



**Notice**

This is a *claims* made insurance policy. This policy will only apply to *Claims* first made against the *Insured* by a *Third Party* and reported to the *Insurer* during the *Policy Period*. Further, please note that the amounts incurred for legal defence shall be applied against the *Retention* amount.

# ***TechGuard*** Professional Liability and Technology Products Liability Policy

In consideration of the payment of the *Premium* and subject to all of the provisions of this policy, the *Insurer* agrees as follows.

The term "Policy" includes any schedules, terms and conditions, any endorsements and any Sections which form and are read together as one contract. Any word or expression to which a specific meaning has been attached in any part or Section of this Policy bears that meaning wherever it appears unless stated to the contrary.



# TechGuard

## Sections 1 - 2 Insurance Coverages

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### Section 1. Professional Liability Cover - Insuring Clauses

All cover under this section is afforded solely with respect to *Claims* first made against an *Insured* during the *Policy Period* and reported to the *Insurer* during the *Policy Period*, with respect of *Wrongful Act*, committed in the performance or failure to perform *Technology Services* and which first took place on or after the *Retroactive Date* all as set forth below:

#### 1.1 Civil Liability

The *Insurer* will pay on behalf of any *Insured* all *Damages* resulting from any *Claim* for any civil liability of the *Insured* committed solely in the performance of *Technology Services*.

#### 1.2 Contractual Liability for Specific Guarantees or Warranties

The *Insurer* will pay on behalf of any *Insured* all *Damages* resulting from any *Claim* for any contractual liability or obligation arising where the *Insured* has given a guarantee or warranty:

- (i) that they will use reasonable care and skill in the performance of *Technology Services*;
- (ii) that any *Technology Services* or *Technology Products* will not infringe upon a *Third Party's* intellectual property rights; or
- (iii) that any *Technology Services* or *Technology Products* will substantially conform to all material written specifications.

#### 1.3 Technology Products

The *Insurer* will pay on behalf of any *Insured* all *Damages* resulting from any *Claim* for any *Technology Product Failure*.

#### 1.4 Internet Liability

The *Insurer* will pay on behalf of any *Insured* all *Damages* resulting from any *Claim* arising from *Internet Liability*.

#### 1.5 Privacy Breach

The *Insurer* will pay on behalf of any *Insured* all *Damages* resulting from any *Claim* for any *Privacy Breach*.

#### 1.6 Intellectual Property

The *Insurer* will pay on behalf of any *Insured* all *Damages* resulting from any *Claim* for any *Infringement* by an *Insured* committed solely in the performance of *Technology Services* or that arises from *Technology Products*.



### 1.7 Defamation

The *Insurer* will pay on behalf of any *Insured* all *Damages* resulting from any *Claim* for libel or slander committed by an *Insured* solely in the performance of *Technology Services* or that arises from *Technology Products*,

### 1.8 Employee's Fraud or Dishonesty

The *Insurer* will pay on behalf of any *Insured*, who is not the actual perpetrator, all *Damages* resulting from any *Claim* for *Fraud or Dishonesty* of any *Employee* committed solely in the performance of *Technology Services* or that arises from *Technology Products*.

### 1.9 Defence

The *Insurer* is entitled to defend any *Claim* which this policy may respond to under its Covers or Extensions. The *Insurer* shall pay the reasonable *Defence Costs* incurred in defending any covered *Claim*, subject to the terms of Policy Condition 6.9.

## Section 2. Technology Products Liability Cover - Insuring Clause

### 2.1 Technology Products Liability

The *Insurer* will pay on behalf of any *Insured* all *Damages* resulting from any *Claim* first made against an *Insured* during the *Policy Period* and reported to the *Insurer* as required by this Policy for:

- (i) *Bodily Injury (except to Employees)*; and / or
- (ii) *Property Damage*;

arising from an *Occurrence* which takes place on or after the *Retroactive Date*, in connection with the *Business Description*.

### 2.2 Defence

The *Insurer* is entitled to defend any *Claim* which this policy may respond to under its Covers or Extensions. The *Insurer* shall pay the reasonable *Defence Costs* incurred in defending any covered *Claim*, subject to the terms of Policy Condition 6.9.

