafter, cancellation shall be effective. However, the Insurer may cancel this policy for non-payment of premium by sending not less than ten (10) days notice to the **Parent Organization** by certified mail at the address shown in Item 1 of the Declarations. Cancellation for non-payment of premium shall be effective as of the inception date of the **Policy Period**.
- 11.2 The **Parent Organization** may cancel this Policy by sending notice of cancellation to the Insurer. Such cancellation shall be effective on the date the Insurer receives such notice. In the event the **Parent Organization** cancels this Policy, the Insurer shall retain the customary short rate premium. Payment of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable.

**12. OTHER INSURANCE:**

If any **Loss** otherwise covered under this Policy is insured by other valid and collectible insurance or indemnity, then this Policy shall apply only in excess of the amount of any deductibles, retentions and limits of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy to this Policy's Policy Number.

**13. SUBROGATION:**

If the Insurer pays any **Loss** under this Policy, the Insurer shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery therefor. The **Insured** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the **Insured**. The obligations of the **Insured** pursuant to this Section 13 shall survive the termination of the **Policy Period**.

**14. AMENDMENT, ASSIGNMENT AND HEADINGS:**

**14.1** Any amendment to this Policy or assignment of an interest in this Policy, in whole or in part, shall be effective only if made by endorsement to this Policy signed by an authorized representative of the Insurer.

**14.2** The headings to the provisions in this Policy, including those found in any endorsements attached hereto, are provided for convenience only and do not affect the construction hereof.

**15. TERRITORY:**

This Policy applies to **Claims** made, **Wrongful Acts** occurring, **Loss** sustained or **Covered Events** taking place anywhere in the world.

**16. ACTION AGAINST INSURER:**

No action shall be taken against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy. No person or organization shall have the right under this Policy to join the Insurer as a party to any action against an **Insured**, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives.

**17. AUTHORIZATION:**

By acceptance of this Policy, the **Parent Organization** agrees to act on behalf of the **Insureds** with respect to the giving and receiving of notice of **Claim** or termination, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the

agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this Policy, and the **Insureds** agree that the **Parent Organization** shall act on their behalf.

## INTERNET LIABILITY COVERAGE PART

### 1. INSURING AGREEMENTS:

#### A. Internet Liability

The Insurer shall pay on behalf of the **Insureds** all **Loss** which the **Insureds** shall become legally obligated to pay as a result of any **Claim** first made against the **Insureds** during the **Policy Period** or the **Discovery Period**, if applicable, for:

- (1) an **Internet Matter Wrongful Act**, or
- (2) an **Internet Activities Wrongful Act**, or
- (3) an **Internet Technology Services Wrongful Act**

by the **Insureds** or by any other person for whose actions the **Insureds** are legally responsible, but only if such **Wrongful Act** takes place before or during the **Policy Period**.

#### B. Security Liability Coverage

The Insurer shall pay on behalf of the **Insureds** all **Loss** which the **Insureds** shall become legally obligated to pay as a result of any **Claim** first made against the **Insureds** during the **Policy Period** or the **Discovery Period**, if applicable, for the **failure** of the **Insured Organization's Computer System** resulting in (i) a computer virus, (ii) the unauthorized access to or use of a computer, computer system or computer network, or (iii) the inability of an authorized third party to access services provided by the **Insured Organization** through the **Internet**.

### 2. DEFINITIONS:

#### 2.1 "Claim" means:

- (a) a written demand for monetary or non-monetary relief against an **Insured**;
- (b) a civil proceeding or arbitration against an **Insured**;
- (c) a criminal proceeding against an **Insured Person**;
- (d) a formal administrative or regulatory proceeding against an **Insured**; or
- (e) a formal criminal, administrative, or regulatory investigation against an **Insured Person**;

including any appeal therefrom. A **Claim** will be deemed first made on the earliest date any **Insured** receives the written demand, complaint, indictment, notice of charges, or order of formal investigation in such **Claim**.

- 2.2** “**Computer Systems**” means the **Insured Organization’s** (i) computer hardware, software and programs, (ii) electronic data, (iii) any media on which electronic data is recorded, (iv) computer network or networking equipment, and (v) websites, servers, intranet, extranet or virtual private computer network.
- 2.3** “**Defense Costs**” means reasonable and necessary fees (including attorneys’ fees and experts’ fees) and expenses incurred in the defense of a **Claim** and the cost of attachment or similar bonds, but shall not include the wages, salaries, benefits or expenses of any directors, officers or employees of the **Insured Organization**.
- 2.4** **Failure** means the inability of **the Insured Organization’s Computer System’s** security to prevent a computer attack, unauthorized access, unauthorized use, disclosure of confidential or private information, or the transmission of a malicious code. However, in no event, shall unintentional programming or operational errors constitute **failure**.
- 2.5** “**Insured Persons**” means:
- (a) one or more natural person who is a past, present or future director, trustee, officer, or employee of an **Insured Organization**; and
  - (b) with respect to any **Insured Organization** chartered outside the United States, one or more natural person who is the functional equivalent of any position described in (a) above.
- 2.6** “**Insureds**” means the **Insured Organizations** and **Insured Persons**.
- 2.7** “**Internet Activities**” means the following services:
- (1) designing, constructing or maintaining an **Internet** site;
  - (2) the integration of electronic information or business processes with an **Internet** site;
  - (3) providing an end-user or customer access to the **Internet** through a browser which enables the customer or end-user to send and receive electronic information;
  - (4) providing access to or dissemination of material, goods or services through the **Internet**;

