

PRIVACY BREACH COVERAGE

THIS ENDORSEMENT CHANGES THE FIDUCIARY LIABILITY COVERAGE SECTION. PLEASE READ IT CAREFULLY.

- (1) Section I. **INSURING AGREEMENTS** of the Fiduciary Liability Coverage Section is amended to include the following as Paragraphs (E) and (F) thereof:

(E) Notification & Breach Management Expense Coverage

Upon satisfactory proof of payment by the **Organization** or **Plan**, the Underwriter will reimburse the **Organization** or **Plan**, up to the Notification & Breach Management Expense Coverage Limit stated in the Declarations Page, for **Remediation Expenses** and **Legal Consulting Costs** actually paid by the **Organization** or **Plan**, resulting from a **Privacy Breach** that first takes place (or is first activated) during the time that this Endorsement's coverage is in effect and must first be discovered by the **Insured** during the time that this Endorsement's coverage is in effect, provided such **Privacy Breach** is reported to the Underwriter in accordance with Paragraph (8) of this Endorsement.

(F) Privacy Breach Liability Coverage

The Underwriter will pay, on behalf of the **Insureds**, **Loss** from any **Claim** first made against the **Insured** during the **Policy Period** or applicable **Extended Reporting Period**, for an **Injury**.

- (2) For the purposes of this Endorsement, the terms below as defined in Section II. **DEFINITIONS** of the Fiduciary Liability Coverage Section, are amended to read in their entirety as follows:

- (A) "**Claim**" means:

- (1) a written demand for monetary, non-monetary or injunctive relief;
- (2) a civil proceeding commenced by the service of a complaint, demand letter, notice of claim or similar pleading;
- (3) a penal or criminal proceeding commenced by an arrest, a statement of allegations, the laying of information, the return of an indictment, or similar document;
- (4) an administrative or regulatory investigation or proceeding commenced by the filing of a notice of charges, formal investigative order, service of a complaint or similar document;
- (5) an arbitration or mediation proceeding consented to or commenced by receipt of notice to appoint an arbitrator or mediator, an arbitration or mediation petition or similar document;

against an **Insured** for an **Injury**;

- (6) a written request received by an **Insured** to toll or waive a limitation period, relating to any matter outlined in items (1) to (5) above.

- (B) "**Loss**" means any monetary amount which an **Insured** is legally obligated to pay as a result of a covered **Claim**, including but not limited to:

- (1) compensatory damages, judgments (including pre-judgment and post judgment interest) and settlements;
- (2) punitive, exemplary or multiplied damages, to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to the **Insureds**, this Policy or the **Claim** giving rise to such damages and which is most favourable to the insurability of such damages; and

- (3) **Defence Expenses**.

Loss does not include:

- (a) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided in paragraph (2) above;
- (b) civil or criminal fines or penalties;
- (c) taxes or tax penalties assessed against the **Organization** or **Plan** (whether imposed by a federal, provincial, territorial, state, local or other governmental authority); or
- (d) any costs incurred by the **Organization** or **Plan** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief.

- (3) For the purposes of this Endorsement, Section II. **DEFINITIONS** of the Fiduciary Liability Coverage Section is amended to include the following terms:

- (A) "**Computer Systems**" means the **Organization's** or **Plan's**:

- (1) personal computers, servers and mainframes with related peripheral components, including storage components and off-line media libraries;
 - (2) any similar equipment and facilities to Paragraph (1) above of any **Service Provider**, but only to the extent of the **Organization's** or **Plan's** interest in such **Service Provider**;
 - (3) operating systems and applications software;
 - (4) terminal devices;
 - (5) related communication networks; and
 - (6) mobile communication devices with related peripheral components;
- by which **Data** are electronically collected, transmitted, processed, stored and retrieved.

- (B) "**Customer**" means any individual or entity that received or will receive, or that purchased or will purchase goods or services produced by the **Organization**.