## Section 3. Extensions

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### A. Extensions applicable to Sections 1 - 2

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#### 3.1 Court Attendance

For any person described in (i) and (ii) below who attends court as a witness at the request of the *Insurer* in connection with a *Claim* notified under and covered by this Policy, *Defence Costs* will include the following rates per day for each day on which attendance in court has been required:

- (i) for any principal, partner or director of the *Insured* US\$ 500.
- (ii) for any *Employee* US\$ 250.

No *Retention* shall apply to this Extension.



### 3.2 Criminal proceedings

The *Insurer* will pay on behalf of the *Insured* all *Criminal Defence Costs* provided that such costs are incurred in respect of a regulatory, administrative or criminal proceeding that is directly related to a *Claim* otherwise covered by this policy.

**This Extension 4.2 is subject to a Sublimit of Liability of US\$ 150,000.**

### 3.3 New Subsidiaries

The definition of "*Subsidiary*" is extended to include any entity that the *Policyholder* acquires or forms after the inception date of this policy provided that such entity:

- (i) has total gross revenues that are less than 20% of the total gross revenue of the *Policyholder* for the last financial year before the date of acquisition; **and**
- (ii) does not have any revenue from any *Business* carried out in the United States of America or Canada; and
- (iii) undertakes the same *Business* as the *Policyholder* already notified to the *Insurer* and was accepted for cover under this Policy.

Cover under this Extension only applies to:

- (a) any *Wrongful Act* or negligent act, error or omission committed; or
- (b) any *Occurrence*

Which takes place after the date of acquisition or formation of the new *Subsidiary*.

### 3.4 Extended Reporting Period

If the *Insurer* cancels or does not renew this policy, the *Policyholder* shall have the right to a period of:

- (i) 30 days without payment of an additional *Premium* ;or
- (ii) 6 months subject to payment of additional 50% of the annual *Premium* ;
- (iii) 12 months subject to payment of additional 100% of the annual *Premium*;

following the date of cancellation or expiry in which to give notice of any covered *Claim* first made against the *Insured* during such period, for any *Wrongful Act* or an occurrence committed prior to the end of the *Policy Period* and after the *Retroactive Date* specified in the policy schedule. The aforementioned extended reporting period shall be considered part of the *Policy Period*. That extended reporting period shall not apply if the *Insured* has purchased another policy to cover his professional or Technology Product liability.

The *Insured* shall not be entitled to an extended reporting period in case of cancellation of the Policy by the *Insurer* for the reasons of non-payment of *Premium* or cancellation of the Policy in accordance with sections 6 (c), 7 (a) or 18 (a) of the Insurance Contract Act, 1981.



## B. Extensions applicable to Section 1 only

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### 3.5 Computer Records

in regards to a *Third Party's Computer Records*:

- (i) for which an *Insured* is legally responsible; and
- (ii) which, during the *Policy Period*, have been destroyed, damaged, lost, distorted, erased or mislaid

solely in the performance of *Technology Services*. *Damages* also includes costs and expenses reasonably incurred by the *Insured* in replacing or restoring such *Computer Records*, provided that:

- (i) such *Loss* or damage is sustained while the *Computer Records* are either: (1) in transit; or (2) in the custody of the *Insured* or of any person to whom the *Insured* has entrusted; the *Computer Records* in the normal course of their *Technology Services*; and
- (ii) the lost or mislaid *Computer Records* have been the subject of a diligent search by or on behalf of the *Insured*; and
- (iii) the amount of any *Claim* for such costs and expenses shall be supported by sufficient written proof of expenditure; and
- (iv) **the *Insurer* shall not liable for any *Claim* arising out of wear, tear and/or gradual deterioration, moth and vermin, or other matters beyond the *Insured's* control.**

This Extension for the reasonable costs and expenses incurred by the *Insured*, will be subject to a Sublimit of Liability of US\$ 100,000. A separate retention of US\$ 1,000 instead of the *Retention* will apply to each *Claim* covered under this Extension.