- (5) providing **Internet** search/navigational tools or **Internet** site building tools and/or technology;
- (6) providing an end-user or customer with a unique **Internet** address that can function as the beginning and end point of electronic information transfers;
- (7) providing electronic mail services;
- (8) maintenance of **Internet** chat room(s) or bulletin board(s);
- (9) acquiring, researching, gathering, recording, collecting or preparing of material by means of the foregoing services; or
- (10) any other computer or electronic information technology services specified by written endorsement attached to this Policy

**2.8 “Internet Activities Wrongful Act”** means acts, errors or omissions actually or allegedly committed or attempted by the **Insureds** in their capacity as such or by any other person or entity for whom the **Insureds** are legally responsible, in connection with **Internet Activities** by or on behalf of the **Insured Organization**:

**2.9 “Internet Matter Activities”** means the creation, display, transmission or other use of **Matter** through the **Internet**.

**2.10 “Internet Matter Wrongful Act”** means any of the following acts, errors or omissions actually or allegedly committed or attempted by the **Insureds** in their capacity as such or by any other person or entity for whom the **Insureds** are legally responsible, in connection with **Internet Matter Activities** by or on behalf of the **Insured Organization**:

- (a) libel, slander, oral or written publication of defamatory or disparaging material, or any other defamation;
- (b) invasion or infringement of, or interference with, the right of privacy or publicity; or
- (c) infringement of copyright, service mark, service name, trademark, trade dress, trade name, title or slogan; or
- (d) plagiarism, piracy, unauthorized use or misappropriation of confidential, proprietary or protected ideas or information under an implied contract, or improper use of literary or artistic titles, formats or performances.

**2.11 “Internet Technology Service”** means providing any of the following in connection with the **Insured Organization’s Internet Activities**:

- (1) any computer or electronic information technology services performed by

**the Insured Organization** for others for a fee, including consulting, systems analysis, systems programming, data processing, system integration, development, design, management, repair or maintenance of computer products, networks or systems; or

- (2) any computer hardware, software or related electronic product, equipment or device that is created, manufactured, developed, distributed, licensed, leased or sold by **the Insured Organization** to others for a fee, including training in the use of such computer hardware, software or related technology products.

**2.12 “Internet Technology Service Wrongful Act”** means acts, errors or omissions actually or allegedly committed or attempted by the **Insureds** in their capacity as such or by any other person or entity for whom the **Insureds** are legally responsible, in connection with an **Internet Technology Service**.

**2.13 “Loss”** means sums which the **Insured** is legally obligated to pay solely as a result of any **Claim** insured by this Coverage Part, including **Defense Costs**, damages, judgments, settlement amounts, legal fees and costs awarded pursuant to judgments, punitive or exemplary damages, and the multiple portion of any multiplied damage award. With respect to the insurability of punitive, exemplary or multiple damages, if the **Insured Organization** determines in good faith that such damages are insurable under applicable law, the Insurer will not raise as a defense to coverage the insurability of such damages. However, in the event of a challenge to such a determination by any other person or entity, the Insurer shall be obligated to reimburse such damages only if a court of competent jurisdiction specifically determines that such damages are insurable.

**Loss** shall not include:

- (a) fines, penalties, or taxes;
- (b) compensation or interest charged to or due from clients or customers of the **Insured Organization**, unless such compensation is used as a measure of damages incurred by the claimant;
- (c) the cost of complying with any settlement for, or award of, non-monetary relief;
- (d) the monetary value of any electronic fund transfers or transaction by or on behalf of the **Insured Organization** which are lost or damaged during transfer into, from or between **Insured Organization** accounts; or
- (e) matters uninsurable pursuant to any applicable law.

**2.14 “Matter”** means printed, verbal, numerical, audio or visual expression, or any other expression, regardless of the medium upon which such expression is fixed.