- (C) "**Cyber Attack**" means an actual assault perpetrated by an intentional act of a natural person, entity or organization whether access is authorized or unauthorized to:

- (1) deliberately alter a **Computer System** to the detriment of the **Organization**, **Plan** or its **Customers**;
- (2) cause the theft, collection, degrading or destruction of any information or **Data** contained within the **Computer System**;
- (3) cause damage to, or delete any input of **Data** or that causes any malicious transmission, transformation, incapacity, or misuse of information from the **Computer System** or the proliferation of the **Computer System's Data** and information to any source outside the **Computer System**;
- (4) transmission of electronic instructions to the **Computer System** causing any of the above;
- (5) cite or induce fear into the public in circumstances in which it is reasonable to conclude that the purpose(s) of the person or organization concerned are, in whole or in part, of a political, religious, ideological or of a similar nature; or
- (6) access or bypass the **Computer System** to cause any harm or compromise system integrity.

- (D) **"Cyber Extortion"** means a demand (that originates from outside the **Organization** or **Plan**) made to the **Organization** or **Plan** for money or something else of value in exchange for not carrying out a threat to commit harm to **Computer Systems** or to **Data**. **Cyber Extortion** also means a threat to disseminate **Data** without authorization, or to deny, to impede, to make unavailable or to otherwise disrupt access to **Data** or network or computer services or resources.
- (E) **"Data"** means representations of information or concepts in any form and residing in or on the **Computer System** except for and excluding programmable manufacturing machines or programmable controllers for industrial use.
- Data** does not include:
- (1) money, currency, funds, bonds or instruments of debt, credit or equity;
 - (2) deeds, accounts, bills, records, abstracts, manuscripts or other documents except as they have been converted to computer data and then only in that converted form;
 - (3) such property already sold or that is held for sale or for distribution;
 - (4) Under Insuring Agreement (F) **Privacy Breach Liability Coverage**, data or information stored using the centralized facilities (whether public or private) of a data or information storage provider or other service provider.
- (F) **"Disrupted System Function"** means the actual or alleged harm sustained by a **Customer**, participant or beneficiary due to denial of Computer System use when permission is granted by the **Organization** or the **Plan** to such individual to access and use such **Computer System(s)**, resulting directly from a natural person's use of an authorized access into the **Organization's** or **Plan's Computer System** to purposefully perform or enter fraudulent transactions of any nature, including the input of data, which results in the weakness or deprivation of the **Organization's Computer System** and causes such **Computer System** to not function as intended or to cease functioning for the **Customer**, participant or beneficiary.
- (G) **"Hostile Cyber Activity"** means any actual or attempted:
- (1) access or use of any computer, computer system or network by unauthorized persons or organizations (including access or use by persons or organizations in a manner that exceeds their authority), regardless of whether such access affects the functionality of such computer, system or network or alters, deletes corrupts or denies access to any data stored therein; or
 - (2) operations directed at any computer, computer system or network to:
 - (a) alter, delete, corrupt or deny access to any computer, computer system or network or to any data stored therein;
 - (b) partially or totally disrupt or disable the functioning of any computer, computer system or network or any related physical infrastructure; or
 - (c) cause:
 - (i) bodily injury;
 - (ii) physical injury to tangible property; or
 - (iii) loss of use of tangible property regardless of whether such property is physically injured; outside of any computer, computer system or network.
- (H) **"Injury"** means **Privacy Breach** and/or **Disrupted System Function**.
- (I) **"Legal Consulting Costs"** means the costs incurred by the **Organization** or **Plan** to retain, with the prior approval of the Underwriter, a lawyer to:
- (1) determine the notification obligations under the applicable laws;
 - (2) respond to regulatory and law enforcement authorities or to investigators; or
 - (3) provide legal advice in connection with management of the **Privacy Breach** and associated disclosures.
- Legal Consulting Costs** shall not include costs to defend a third party **Claim**.
- (J) **"Privacy Breach"** means failure to prevent unauthorized use of or unauthorized access to **Data** either about the **Plan** or used in the **Administration** of the **Plan**, that are possessed, managed, entrusted to, or held by the Insured Persons, the **Organization** or the **Plan** and that are non-public or personal information as established by law. **Privacy breach** also means theft of non-computer data that are possessed, managed, entrusted to, or held by the **Insured** and that are non-public and personal information as established by law. **Privacy breach** does not include theft of, or failure to prevent unauthorized use of or unauthorized access to, intellectual property or trade secrets of any kind.
- (K) **"Remediation Expenses"** means reasonable and necessary expenses that are required by law or that have received the Underwriter's prior written consent and approval beforehand, incurred by the **Organization** or **Plan** for:
- (1) notification to existing, prospective or former **Customers**, existing or former **Employees** or members of the **Organization** or participants or beneficiaries of the **Plan**;
 - (2) changing the account numbers, other identification numbers and security codes of the existing, prospective or former **Customers**, existing or former **Employees** or members of the **Organization**, or participants or beneficiaries of the **Plan**;
 - (3) computer forensic services;
 - (4) public relations services;
- provided that the need for such services arises directly from a **Privacy Breach**.
- Remediation Expenses** also means, with respect to a **Privacy Breach**, the **Organization's** or **Plan's** expenditures that may be incurred for credit monitoring or for fraud monitoring services provided to individuals notified in accordance with Paragraph (1) above, for a period not exceeding fifty-two (52) consecutive weeks from the date that the actual **Privacy Breach** is first discovered.
- (L) **"Service Provider"** means a natural person, partnership or corporation authorized by way of written agreement to perform data processing services on the **Organization's** or **Plan's** behalf using a **Computer System**, including businesses providing computer based services over a network.