## C. Extensions applicable to Section 2 only

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### 3.6 Vendors' Coverage

It is agreed that the definition of *Insured* under this Section is amended to include any person or organization (herein referred to as "Vendor"), but only with respect to the distribution or sale in the regular course of the Vendor's business of the *Policyholder's* products

The Extension does not apply to:

- (i) any express warranty unauthorized by the *Policyholder*;
- (ii) ***Bodily Injury* or *Property Damage*** arising out of:
  - (a) any physical or chemical change in the form of the product made intentionally by the Vendor;
  - (b) repacking, unless unpacked solely for the purpose of inspection, demonstration, testing or the substitution of parts under instruction from the manufacturer and then repacked in the original container;
  - (c) demonstration, installation, servicing or repair operations, except such operations performed at the Vendor's premises in connection with the sale of the product; or
  - (d) products which after distribution or sale by the *Policyholder* have been labelled or relabelled or used as a container, part or ingredient of any other thing or substance by or for the Vendor.

This Extension does not apply to any person or organization, as *Insured*, from whom the *Policyholder* has acquired such products or any ingredient, part or container, entering into, accompanying or containing such products.

## Section 4. Definitions

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***Bodily Injury*** means physical injury, sickness, disease or death; and, when directly resulting from any of the aforementioned, shall also include nervous shock, emotional distress, mental anguish or mental injury.

***Business*** means the provision of *Technology Services* and *Technology Products* by the *Insured* as specified in the Policy Schedule under "Business Description".

***Claim*** means any:

- A. written demand; or
- B. civil, regulatory or administrative proceedings;

in which *Damages* are sought as a result of a *Wrongful Act* or an *Occurrence* covered by this Policy.



**Computer Records** means any *Data* stored within any:

- (i) computer, *Data* processing equipment, or any of their respective components; or
- (ii) computer software;

**but does not include any currency, negotiable instruments or records thereof.**

**Computer Virus** means any program or code that (i) is designed to cause loss or damage to a computer system or any part and/or (ii) which prevents or impairs a computer system or any part from performing and/or functioning accurately and properly.

**Criminal Defence Costs** means reasonable fees, costs and expenses incurred by or on behalf of any *Insured* in the criminal defence, investigation, adjustment, settlement or appeal of any regulatory, administrative or criminal proceedings against any *Insured* that seeks legal remedy, compliance or other sanction.

**Damages** means any amount that an *Insured* shall be legally liable to pay to a *Third Party* in respect of judgments rendered against an *Insured*, or for settlements obtained with the consent of the *Insurer*.

**Data** means electronically stored digital or digitised information or media.

**Defence Costs** means reasonable and necessary fees, costs and expenses incurred by or on behalf of the *Insured* in the investigation, defence, adjustment, settlement or appeal of:

- (i) any *Claim*; or
- (ii) any *Occurrence* which may reasonably be expected to give rise to a *Claim*.

**"Defence Costs" shall not mean any internal or overhead expenses of any *Insured* or the cost of any *Insured's* time.**

**Employee** means any natural person:

- I. who is or has been expressly engaged as an employee under a contract of employment with the *Policyholder* or any *Subsidiary*;
- II. any principal, partner or director; or
- III. *Independent Contractor*.

**With respect to the Employee's Fraud or Dishonesty cover under Section 1 - Professional Liability only, *Employee* shall not include the persons referred to in (ii) and (iii) above.**

**Employee's Fraud or Dishonesty** means fraudulent or dishonest conduct of an *Employee*:

- (i) not condoned, expressly or implicitly by the *Policyholder* or any *Subsidiary*;
- (ii) and that results in liability of the *Policyholder* or any *Subsidiary*.

**Independent Contractor** means any:

- (i) temporary contract labour;
- (ii) self-employed persons; or
- (iii) labour-only sub-contractors,

while working for the *Insured* in connection with the *Business*. *Independent Contractor* also includes an *Employee* or a person described above, whose services or labour is hired out, lent or





otherwise to a *Third Party* on a temporary or permanent basis and any persons undertaking work experience.

**Infringement** means an unintentional infringement of any intellectual property right of any *Third Party*, other than patents and *Trade Secrets*.