### 3. **EXCLUSIONS:**

The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** against an **Insured**:

- 3.1 for bodily injury, sickness, disease or death, or for damage to or destruction of any tangible property, including loss of use thereof;
- 3.2 based upon, arising from, or in any way related to any fact, circumstance or wrongful act which has been reported, or has been the subject of any notice, under any insurance policy of which this Coverage Section is a renewal or replacement or under any other policy which this Coverage Section may succeed in time;
- 3.3 based upon, arising from, or in any way related to:
  - (a) any demand, suit, or other proceeding against an **Insured** which existed or was pending prior to the Prior Litigation Date set forth in Item VII of the Declarations; or
  - (b) the same or substantially the same facts, circumstances or allegations involved in such demand, suit, or other proceeding;
- 3.4 brought or maintained by or on behalf of:
  - (a) any **Insured** in any capacity, or
  - (b) any organization directly or indirectly controlled by, controlling or under common control with any **Insured**;
- 3.5 based upon, arising from, or in any way related to such **Insured** gaining in fact any profit, remuneration or financial advantage to which they are not legally entitled;
- 3.6 based upon, arising from, or in any way related to any deliberately dishonest, malicious or fraudulent act or omission or any willful violation of law by such **Insured** if a final and non-appealable judgment or adjudication adverse to the **Insured** establishes such an act, omission or willful violation;
- 3.7 based upon, arising from, or in any way related to any pension, profit sharing, health and welfare or other employee benefit plan or trust sponsored, established or maintained for the purpose of providing benefits to employees of the **Insured Organizations**;
- 3.8 for acts, errors or omissions committed or attempted by a **Subsidiary** or its **Insureds** before the date such **Subsidiary** became a **Subsidiary** or after the date such **Subsidiary** ceased being a **Subsidiary**;

- 3.9** for acts, errors or omissions actually or allegedly committed or attempted by **Insured Persons** in their capacity as director, officer, trustee, partner or employee of any organization other than the **Insured Organization**;
- 3.10** for liability assumed by the **Insured Organization** under any oral, written or implied contract or agreement; provided, however, this exclusion shall not apply to the extent that liability would have attached to the **Insureds** in the absence of such contract or agreement;
- 3.11** based upon, arising from, or in any way related to the actual, alleged, or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants**, including without limitation any actual or alleged property damage or financial loss incurred by, or bodily injury, sickness, disease or death of, any **Insured** or its creditors or securities holders resulting from the matters described in this exclusion;
- 3.12** based upon, arising from, or in any way related to any actual or alleged antitrust, price fixing, restraint of trade, unfair competition, unfair or deceptive business practices, false or deceptive advertising, or violation of any statutory or common law protecting competition, consumers or privacy;
- 3.13** based upon, arising from, or in any way related to any actual or alleged infringement of patent or misappropriation of trade secrets;
- 3.14** based upon, arising from, or in any way related to any actual or alleged (i) purchase, sale, or offer to purchase or sell securities, or violation of any federal, state, local or common law relating to securities, including without limitation the Securities Act of 1933, the Securities Exchange Act of 1934, and any state "Blue-Sky" statutes, or (ii) violation of the Organized Crime Control Act of 1970 including the Racketeer Influenced And Corrupt Organizations Act, all as amended;
- 3.15** based upon, arising from, or in any way related to any actual or alleged wrongful employment practices or any discrimination of any person or entity on any basis;
- 3.16** brought or maintained by or on behalf of any federal, state or local regulatory agency or other administrative body alleging the violation of any federal, state or local laws or regulations;
- 3.17** based upon, arising from, or in any way related to (i) fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, an act of God or any other physical event, however caused; (ii) strikes or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, acts of domestic or foreign terrorism committed by a person or persons whether acting on their own behalf or on behalf of or in connection with any organization or government, or any action taken to

hinder or defend against these actions; (iii) a mechanical breakdown, or (iv) an electrical, data transmission, telecommunications or satellite systems failure not cause by an Insured;

- 3.18** based upon, arising from, or in any way related to the **Insured's** development, distribution, dissemination, installation, implementation, operation, maintenance for others and/or the Insured's recommendation of encryption, authentication, certification, validation, and/or filtering software, or of policies, equipment or procedures for establishing or managing a secure method for exchanging electronic information for others;
- 3.19** based upon, arising from, or in any way related to any costs, expenses or other loss incurred by the **Insured** or others in connection with the withdrawal or recall from the marketplace of the **Insured's** services or products, including products which incorporate the **Insured's** products;
- 3.20** based upon, arising from, or in any way related to the **Insured's** cost guarantees, cost representations, cost estimates or contract price being exceeded; or
- 3.21** based upon, arising from, or in any way related to coupons, price discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount;
- 3.22** based upon, arising from, or in any way related to the inaccurate, inadequate, or incomplete description of the price of goods, products or services or failure of goods, products or services to conform with an advertised quality or performance; or

**And further**, the following exclusions shall additionally apply with respect to Insuring Agreement B. "Security Liability Coverage":

The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** against an **Insured**:

- 3.23.** based upon, arising from, or in any way related to the actual or alleged :
  - (1) **the Insureds'**, or by any other person for whose actions the **Insureds** are legally responsible, failure to make back-up copies of any data, file or program at regular intervals;
  - (2) any shortcoming in the **Insureds' Computer System** or loss which an **Insured** knew about or ought reasonably to have known about prior to the inception of this policy; or
  - (3) **the Insureds'** failure, or by any other person for whose actions the **Insureds** are legally responsible failure, to take reasonable steps, to use, design, maintain and upgrade **your security**;
- 3.24** based upon, arising from, or in any way related to the actual or alleged failure in project

planning, including, but not limited to, mistakes in determining capacity needs;