- (4) The following provisions shall apply in addition to the provisions of Section III. **EXCLUSIONS** of the Fiduciary Liability Coverage Section:

EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS OF THIS ENDORSEMENT

This Endorsement does not apply to, and no coverage will be available under this Endorsement for:

(A) WEAR AND TEAR

wear and tear, gradual deterioration, any **Loss** or any other loss, damage, expenses or increased costs due to electrical disturbance, short circuit, mechanical failure, breakdown, faulty construction, errors in design, hidden or latent defect or any quality in **Data**, interruption of internet service, of electrical power supply or any other malfunction or failure in computer media or in non-computer data that causes it to damage or destroy itself;

(B) ERRORS IN PROGRAMMING OR CONFIGURATION

expenses, any **Loss** or any other loss arising from errors in the programming or configuration of computer equipment or from errors in the configuration of **Data** or of computer media;

(C) COST OF UPDATE OR UPGRADE

any cost or expenses incurred to update, upgrade or otherwise improve **Data**, non-computer data, computer media or computer equipment;

(D) CYBER EXTORTION

payments made by the **Insured** in response to **Cyber Extortion** or otherwise complying with or responding to **Cyber Extortion**. This exclusion does not apply to **Remediation Expenses** due directly to the carrying out of a **Cyber Extortion** threat;

(E) **ORGANIZATION'S PRODUCTS, SERVICES OR GOODS RESTITUTION**

any restitution, reduction in any payment or debt, disgorgement or return of any payment, any charges or fees, and any other consideration paid or owed regarding any of the **Organization's** products, services or goods;

(F) **COSTS INCURRED ON BEHALF OF AN INSURED**

any costs incurred on behalf of any **Insured** or where such costs are incurred to perform any obligation by or on behalf of any **Insured** or with the **Insured's** consent, provided such EXCLUSION (F) shall not apply to **Remediation Expenses** and **Legal Consulting Costs**;

(G) **PRODUCTS OR SERVICES LIABILITY**

the providing of or failure to provide, warnings or instructions, or warranties or representations, made at any time, with respect to the fitness, quality, durability, performance or use of the **Organization's** products (whether manufactured by the **Organization** or not) or services of the **Organization**, or failure of such products or services to conform to such instructions, representations or warranties;

(H) **WEBSITE CONTENT**

the designing, creating, developing, producing or the maintaining of any content or material on any person's Web site;

(I) **FINANCIAL IMPAIRMENT**

any undertaking of the **Organization** or **Plan**, for the benefit of its creditors, the capacity of Bailee, receiver, trustee in bankruptcy, conservator or assignee;

(J) **UNFAIR TRADE PRACTICES**

the actual or alleged violation of the *Canadian Competition Act* or applicable law related to commercial competition or to unfair trade practices;

(K) **PROFESSIONAL SERVICES**

the provision of or failure to provide any type of professional service.