**Insured** means:

- (i) the *Policyholder* or any *Subsidiary*;
- (ii) any natural person, who is or has been a principal, partner or director of the *Policyholder* or any *Subsidiary*;
- (iii) any *Employee*;
- (iv) any *Independent Contractor*,

**but only when providing *Technology Products* or *Technology Services* in the foregoing capacities.**

*Insured* also includes any estate or legal representative of any *Insured* described in (ii) and (iii) of this definition in respect of *Loss* arising from a liability of such *Insured* for a *Wrongful Act* committed or for an *Occurrence* when providing *Technology Services* or *Technology Products*.

**Insurer** means the entity specified as such in the Schedule.

**Internet Liability** means any actual or alleged *Wrongful Act*, *Privacy Breach*, *Infringement*, libel or slander arising from:

- (i) the operation of an internet, intranet or extranet site;
- (ii) the transmission of electronic mail or documents by electronic means; the unintentional transmission of a *Computer Virus*.

**Limit of Liability** means the amounts specified as such in the Schedule with respect to each Section of cover.

**Loss** means *Damages* and *Defence Costs*.

**“Loss” shall not mean and this policy shall not cover any (1) taxes; (2) non-compensatory damages, including punitive, multiple, exemplary or liquidated damages; (3) fines or penalties; (4) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief; (5) compensation, benefits or overhead of, or charges or expenses by any *Insured*; or (6) any uninsurable matter under the law governing this policy or the jurisdiction in which a *Claim* is brought.**

**Motor Vehicle** means any mechanically propelled vehicle, trailer or agricultural implement which belongs to the *Insured* or for which the *Insured* is legally responsible, **but not including steam-driven vehicles.**

**Occurrence** means an accident, incident, circumstance or event which is neither expected nor intended by the *Insured*.

**Policyholder** means the entity or natural person specified as such in the Schedule.

**Policy Period** means the period of time specified in the Schedule. However, in case of cancellation of the policy the *Policy Period* will end on the effective date of the cancellation.

**Pollutants** means, but is not limited to, any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids, alkalis, nuclear or radioactive material of





any sort, chemicals or waste. "Waste" includes, but is not limited to, material to be recycled, reconditioned or reclaimed.

**Premium** means the amount specified as such in the Schedule and any premium adjustment reflected in an endorsement to this Policy.

**Privacy Breach** means any actual or alleged breach of any statutory or other right of privacy of any *Third Party* by any *Insured*.

**Property Damage** means damage to or loss of or destruction of tangible property or loss of use thereof.

**Retention** means the amount specified as such in the Schedule.

**Retroactive Date** means the date specified as such in the Schedule.

**Subsidiary** means companies in which the *Policyholder*, either directly or indirectly through one or more of its *Subsidiaries*:

- (i) controls the composition of the board of directors;
- (ii) controls 50% or more of the voting power; or
- (iii) holds 50% or more of the issued share capital.

For any *Subsidiary* or any *Insured* thereof, cover under this Policy shall only apply to *Wrongful Acts* committed or *Occurrences* which take place while such entity is a *Subsidiary* of the *Policyholder*.

#### **Technology Product**

- (i) With respect to Section 1 (Professional Liability) and Section 2 (Technology Products Liability), means any computer hardware or firmware sold, supplied, designed, leased or licensed to others, manufactured, repaired, serviced, installed, inspected, adjusted, erected, altered, tested, handled, cleaned or treated by or on behalf of the *Insured* in the normal course of the *Business*;
- (ii) With respect to Section 2 - Technology Products Liability only, Technology Products also means all associated containers, labels, instructions and packaging material after such products have ceased to be in the *Insured's* custody or control;

**Technology Product Failure** means any actual or alleged negligent breach of duty, act, error, misstatement, misleading statement or omission in connection with any *Technology Product*.

**Technology Services** means any:

- (i) software services;
- (ii) *Data* services; or
- (iii) services that facilitate access to or the use of *Data* or software via the Internet, of the *Policyholder* or any *Subsidiary*.

**Third Party** means any entity or natural person; however, "Third Party" does not mean: (i) any *Insured*; or (ii) any other entity or natural person having a financial interest or executive role in the operation of the *Policyholder* or any *Subsidiary*.

