

4. GENERAL EXCLUSIONS

4.1 Conduct

We shall not be liable for **Damages** or **Expenses** on account of any **Claim** directly or indirectly caused by, arising out of or in any way connected with **your** conduct, or of any person for whose conduct **you** are legally responsible, which involves:

- A. committing or permitting any knowing or wilful breach of duty, or violation, of any laws; or
- B. committing or permitting any criminal, deliberately fraudulent or deliberately dishonest act or omission; or
- C. any actual or attempted gain of personal profit, secret profit or advantage by **you** to which **you** were not entitled.

This Exclusion only applies where such conduct has been established to have occurred by final adjudication, or written admission.

For the purpose of determining the applicability of this Exclusion to an **Insured Person**, no conduct of, facts known to or knowledge possessed by any one **Insured** shall be imputed to any other **Insured Person**.

For the purpose of determining the applicability of this Exclusion to the **Insured Organisation**, only the conduct of, facts known to and knowledge possessed by any past, present or future chairman, chief executive officer, chief financial officer, chief operating officer, managing director, chairman, company secretary, chief legal officer, chief technology officer, chief information security officer, information technology manager, responsible officer, or any person who holds an equivalent position, will be imputed to such **Insured Organisation**.

4.2 Bodily Injury/Property Damage

We shall not be liable for **Damages** or **Expenses** on account of any **Claim** alleging, based upon, arising out of or attributable to any **Bodily Injury** or **Property Damage**.

4.3 Assumed Liability

We shall not be liable for **Damages** or **Expenses** on account of any **Claim** for breach of any express, implied, actual or constructive contract, warranty, guarantee, or promise, including liquidated damages provisions or any liability assumed by **you**. This Exclusion shall not apply to:

- A. any liability or obligation **you** would have in the absence of such contract, warranty, promise or agreement; or
- B. any indemnity by **you** in a written contract or agreement with **your** client regarding any **Privacy Claim** suffered by **you** that results in the failure to preserve the confidentiality or privacy of **Personal Data** of customers of **your** client.

4.4 Insured versus Insured

We shall not be liable for **Damages** or **Expenses** on account of any **Claim** brought or maintained by **you**, or on **your** behalf, or any other natural person or entity for whom or which **you** are legally liable. However this Exclusion shall not apply to **Privacy Wrongful Acts** expressly covered under Insuring Clause 1.1.

4.5 Employment Related Wrongful Acts

We shall not be liable for **Damages** or **Expenses** on account of any **Claim** alleging, based upon, arising out of or attributable to any:

- A. illegal discrimination of any kind;
- B. humiliation, harassment or misconduct based upon, arising out of or related to any such discrimination; or
- C. **Wrongful Employment Practices.**

However, this Exclusion shall not apply with respect to that part of any **Privacy Claim** or **Network Security Claim** alleging employment-related invasion of privacy or employment-related wrongful infliction of emotional distress in the event such claim arises out of the loss of **Personal Data** which is covered under Insuring Clauses 1.1 or 1.2.

4.6 Fees

We shall not be liable for **Damages** or **Expenses** on account of any **Claim** alleging, based upon, arising out of or attributable to any fees, expenses, or costs paid to or charged by **you**.

4.7 Prior Matters

We shall not be liable for **Damages** or **Expenses** on account of any **Claim** alleging, based upon, arising out of, or attributable to:

- A. any **Claim** made, threatened or intimated against **you** before the **Policy Period**; or
- B. any litigation or other proceedings commenced against **you** before the **Policy Period**, or alleging or derived from the same or substantially the same facts or circumstances alleged in the litigation or proceedings; or
- C. any fact, circumstance, act, omission or claim known or disclosed in the **Proposal** or of which notice has been given to any other insurer on or before the **Policy Period**; or
- D. any fact, circumstance, act or omission which, prior to the commencement of the **Policy Period** **you** were aware may give rise to a **Claim** or which at such date **you** ought reasonably have been aware may give rise to a **Claim**.

4.8 Internet Access

We shall not be liable for **Damages** or **Expenses** on account of any **Claim** alleging, based upon, arising out of or attributable to any failure, interruption, or outage to internet access service provided by the internet service provider that hosts **your** website, unless such infrastructure is under **your** operational control.

4.9 Act of God

We shall not be liable for **Damages** or **Expenses** on account of any **Claim** alleging, based upon, arising out of or attributable to fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event, however caused.

4.10 War and Terrorism

We shall not be liable for **Damages** or **Expenses** on account of any **Claim** alleging, based upon, arising out of or attributable to war, invasion, acts of foreign enemies, terrorism, hostilities or warlike operations (whether war is declared or not), strike, lock-out, riot, civil war, rebellion, revolution,

insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power. However, this Exclusion shall not apply to an **Act of Cyber-Terrorism** which results in a **Claim**.

4.11 Trade Secret

We shall not be liable for **Damages** or **Expenses** on account of any **Claim** alleging, based upon, arising out of or attributable to any validity, invalidity, infringement, violation or misappropriation of any patent or **Trade Secret** by or on behalf of **you**.

4.12 Intellectual Property

We shall not be liable for **Damages** or **Expenses** on account of any **Claim** alleging, based upon, arising out of or attributable to any infringement, violation or misappropriation by **you** of any copyright, service mark, trade name, trademark or other intellectual property of any third party. However, this Exclusion shall not apply to a **Privacy Wrongful Act** or **Media Wrongful Act** expressly covered under Insuring Clauses 1.1 or 1.3.

4.13 Personal Data

We shall not be liable for **Damages** or **Expenses** on account of any **Claim** alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the unauthorised, surreptitious, or wrongful collection of **Personal Data** by **you** or the failure to provide adequate notice that such information is being collected. However, this Exclusion shall not apply to **your** unintentional violation of any **Privacy Regulation**, including but not limited to the unintentional wrongful collection of **Personal Data**.

4.14 Media Content

We shall not be liable for **Damages** or **Expenses** on account of any **Claim**, solely with respect to coverage under Insuring Clause 1.3, alleging, arising out of, or attributable to the actual goods, products or services described, illustrated or displayed in **Media Content**.

4.15 First Party

We shall not be liable for **Damages** or **Expenses** on account of any **Claim** solely with respect to coverage under Insuring Clauses 1.5 and 1.6:

- A. alleging, based upon, arising out of, or attributable to the ordinary wear and tear or gradual deterioration of **Data**, including any data processing media; or
- B. alleging, based upon, arising out of, or attributable to any action of a public or governmental authority, including the seizure, confiscation or destruction of **Your Computer Systems** or **Data**.

4.16 Computer Crime

Solely with respect to coverage under Insuring Agreement 1.7 Computer Crime, **we** will not pay for **Direct Financial Loss** consisting of or which is due to:

- A. any acts by employees or independent contractors of the insured, including any claims caused by collusion with an employee or independent contractor;
- B. any fluctuation in value in any **Money** or **Securities**.
- C. indirect or consequential loss, including but not limited to income or profit.

D. recall costs or expenses.