(L) **WAR, STATE-SPONSORED ACTIVITY, HOSTILE CYBER ACTIVITY, ECONOMIC SANCTIONS**

any **Injury**, **Remediation Expenses**, **Legal Consulting Costs** or Loss from any **Claim Based Upon** any means, methods or techniques of engaging in:

- (1) war, including cyber warfare, hybrid warfare, undeclared war or civil war;
- (2) warlike action, including action in hindering or defending against an actual or expected attack, either directly or indirectly performed, ordered or sponsored by any: (a) government, sovereign or other authority; (b) agent, branch, subdivision or entity of any government, sovereign or other authority; or (c) other person or organization acting on behalf of any government, sovereign or other authority;
- (3) espionage, illegal activity or vandalism either directly or indirectly performed, ordered or sponsored by any: (a) government, sovereign or other authority; (b) agent, branch, subdivision or entity of any government, sovereign or other authority; or (c) other person or organization acting on behalf of any government, sovereign or other authority;
- (4) **Hostile Cyber Activity** either directly or indirectly performed, ordered or sponsored by any: (a) government, sovereign or other authority; (b) agent, branch, subdivision or entity of any government, sovereign or other authority; or (c) other person or organization acting on behalf of any government, sovereign or other authority;
- (5) economic sanctions by any: (a) government, sovereign or other authority; (b) agent, branch, subdivision or entity of any government, sovereign or other authority; or (c) other person or organization acting on behalf of any government, sovereign or other authority; or
- (6) insurrection, rebellion, revolution or usurped power;

including but not limited to means, methods or techniques that: (a) are physical, kinetic, cyber or economic; (b) are offensive or defensive; or (c) impact a government, sovereign or other authority, or impact individual persons, individual organizations or any group(s) of persons or organizations.

Such **Injury**, **Remediation Expenses**, **Legal Consulting Costs** or Loss from any **Claim** is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such **Injury**, **Remediation Expenses**, **Legal Consulting Costs** or Loss from any **Claim**.

EXCLUSIONS APPLICABLE TO INSURING AGREEMENT (E) NOTIFICATION & BREACH MANAGEMENT EXPENSE COVERAGE OF THIS ENDORSEMENT

This Endorsement does not apply to, and no coverage will be available under this Endorsement for any **Remediation Expenses** or **Legal Consulting Costs**:

(M) **COST OF COMPLIANCE TO AN INJUNCTION**

to comply with any order for or grant of or agreement to provide injunctive or non-pecuniary relief;

(N) **PERSONAL MOBILE DEVICES OR COMPUTER EQUIPMENT**

or any other loss arising from unauthorized use of, unauthorized access to, loss of or damage to **Data** or information on a personal mobile device or any other computer equipment owned by an **Employee** of the **Organization** or **Plan**, except for a **Privacy Breach** in regard to laptop computers, tablets, smart phones or desktop computers that are personally owned by an **Employee** of the **Organization** or **Plan** and provided that any such device, at the time of a **Privacy Breach**, is being used with permission of the **Organization** or **Plan** on the **Organization's** or **Plan's** premises (including offices in the homes of **Employees** and while in transit to or from such offices and the **Organization's** or **Plan's** premises);

(O) **MYSTERIOUS DISAPPEARANCE**

resulting from unexplained deletion, disappearance or diminution of data or of non-computer data;

(P) **PCI AND PAYMENT CARDS ASSESSMENTS**

for assessments of any nature including (but not limited to) fines, fees or damages for breach of contract or for late or non-completion of orders or payments, or levies or assessments of any nature including but not limited to levies or assessments that are related to payment cards or to Payment Card Industry Standards;

(Q) **FAILURE TO IMPLEMENT PROTECTIVE MEASURES**

due to a **Privacy Breach** (except for theft of non-computer data) arising from failure of the **Insured** to diligently deploy updated functional security software including but not limited to anti-malware software, security patches and including but not limited to a functional hardware firewall and, for each computer, a functional software firewall, all in accordance with a standard of care that at least meets (at the time of such breach) current standards and best practices for computer security and data security.