**Trade Secret** means business information, of any kind, that is not within public domain, and which is not easily and lawfully obtainable by others, and the secrecy of which grants its owner business advantage over its competitors, provided that its owner takes reasonable measures to protect its secrecy.



**USA/Canada** means:

- (i) the United States of America and Canada;
- (ii) any state, territory or protectorate incorporated in, or administered by, the United States of America or Canada; and
- (iii) any country or territory subject to the laws of the United States of America or Canada.

**Wrongful Act** means any act giving rise to civil liability, *Privacy Breach, Technology Product Failure, Infringement*, libel, slander, *Internet Liability* or *Fraud or Dishonesty*.

## Section 5. Exclusions

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### A. Exclusions applicable to Section 1 - Professional Liability Cover and Section 2 – Products Liability Cover

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This Policy does not cover Loss in connection with any Claim or Occurrence arising out of, based upon or attributable:

#### 5.1 Asbestos

*to any Loss, Claim, demand or proceedings arising out of or related in any way to asbestos or materials containing asbestos.*

#### 5.2 to Contractual Obligation or Liability

In respect of Section 1 only - arising out of, based upon or attributable to any contractual liability or other obligation assumed, that goes beyond the duty to use such skill and care as is ordinarily applied to the *Technology Services* provided. This Exclusion does not apply to Section 1.2 Contractual Liability for Specific Guarantees or Warranties

In respect of Section 2 only - arising out of, based on or attributable to any contractual liability assumed or accepted by the *Insured* except to the extent that such liability would have attached in the absence of such contract.

#### 5.3 to Damage or Defects to *Technology Products*, Recall and Repair arising out of, based upon or attributable:

- (i) to loss or damage to the known or suspected defective part of any *Technology Product*; and
- (ii) to the costs of recalling, replacing, repairing or removing the *Technology Products* as a result of any known or suspected defect or deficiency therein; and
- (iii) to the cost of rectifying defective work to *Technology Products*.

#### 5.4 Intentional Acts

*to any intentional act that would reasonably be expected to give rise to a Claim against an Insured; provided, however that this Exclusion does not apply to Section 1.8 - Employee's Fraud or Dishonesty.*



### **5.5 Nuclear and Radioactive Contamination**

to:

- (i) any ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (ii) the radioactive, toxic, explosive or hazardous properties of any nuclear assembly or nuclear component thereof.

### **5.6 Patent / Trade Secret**

to the breach of licences concerning, *Infringement* of or misappropriation of patents or *Trade Secrets*.

### **5.7 Pollution**

- (i) to the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of *Pollutants*; or
- (ii) to any direction, request or effort to:
  - (a) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *Pollutants*; or
  - (b) respond to or assess the effects of *Pollutants*.

### **5.8 Prior Claims / Occurrences and Circumstances**

To any *Claims* made prior to or pending at the inception of this Policy; or

To any *Claims* or *Occurrences* arising out of, based upon or attributable to any circumstance that, as of the inception of this Policy, may reasonably have been expected by any *Insured* to give rise to a *Claim*.

### **5.9 USA/Canada**

- I. To Claim or Occurrence made or pending within the United States of America and/or Canada; or
- II. to Claim to enforce a judgment obtained in the United States of America, Canada, or any of their territories or possessions

### **5.10 War/Terrorism**

1. to war, any act of war, civil war, invasion, insurrection, revolution, use of military power or usurpation of government of military power, act of foreign enemy, hostilities, permanent or temporary dispossession resulting from confiscation, commandeering or requisition by any lawfully constituted authority, military rising, rebellion, military or usurped power, martial law or state of siege or any of the events or causes which determine the proclamation or maintenance of martial law or state of siege; or
2. to the intentional use of military force to intercept, prevent, or mitigate any known or suspected terrorist act; or
3. to any terrorist acts.



It is further agreed that the terms war and terrorist acts are respectively defined as follows:

- a) War shall mean war, whether declared or not, or any warlike activities including use of military force by any sovereign nation to achieve economic, geographic, nationalistic, political, racial, religious or other ends;
- b) Terrorist Act(s) shall mean any actual or threatened use of force or violence directed at or causing damage, injury, harm or disruption, or commission of an act dangerous to human life or property, against any individual, property or government, with the stated or unstated objective of pursuing economic, ethnic, nationalistic, political, racial or religious interests, whether such interests are declared or not. Robberies or other criminal acts, primarily committed for personal gain and acts arising primarily from prior personal relationships between perpetrator(s) and victim(s) shall not be considered terrorist acts.