**3.25** based upon, arising from, or in any way related to the actual or alleged the inability to use or lack of performance of software programs:

- (a) due to its expiration, cancellation, or withdrawal;
- (b) that have not yet been released from their development stage;
- (c) that have not passed all test runs or proven successful in applicable daily operations;
- (d) due to installing or failing to install a software patch; or
- (e) due to configuration problems;

**3.26** based upon, arising from, or in any way related to the actual or alleged **loss** resulting directly or indirectly from any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, or gaining of any profit or advantage (including extortion related damages, monies and costs) which is not legally entitled if committed by any of the Insureds (or any other person for whose actions the **Insureds** are legally responsible):

- (1) directors, officers, trustees, governors, management committee members, members of the management board or partners (or the equivalent positions), whether acting alone or in collusion with other persons; or
- (2) employees (other than officers) or independent contractors employed by you if your elected or appointed officer possessed, at any time, knowledge of any dishonest, fraudulent, malicious, or criminal acts committed by such employee or independent contractor that caused a direct loss to an **Insured** or any other person;

however, under coverage B, this exclusion shall not apply to any natural person **Insured** if he or she did not know or have reason to know of, participate in or acquiesce to such conduct, and he or she did not gain an advantage to which he or she was not entitled.

## COMPUTER EXTORTION COVERAGE PART

### 1. INSURING AGREEMENT:

#### A. Computer Extortion

The Insurer shall pay for loss of **Money, Securities** or other property surrendered by an **Insured**, and **Extortion Costs** incurred by the **Insured Organization**, as a result of **Computer Extortion** which is **Discovered** during the **Policy Period**.

### 2. DEFINITIONS:

#### 2.1 “Computer Crime” means:

- (a) dishonest, fraudulent, malicious, or criminal use of the **Insured Organization’s Computer System** by a perpetrator (whether identified or not, and whether acting alone or in collusion with other persons), to affect, alter, copy, corrupt, delete, disrupt, or destroy the **Computer System** and obtain financial benefit for any party:  
or
- (b) **Theft** of electronic data stored in the **Insured Organization’s Computer System**.

#### 2.2 “Computer Extortion” means any threat or related series of threats against the **Insured Organization** (i) to commit a **Computer Crime**, (ii) to introduce, implant or spread a computer virus, or (iii) to adversely affect the **Insured Organization’s** reputation or public standing through use of a computer or the **Internet**, provided such threat(s) involve or are reasonably likely to involve a demand for **Money** or property to terminate or prevent the threatened event.

#### 2.3 “Computer Systems” means the **Insured Organization’s** (i) computer hardware, software and programs, (ii) electronic data, (iii) any media on which electronic data is recorded, (iv) computer network or networking equipment, and (v) websites, servers, intranet, extranet or virtual private computer network.

#### 2.4 “Discovered” means the **Insured Organization’s** in-house general counsel, chief financial officer, risk manager or IT/IS manager first learning facts which would cause a reasonable person to believe a loss covered by this Coverage Part has been or will be incurred.

#### 2.5 “Extortion Costs” means reasonable and necessary costs and expenses incurred by an **Insured** directly as a result of a **Computer Extortion**, other than (i) **Money** or property

paid or delivered to terminate or prevent the threatened extortion event, or (ii) costs and expenses incurred to prevent future **Computer Extortion**.

**2.6 “Insured” means:**

- (a) an **Insured Organization**;
- (b) any past, present or future director, trustee, officer or employee of an **Insured Organization**; and
- (c) with respect to any **Insured Organization** chartered outside the United States, the functional equivalent of any position described in (b) above.

**2.7 “Money” means:**

- (a) currency, bullion, coins and bank notes;
- (b) travelers checks, register checks and money orders held for sale to the public; and
- (c) electronic cash equivalents.

**2.8 “Securities” means negotiable and non-negotiable instruments representing either Money or other property and includes:**

- (a) stock certificates, tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
- (b) evidences of debt issued in connection with credit or charge cards, which cards are not issued by the **Insured Organization**.