For the purposes of this exclusion, available security patches (available as patches in response to computer security threats as recognized and specified by any CERT entity, or available otherwise) that are not applied automatically or semi-automatically must be applied by the **Insured** as soon as practicable following the **Insured's** discovery of a **Privacy Breach** related to a computer security vulnerability that is addressed by such a patch; and in any event no later than thirty (30) days following a security patch being made available by a software developer, a software supplier or by a computer security specialist;

(R) **CRIMINAL OR DISHONEST ACTS**

resulting from criminal, fraudulent or dishonest acts of any **Insured**, or criminal or penal proceedings against any **Insured**;

(S) **LOSS OF USE**

or any other loss, damage, expenses or increased costs due to delay, loss of use, loss of market, or loss of occupancy;

(T) **PROOF OF LOSS EXPENSES**

or any cost or expenses incurred or paid by the **Insured** in establishing the existence of or the amount of **Loss**;

(U) **LOSS OF INCOME**

for any potential income, including but not limited to interest and dividends, that could in any way or manner have been realized, or were not realized.

EXCLUSIONS APPLICABLE TO INSURING AGREEMENT (F) PRIVACY BREACH LIABILITY COVERAGE OF THIS ENDORSEMENT

This Endorsement does not apply to, and no coverage will be available under this Endorsement for any **Loss** from any **Claim**:

(V) CYBER ATTACK

Based Upon a Cyber Attack, provided this Exclusion (U) will not apply to a **Claim** made by a **Customer**, participant or beneficiary arising out of a **Disrupted System Function**.

- (5) Solely with respect to Insuring Agreement (F) **Privacy Breach Liability Coverage**, the following exception is added to Exclusion (C) **BODILY INJURY AND PROPERTY DAMAGE** of Section III. **EXCLUSIONS** the Fiduciary Liability Coverage Section:
provided that this Exclusion (C) shall not apply to emotional distress, humiliation or mental anguish resulting from an **Injury**.

- (6) The following provisions shall apply in addition to the provisions of Section III. **LIMITS OF LIABILITY** of the General Terms and Conditions and Section V. **COVERAGE SECTION SPECIFIC LIMITS OF LIABILITY** of the Fiduciary Liability Coverage Section:

- (A) The Notification & Breach Management Expense Coverage Limit stated in the Declarations Page for this Endorsement is the maximum limit of the Underwriter's liability for all **Remediation Expenses** and all **Legal Consulting Costs** resulting from all **Privacy Breaches** covered under Insuring Agreement (E) **Notification & Breach Management Expense Coverage**, which amount shall be part of, and not in addition to, the Coverage Section Aggregate Limit of Liability applicable to the Fiduciary Liability Coverage Section.
- (B) The Privacy Breach Liability Limit stated in the Declarations Page for this Endorsement is the maximum limit of the Underwriter's liability for all **Loss** under Insuring Agreement (F) **Privacy Breach Liability Coverage** resulting from all **Claims** for which such Insuring Agreement provides coverage, which amount shall be part of, and not in addition to, the Coverage Section Aggregate Limit of Liability applicable to the Fiduciary Liability Coverage Section.
- (C) With respect to Insuring Agreement (E) **Notification & Breach Management Expense Coverage**, if the **Organization** or **Plan** has other valid and collectible insurance against **Remediation Expenses** and/or **Legal Consulting Expenses**, under another policy issued by the Underwriter, the Notification & Breach Management Expense Coverage Limit stated in the Declarations Page shall be cumulative notwithstanding any other provision to the contrary contained elsewhere.
- (D) With respect to Insuring Agreement (F) **Privacy Breach Liability Coverage**, if the **Insured** has other valid and collectible insurance against **Loss** covered by this Endorsement, under any Coverage Section of this Policy, then the limits of liability of these coverages will not be cumulative and the coverage with highest Limit of Liability will apply, provided that the Underwriter's liability shall in no event exceed the highest aggregate limit of liability applicable to such **Loss**.