A terrorist act shall also include any act which is verified or recognized as such by the Israeli or United States Governments or any other country where the claim was made or where the act took place.

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## **B. Exclusions applicable to Section 1 - Professional Liability Cover ONLY.**

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This Policy does not cover *Loss* in connection with any *Claim* for a *Wrongful Act* arising out of, based upon or attributable:

**5.11 Antitrust**

to any actual or alleged antitrust violation, restraint of trade or unfair competition.5.12

**5.12 Bodily Injury/Property Damage**

to *Bodily Injury* or *Property Damage* unless arising from a *Wrongful Act* of the *Insured* committed solely in the performance of *Technology Services*.

**5.13 Infrastructure**



- I. To mechanical failure; to electrical failure, including any electrical power interruption, surge, brown out or black out; or
  - II. to telecommunications or satellite systems failure;
- unless such failure arises solely in the performance of *Technology Services*.

#### 5.14 Insolvency

to the insolvency, administration or receivership of the *Insured*.

#### 5.15 Joint Ventures

to work carried out by the *Insured* for and in the name of any association or joint venture of which an *Insured* forms part.

#### 5.16 Misdeeds

to any act which a judge, jury or other official tribunal or panel found, or which an *Insured* admitted to be a criminal, dishonest or fraudulent act; and in such event, the Insurer shall be reimbursed for all Loss paid in connection with such Claim; provided, however, that this exclusion shall not apply to the Employee's Fraud or Dishonesty Cover.

#### 5.17 Trade Debt

to trading debt incurred by an *Insured* or (ii) to guarantee given by an *Insured* for a debt;



## C. Exclusions applicable to Section 2 – Product Liability Cover ONLY.

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This Policy does not cover *Loss* in connection with any *Claim* or *Occurrence* arising out of, based upon or attributable:

### 5.18 Aircraft / Watercraft

to ownership, possession, or use by the *Insured* of any aircraft, aerial device for travel through air or space, water-going vessel or craft hovercraft or hydrofoil.

### 5.19 Motor Liability

to the ownership, possession or use under the control of the *Insured* of any *Motor Vehicle*.

### 5.20 Property Damage

to *Property Damage* in respect of property belonging to the *Insured* or in the *Insured's* care, custody or control.

### 5.21 Bodily Injury to Employees

to *Bodily Injury* to an *Employee*.

## Section 6. Policy Conditions

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### A. Claims

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#### 6.1 Notification of Claims

The *Insured* shall give written notice to the *Insurer* of any *Claim* first made against the *Insured* as soon as practicable and during the *Policy Period*. All notifications must be made in writing and by registered mail or facsimile, and addressed as follows:

*AIG Israel Insurance Company Ltd*

*Commercial Claims Department*

*25 Hasivim St., Kiryat Matalon*

*Petah Tikva 491001, P.O.B 535*

In case of violation of the obligations above by the *Insured* to timely notify the *Insurer* of any *Claim* in accordance with section 22 of the Insurance Contract Act, 1981, the remedies available to the *Insurer* shall be in accordance to sections 24-25 of the Insurance Contract Act, 1981.



## 6.2 Related Claims

If notice of a *Claim* is given to the *Insurer* pursuant to the terms and conditions of this Policy, then any subsequent *Claim*:

arising out of, based upon or attributable to the facts alleged in that previously notified *Claim*;  
or

alleging any *Wrongful Act* which is the same as, related to or connected with any *Wrongful Act* alleged in that previously notified *Claim*,

shall be considered made against the *Insured* at the same time as the previously notified *Claim* was made, and reported to the *Insurer* at the same time as the previously notified *Claim* was first reported.

Any *Claim* or *Occurrence* arising out of, based upon or attributable to:

the same originating cause or *Wrongful Act*;

a single *Wrongful Act*; or

the same or similar originating causes or *Wrongful Acts* or *Occurrences* involving a number of matters or transactions,

shall be considered a single *Claim* or *Occurrence* for the purposes of this Policy.