**2.9 “Single Loss” means all loss caused by, resulting from or involving an act or event, or a series of related acts or events, whether or not involving one or more specific persons.**

**2.10 “Theft” means any unlawful taking or interruption to the deprivation of an Insured.**

**3. EXCLUSIONS:**

The Insurer shall not pay for:

- 3.1** loss based upon, arising from, or in any way related to (i) fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, an act of God or any other physical event, however caused; (ii) strikes or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, acts of

domestic or foreign terrorism committed by a person or persons whether acting on their own behalf or on behalf of or in connection with any organization or government, or any action taken to hinder or defend against these actions; (iii) a mechanical breakdown, or (iv) an electrical, data transmission, telecommunications or satellite systems failure not cause by a person in connection with committing a **Computer Extortion**;

- 3.2 loss resulting from any dishonest, fraudulent, malicious or criminal act committed by or with the knowledge of any of the **Insured Organization's** directors, trustees or officers, whether acting alone or in collusion with other persons and whether committed while performing services for the **Insured Organization** or otherwise;
- 3.3 loss resulting from the actual, alleged, or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants**, including without limitation any actual or alleged property damage or financial loss incurred by, or bodily injury, sickness, disease or death of, any **Insured** or its creditors or securities holders resulting from the matters described in this exclusion;
- 3.4 indirect or consequential loss, including without limitation loss of income or revenue or potential income or revenue;
- 3.5 loss, or that part of any loss, the proof of which involves in any manner a profit and loss computation or comparison, or a computation or comparison of inventory; provided, however, that where the **Insured** establishes wholly apart from such comparison that it has sustained a loss covered under this Coverage Part, then it may offer its inventory records and actual physical count of inventory of support of the amount claimed;
- 3.6 expenses and costs, other than **Extortion Costs**, incurred by the **Insured** in investigating or establishing the existence of or the amount of any loss covered under this Coverage Part;
- 3.7 loss resulting from forged, altered or fraudulent negotiable instruments, **Securities**, documents, or written instruments which are used as source documentation in the preparation of electronic data or are manually keyed in at a data terminal;
- 3.8 loss of trade secrets, confidential processing methods, or other confidential or proprietary information of any kind;
- 3.9 loss resulting from circumstances or events which might give rise to a loss of which a director, trustee or officer of the **Insured Organization** was aware or should have reasonably foreseen at the inception of the earlier of (i) this Coverage Part, or (ii) the first policy or Coverage Part in an uninterrupted series of policies or Coverage Parts issued by the Insurer of which this Coverage Part is a direct or indirect renewal or replacement;

- 3.10** loss resulting from the unauthorized access and use of the **Insured Organization's** telephone system; unless such telephone system is used exclusively for Internet access; or
- 3.11** loss resulting from a **Computer Crime, Theft** or **Computer Extortion** committed in whole or in part prior to the Retroactive Date set forth in Item VIII of the Declarations.
- 3.12** loss resulting from the security failure of any wireless Computer System.
- 3.13.** loss based upon, arising from, or in any way related to the actual or alleged :
- (1) **the Insureds'**, or by any other person for whose actions the **Insureds** are legally responsible, failure to make back-up copies of any data, file or program at regular intervals;
  - (2) any shortcoming in the **Insureds' Computer System** or loss which an **Insured** knew about or ought reasonably to have known about prior to the inception of this policy; or
  - (3) **the Insureds'** failure, or by any other person for whose actions the **Insureds** are legally responsible failure, to take reasonable steps, to use, design, maintain and upgrade **your security**;
- 3.14** loss based upon, arising from, or in any way related to the actual or alleged failure in project planning, including, but not limited to, mistakes in determining capacity needs;
- 3.15** loss based upon, arising from, or in any way related to the actual or alleged the inability to use or lack of performance of software programs:
- (a) due to its expiration, cancellation, or withdrawal;
  - (b) that have not yet been released from their development stage;
  - (c) that have not passed all test runs or proven successful in applicable daily operations;
  - (d) due to installing or failing to install a software patch; or
  - (e) due to configuration problems;
- 3.16** loss based upon, arising from, or in any way related to the actual or alleged **loss** resulting directly or indirectly from any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, or gaining of any profit or advantage (including extortion related damages, monies and costs) which is not legally entitled if committed by any of the Insureds (or any other person for whose actions the **Insureds** are legally responsible):
- (1) directors, officers, trustees, governors, management committee members, members of the management board or partners (or the equivalent positions), whether acting alone or in collusion with other persons; or

- (2) employees (other than officers) or independent contractors employed by you if your elected or appointed officer possessed, at any time, knowledge of any dishonest, fraudulent, malicious, or criminal acts committed by such employee or independent contractor that caused a direct loss to an **Insured** or any other person;

however, this exclusion shall not apply to any natural person **Insured** if he or she did not know or have reason to know of, participate in or acquiesce to such conduct, and he or she did not gain an advantage to which he or she was not entitled.

#### 4. **MISCELLANEOUS TERMS:**

##### 4.1 **Retention:**

The Insurer will not pay for loss resulting from a **Single Loss** unless the amount of such loss exceeds the applicable **Single Loss** Retention shown in Item V(B) of the Declarations. The Insurer will then pay the amount of covered loss in excess of such Retention, subject to the Limit of Liability.