- (7) The following provision shall apply in addition to the provisions of Section IV. **DEDUCTIBLES** of the General Terms and Conditions and Section VI. **COVERAGE SECTION SPECIFIC DEDUCTIBLES** of the Fiduciary Liability Coverage Section:

With respect to Insuring Agreement (F) **Privacy Breach Liability Coverage**, no deductible shall apply to any **Loss** resulting from any **Claim** incurred by an **Insured Person** if such **Loss** cannot be indemnified by the **Organization** or **Plan** because such **Organization** or **Plan** is either not legally permitted or required to indemnify, or is unable to indemnify such **Insured Person** by reason of **Financial Impairment**.

- (8) For the purposes of this Endorsement only, and notwithstanding anything to the contrary under this Policy, the following conditions are added as additional conditions to this Policy:

- (A) Insuring Agreement (E) **Notification & Breach Management Expense Coverage** applies to a **Privacy Breach** discovered by the **Insured** during the **Policy Period**. Discovery of a **Privacy Breach** shall be deemed to have occurred at the earliest of the following:

- (1) when the **Organization's** chief executive officer or chief financial officer (or any equivalent or equivalent position thereof) first becomes aware of the **Privacy Breach**, regardless of when the act or acts causing or contributing to the **Privacy Breach** that occurred, even though the exact amount or details of **Remediation Expenses** or **Legal Consulting Costs** to be incurred may not then be known and even if such amounts do not exceed the deductible amount; or
- (2) when the **Insured** receives notice of an actual or potential **Claim** under Insuring Agreement (F) **Privacy Breach Liability Coverage** of this Endorsement and in which it is alleged that the **Insured** is liable to a third party under circumstances which, if true, would constitute a covered **Claim** under Insuring Agreement (F) **Privacy Breach Liability Coverage**.

- (B) Notice of **Remediation Expenses** and **Legal Consulting Costs**:

With respect to Insuring Agreement (E) **Notification & Breach Management Expense Coverage**:

- (1) the **Insured** shall give the Underwriter written notice immediately after discovery and during the **Policy Period** of any **Privacy Breach**;
- (2) the **Insured** shall file detailed proof of loss, duly sworn to, with the Underwriter within six (6) months after the discovery of the **Privacy Breach**;
- (3) any action or legal proceeding against the Underwriter shall be brought by the **Insured** only; and
- (4) any notice provided with respect to Insuring Agreement (E) **Notification & Breach Management Expense Coverage** of this Endorsement shall constitute written notice of circumstances that could give rise to a **Claim** under Insuring Agreement (F) **Privacy Breach Liability Coverage**.

- (9) For the purpose of this Endorsement only, Section IX. **TERRITORY** of the General Terms and Condition is deleted and replaced by the following:

Coverage shall extend to anywhere in the world.

With respect to a **Privacy Breach** under Insuring Agreement (E) **Notification & Breach Management Expense Coverage**, coverage shall only extend to anywhere in the world:

- (A) if such **Privacy Breach** occurs within Canada; or
- (B) if such **Privacy Breach** arises from the business activities of an **Employee** who is away from Canada for a period not exceeding sixty (60) consecutive days, and with regards to computer equipment owned by the **Organization**.

However, coverage provided by this Privacy Breach Coverage Endorsement does not apply in any country against which the Government of Canada has imposed economic or trade sanctions.

All other terms, conditions and limitations of this Policy shall remain unchanged.