## 6.3 Circumstances / Occurrences

With respect to Section 1 - Professional Liability Cover only, during the *Policy Period*, an *Insured* may become aware of circumstances which may reasonably be expected to give rise to a *Claim* for a *Wrongful Act*. In such event, an *Insured* shall during the *Policy Period* report the circumstances in writing to the *Insurer*. If in doing so, the *Insured* provides: (i) the reasons for anticipating the *Claim* for a *Wrongful Act*, and (ii) full particulars as to dates, acts and persons involved, then any *Claim* for a *Wrongful Act* which is subsequently made against an *Insured* and reported in writing to the *Insurer* alleging, arising out of, based upon or attributable to such circumstances, or alleging any *Wrongful Act* which is the same as or related to any *Wrongful Act* alleged or described in the previously notified circumstances, shall be considered first made against the *Insured* and reported to the *Insurer* at the time the facts or circumstances were first reported, provided that the *Insurer* acknowledged the acceptance of notice of circumstances in accordance with the terms of this section.

With respect to Section 2 – Technology Products Liability Cover only, during the *Policy Period*, an *Insured* may become aware of an *Occurrence* which may reasonably be expected to give rise to a *Claim*. In such event, an *Insured* shall during the *Policy Period* report the *Occurrence* in writing to the *Insurer*. If in doing so, the *Insured* provides: (i) the reasons for anticipating the *Claim*, and (ii) full particulars as to dates, acts and persons involved, then any *Claim* which is subsequently made against an *Insured* and reported in writing to the *Insurer* alleging, arising out of, based upon or attributable to such *Occurrence*, shall be considered first made against the *Insured* and reported to the *Insurer* at the time the *Occurrence* was first reported provided that the *Insurer* acknowledged the acceptance of notice of circumstances in accordance with the terms of this section.

## 6.4 Defence/Settlement

In the event of a covered *Claim* under the policy, the *Insurer* shall be entitled, in accordance with its discretion, to take over and manage on behalf of the insured the defence against the *Claim*.

The *Insured* shall (1) provide all reasonable assistance and cooperation with the *Insurer* in the defence of any *Claim* and in the execution of any indemnification and contribution rights;





(2) use due diligence and assist in all matters and required actions to prevent or mitigate any *Loss* under this policy; (3) give such information and assistance to the *Insurer* as the *Insurer* may reasonably require to enable it to investigate any *Loss* or determine the *Insurer's* liability under this policy.

The *Insurer* may at any time make settlement or pay insurance benefits to *Third Party*, provided that the *Insured* has been notified in writing 30 days in advance and does not object during this period.

In case the *Insured* refuses to a reasonable settlement proposed by the *Insurer* to settle the *Claim*, the *Insurer* shall be entitled to notify the *Insured* that its liability shall be limited to the settlement amount in which the *Claim* could have been settled, plus *Defence Costs* incurred up to the date in which such settlement could have been concluded, less the applicable *Retention*

### **6.5 Insurer's Consent**

An *Insured* may not admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any *Defence Costs* without the prior written consent of the *Insurer*. Only those settlements, judgments and *Defence Costs* consented to by the *Insurer*, and judgments resulting from *Claims* defended in accordance with this policy, shall be recoverable as *Loss* under this policy. The *Insurer's* consent shall not be unreasonably withheld. It is agreed that the *Insurer* will act to exercise its rights with consideration to the *Insured's* business operations and in a manner which will not prejudice the *Insured's* right to be indemnified by a *Third Party* in respect of amounts which were not paid by the *Insurer*.

### **6.6 Allocation**

In the event that any *Claim* involves both covered matters and matters not covered under this Policy, a fair and proper allocation of any cost of defence, *Damages*, judgments and/or settlements shall be made between each *Insured* and the *Insurer* taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this Policy.



## B. Representations, Disclosure Duties and Administration

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### 6.7 Representations and Disclosure Duties

In granting cover to the *Insured*, the *Insurer* has relied upon the material statements and particulars in the proposal together with its attachments and other information supplied. These statements, attachments and information are the basis of cover and are considered incorporated and constituting part of this Policy.