##### 4.2 **Duties in the Event of Loss:**

After the **Insured Discovers** a loss or a situation that may result in a loss that may be covered under this Policy, the **Insured** must:

- (a) comply with the notice requirement in Subsection 4 of the General Conditions and Limitations of this Policy. The Insurer agrees to waive the written notice requirement if the amount of loss does not exceed twenty-five percent (25%) of the **Single Loss** retention for the applicable Insuring Clause;
- (b) submit to an examination under oath at the Insurer's request and give the Insurer a signed statement of the answers of the **Insured**;
- (c) give the Insurer a written, sworn proof of loss within one hundred eighty (180) days after **Discovery**, which shall provide, at a minimum:
  - i. the date and circumstances surrounding **Discovery**, including the name(s) of the person(s) making the **Discovery**;
  - ii. details of how the subject loss occurred or will occur;
  - iii. the amount of actual loss known and an estimate of the total loss expected to result; and
  - iv. a description of all known sources of recovery to reduce the loss; and
- (d) notify the police or other appropriate law enforcement authority(ies) if the **Insured** has reason to believe that loss covered by any Insuring Agreement involves a violation of law.

##### 4.3 **Valuation:**

Subject to the applicable Limit of Liability, the Insurer will pay for:

- (a) loss of **Money**, but only up to and including its face value. In the event of loss of **Money** in any currency other than United States dollars, the Insurer may, at its option, pay for loss of such **Money**:
- i. at face value in the original currency; or
  - ii. in the United States dollar equivalent determined by the rate of exchange as reported in *The Wall Street Journal*, published in New York, on the day the loss was **Discovered**;
- (b) loss of **Securities**, but only up to and including their value at the close of business on the day the loss was **Discovered**. The Insurer may, at its option:
- i. pay the value of such **Securities** or replace them in kind, in which event the **Insured** must assign to the Insurer all its rights, title and interest in and to such **Securities**; or
  - ii. pay the cost of any lost instrument bond required in connection with issuing duplicates of the **Securities**. However, the Insurer will be liable only for payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of:
    - a. the value of the **Securities** at the close of business on the day the loss was **Discovered**; or
    - b. the Limit of Liability;
- (c) loss of, or loss from damage to, other property for not more than,
- i. the actual cash value of the property on the day the loss was **Discovered**;
  - ii. the cost of repairing the property; or
  - iii. the cost of replacing the property with property of like kind and quality.

The Insurer may, at its option, pay the actual cash value of the property or repair or replace it. If the Insurer cannot agree with the **Insured** upon the actual cash value or the cost of repair or replacement, the value or cost of repair or replacement will be determined by arbitration in accordance with the rules of the American Arbitration Association.

With respect to loss of or damage to electronic data, books of account or other records, tapes, disks or similar electronic media, the Insurer will only pay for the cost of blank books, blank pages, blank tapes, or blank disks, plus the cost of labor and computer time for the actual transcription or copying of data furnished by the **Insured** in order to reproduce such data, books, records, tapes, disks or similar electronic media.

**4.4 Recoveries:**

Any recoveries with respect to a **Single Loss**, less than the cost of obtaining them, made after settlement of such **Single Loss** covered by this Coverage Part will be distributed as follows:

- (a) to the **Insured**, until the **Insured** is reimbursed for the portion of such **Single Loss** in excess of the applicable Limit of Liability and the **Single Loss** Retention Amount, if any;
- (b) to the Insurer, until it is reimbursed for all amounts paid under this Coverage Part for such **Single Loss**; and
- (c) to the **Insured**, until it is reimbursed for that part of the **Single Loss** equal to the applicable Retention Amount, if any.

Recoveries do not include any recovery:

- (a) from insurance, suretyship, reinsurance, security or indemnity taken for the Insurer's benefit; or
- (b) of original **Securities** after duplicates of them have been issued.

## INTERNET CRIME COVERAGE PART

### 1. INSURING AGREEMENTS:

#### A. Computer Crime

The Insurer shall pay for the direct financial loss of **Money, Securities** and other property incurred by the **Insured Organization** or for which the **Insured Organization** is legally responsible resulting directly from a **Computer Crime** which is **Discovered** during the **Policy Period**.

### 2. DEFINITIONS:

#### 2.1 “Computer Crime” means:

- (a) dishonest, fraudulent, malicious, or criminal use of the **Insured Organization’s Computer System** by a perpetrator (whether identified or not, and whether acting alone or in collusion with other persons), to affect, alter, copy, corrupt, delete, disrupt, or destroy the **Computer System** and obtain financial benefit for any party:  
or
- (b) **Theft** of electronic data stored in the **Insured Organization’s Computer System**.

#### 2.2 “Computer Systems” means the **Insured Organization’s** (i) computer hardware, software and programs, (ii) electronic data, (iii) any media on which electronic data is recorded, (iv) computer network or networking equipment, and (v) websites, servers, intranet, extranet or virtual private computer network.

#### 2.3 “Discovered” means the **Insured Organization’s** in-house general counsel, chief financial officer, risk manager or IT/IS manager first learning facts which would cause a reasonable person to believe a loss covered by this Coverage Part has been or will be incurred.

#### 2.4 “Insured” means:

- (a) an **Insured Organization**;
- (b) any past, present or future director, trustee, officer or employee of an **Insured Organization**; and

- (c) with respect to any **Insured Organization** chartered outside the United States, the functional equivalent of any position described in (b) above.

**2.5 “Money”** means:

- (a) currency, bullion, coins and bank notes;
- (b) travelers checks, register checks and money orders held for sale to the public; and
- (c) electronic cash equivalents.

**2.6 “Securities”** means negotiable and non-negotiable instruments representing either **Money** or other property and includes:

- (a) stock certificates, tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
- (b) evidences of debt issued in connection with credit or charge cards, which cards are not issued by the **Insured Organization**.

**2.7 “Single Loss”** means all loss caused by, resulting from or involving an act or event, or a series of related acts or events, whether or not involving one or more specific persons.

**2.8 “Theft”** means any unlawful taking or interruption to the deprivation of an **Insured**.

**3. EXCLUSIONS:**

The Insurer shall not pay for:

- 3.1** loss based upon, arising from, or in any way related to (i) fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, an act of God or any other physical event, however caused; (ii) strikes or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, acts of domestic or foreign terrorism committed by a person or persons whether acting on their own behalf or on behalf of or in connection with any organization or government, or any action taken to hinder or defend against these actions; (iii) a mechanical breakdown, or (iv) an electrical, data transmission, telecommunications or satellite systems failure not cause by a person in connection with committing a **Computer Crime**;
- 3.2** loss resulting from any dishonest, fraudulent, malicious or criminal act committed by or with the knowledge of any of the **Insured Organization’s** directors, trustees or officers, whether acting alone or in collusion with other persons and whether committed while performing services for the **Insured Organization** or otherwise;

- 3.3** loss resulting from the actual, alleged, or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants**, including without limitation any actual or alleged property damage or financial loss incurred by, or bodily injury, sickness, disease or death of, any **Insured** or its creditors or securities holders resulting from the matters described in this exclusion;
- 3.4** indirect or consequential loss, including without limitation loss of income or revenue or potential income or revenue;
- 3.5** loss, or that part of any loss, the proof of which involves in any manner a profit and loss computation or comparison, or a computation or comparison of inventory; provided, however, that where the **Insured** establishes wholly apart from such comparison that it has sustained a loss covered under this Coverage Part, then it may offer its inventory records and actual physical count of inventory of support of the amount claimed;
- 3.6** expenses and costs incurred by the **Insured** in investigating or establishing the existence of or the amount of any loss covered under this Coverage Part;
- 3.7** loss resulting from forged, altered or fraudulent negotiable instruments, **Securities**, documents, or written instruments which are used as source documentation in the preparation of electronic data or are manually keyed in at a data terminal;
- 3.8** loss of trade secrets, confidential processing methods, or other confidential or proprietary information of any kind;
- 3.9** loss resulting from circumstances or events which might give rise to a loss of which a director, trustee or officer of the **Insured Organization** was aware or should have reasonably foreseen at the inception of the earlier of (i) this Coverage Part, or (ii) the first policy or Coverage Part in an uninterrupted series of policies or Coverage Parts issued by the Insurer of which this Coverage Part is a direct or indirect renewal or replacement;
- 3.10** loss resulting from the unauthorized access and use of the **Insured Organization's** telephone system; unless such telephone system is used exclusively for Internet access; or
- 3.11** loss resulting from a **Computer Crime** or **Theft** committed in whole or in part prior to the Retroactive Date set forth in Item VIII of the Declarations.
- 3.12** Loss resulting from the security failure of any wireless Computer System.
- 3.13.** loss based upon, arising from, or in any way related to the actual or alleged :
- (1) **the Insureds'**, or by any other person for whose actions the **Insureds** are legally responsible, failure to make back-up copies of any data, file or program at regular

intervals;

- (2) any shortcoming in the **Insureds' Computer System** or loss which an **Insured** knew about or ought reasonably to have known about prior to the inception of this policy; or
  - (3) **the Insureds'** failure, or by any other person for whose actions the **Insureds** are legally responsible failure, to take reasonable steps, to use, design, maintain and upgrade **your security**;
- 3.14** loss based upon, arising from, or in any way related to the actual or alleged failure in project planning, including, but not limited to, mistakes in determining capacity needs;
- 3.15** loss based upon, arising from, or in any way related to the actual or alleged the inability to use or lack of performance of software programs:
- (a) due to its expiration, cancellation, or withdrawal;
  - (b) that have not yet been released from their development stage;
  - (c) that have not passed all test runs or proven successful in applicable daily operations;
  - (d) due to installing or failing to install a software patch; or
  - (e) due to configuration problems;
- 3.16** loss based upon, arising from, or in any way related to the actual or alleged **loss** resulting directly or indirectly from any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, or gaining of any profit or advantage (including extortion related damages, monies and costs) which is not legally entitled if committed by any of the **Insureds** (or any other person for whose actions the **Insureds** are legally responsible):
- (1) directors, officers, trustees, governors, management committee members, members of the management board or partners (or the equivalent positions), whether acting alone or in collusion with other persons; or
  - (2) employees (other than officers) or independent contractors employed by you if your elected or appointed officer possessed, at any time, knowledge of any dishonest, fraudulent, malicious, or criminal acts committed by such employee or independent contractor that caused a direct loss to an **Insured** or any other person;

however, this exclusion shall not apply to any natural person **Insured** if he or she did not know or have reason to know of, participate in or acquiesce to such conduct, and he or she did not gain an advantage to which he or she was not entitled.

#### 4. **MISCELLANEOUS TERMS:**

##### 4.1 **Retention:**

The Insurer will not pay for loss resulting from a **Single Loss** unless the amount of such loss exceeds the applicable **Single Loss** Retention shown in Item V(B) of the Declarations. The Insurer will then pay the amount of covered loss in excess of such Retention, subject to the Limit of Liability.

##### 4.2 **Duties in the Event of Loss:**

After the **Insured Discovers** a loss or a situation that may result in a loss that may be covered under this Policy, the **Insured** must:

- (a) comply with the notice requirement in Subsection 4 of the General Conditions and Limitations of this Policy. The Insurer agrees to waive the written notice requirement if the amount of loss does not exceed twenty-five percent (25%) of the **Single Loss** retention for the applicable Insuring Clause;
- (b) submit to an examination under oath at the Insurer's request and give the Insurer a signed statement of the answers of the **Insured**;
- (c) give the Insurer a written, sworn proof of loss within one hundred eighty (180) days after **Discovery**, which shall provide, at a minimum:
  - i. the date and circumstances surrounding **Discovery**, including the name(s) of the person(s) making the **Discovery**;
  - ii. details of how the subject loss occurred or will occur;
  - iii. the amount of actual loss known and an estimate of the total loss expected to result; and
  - iv. a description of all known sources of recovery to reduce the loss; and
- (d) notify the police or other appropriate law enforcement authority(ies) if the **Insured** has reason to believe that loss covered by any Insuring Agreement involves a violation of law.

#### 4.3 Valuation:

Subject to the applicable Limit of Liability, the Insurer will pay for:

- (a) loss of **Money**, but only up to and including its face value. In the event of loss of **Money** in any currency other than United States dollars, the Insurer may, at its option, pay for loss of such **Money**:
  - i. at face value in the original currency; or
  - ii. in the United States dollar equivalent determined by the rate of exchange as reported in *The Wall Street Journal*, published in New York, on the day the loss was **Discovered**;
- (b) loss of **Securities**, but only up to and including their value at the close of business on the day the loss was **Discovered**. The Insurer may, at its option:
  - i. pay the value of such **Securities** or replace them in kind, in which event the **Insured** must assign to the Insurer all its rights, title and interest in and to such **Securities**; or
  - ii. pay the cost of any lost instrument bond required in connection with issuing duplicates of the **Securities**. However, the Insurer will be liable only for payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of:
    - a. the value of the **Securities** at the close of business on the day the loss was **Discovered**; or
    - b. the Limit of Liability;
- (c) loss of, or loss from damage to, other property for not more than,
  - i. the actual cash value of the property on the day the loss was **Discovered**;
  - ii. the cost of repairing the property; or
  - iii. the cost of replacing the property with property of like kind and quality.

The Insurer may, at its option, pay the actual cash value of the property or repair or replace it. If the Insurer cannot agree with the **Insured** upon the actual cash value or the cost of repair or replacement, the value or cost of repair or replacement will be determined by arbitration in accordance with the rules of the American Arbitration Association.

With respect to loss of or damage to electronic data, books of account or other records, tapes, disks or similar electronic media, the Insurer will only pay for the cost of blank books, blank pages, blank tapes, or blank disks, plus the cost of labor and computer time for the actual transcription or copying of data furnished by the **Insured** in order to reproduce such data, books, records, tapes, disks or similar electronic media.

#### **4.4 Recoveries:**

Any recoveries with respect to a **Single Loss**, less than the cost of obtaining them, made after settlement of such **Single Loss** covered by this Coverage Part will be distributed as follows:

- (a) to the **Insured**, until the **Insured** is reimbursed for the portion of such **Single Loss** in excess of the applicable Limit of Liability and the **Single Loss** Retention Amount, if any;
- (b) to the Insurer, until it is reimbursed for all amounts paid under this Coverage Part for such **Single Loss**; and
- (c) to the **Insured**, until it is reimbursed for that part of the **Single Loss** equal to the applicable Retention Amount, if any.

Recoveries do not include any recovery:

- (a) from insurance, suretyship, reinsurance, security or indemnity taken for the Insurer's benefit; or
- (b) of original **Securities** after duplicates of them have been issued.