The *Insured* shall provide a full and honest answer to any question asked by the *Insurer* concerning a material matter. In case of breach of the disclosure duties by the *Insured*, as specified above, the *Insurer* shall be entitled to the reliefs and remedies set forth in sections 7-8 of the Insurance Contract Act, 1981.

### 6.8 Administration

The *Policyholder* has acted and shall act on behalf of each and every *Insured* with respect to: (1) negotiating terms and conditions of, binding and amending cover; (2) exercising rights of *Insureds*; (3) notices; (4) *Premiums*; (5) endorsements; (6) dispute resolution; and (7) payments to any *Insured*. Limit and Retention

## C. Limit and Retention

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### 6.9 Limit of Liability

The Limits of Liability are the aggregate amount of the *Insurer's* liability for any *Loss* arising from all *Claims* brought against all the *Insureds* under all covers under this policy in the aggregate. Sublimits of Liability and Extensions are part of the Limits of Liability. The Limits of Liability for the period provided in the Extended Reporting Period Extension is part of, and not in addition to, the Limits of Liability for the *Policy Period*. The inclusion of more than one *Insured* under this policy does not operate to increase the total amount payable by the *Insurer* under this policy. The Lost Documents Extension Sublimit of Liability shall be part of and not in addition to the Limits of Liability.

It is agreed that in case of *Loss*, including *Defence Costs*, exceeding the Limits of Liability, then this policy shall cover reasonable *Defence Costs* exceeding the Limit of Liability specified in the policy schedule, in accordance with section 66 of the Insurance Contract Act, 1981.

To avoid any doubt, coverage under the Extensions detailed in this Policy is subject to the *Limits of Liability*, and shall not apply in excess thereto, unless specifically stated otherwise. In respect of each Extension which covers the *Insured's* legal liability, and which is subject to a sub-limit of liability, the *Insurer* shall indemnify the *Insured's* *Defence Costs* even in excess of the sub-limit of liability under the Extension.

In case where the policy specifically applies to jurisdictions other than the State of Israel, then with respect to *Claims* filed against the *Insured* outside the jurisdiction of the State of Israel, the reasonability of the *Defence Costs* exceeding the total aggregate *Limits of Liability* will be measured based on reasonable *defence costs* in Israel in accordance with Israeli standards.

### 6.10 Retention

The *Insurer* shall only pay for the amount of any *Loss* which is in excess of the *Retention*, which shall be paid by the *Insured*. A single *Retention* shall apply to all *Claims* which are deemed one *Claim* in accordance to section "Related Claims" above. The *Insurer* may,



advance all or part of the *Retention*, and, in that event, such amounts shall be reimbursed to the *Insurer* by the *Insureds* forthwith.

## D. General Provisions

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### 6.11 Assignment

This Policy and any rights under or in respect of it cannot be assigned without the prior written consent of the *Insurer*.

### 6.12 Cancellation By Policyholder:

This policy may be cancelled by the *Policyholder* at any time only by mailing written prior notice to *Insurer*. In such case, the *Insurer* shall be entitled to the *Premium* paid for the period before the cancellation become effective, calculated as follows:

10% of the *Premium* applicable for the *Policy Period*, plus 10% for each month or part thereof during which the policy was in force.

### 6.13 Cancellation By Insurer:

This policy may be cancelled by the *Insurer* delivering to the *Policyholder* by registered, certified, other first class mail or other reasonable delivery method, at the address of the *Policyholder* set forth in the Schedule, written notice stating when, not less than thirty (30) days thereafter, the cancellation shall be effective. Proof of mailing or delivery of such notice shall be sufficient proof of notice and this policy shall be deemed cancelled as to all *Insureds* at the date and hour specified in such notice

In case of cancellation of the policy by the *Insurer* before the expiry of the *Policy Period*, and the reason for the cancellation is not due to the violation of the policy terms by the *Insured* or an attempt to defraud the *Insurer* by the *Insured*, the *Insurer* will return the *Insured* the amount which the *Insurer* would have charged from a similar *Insured* in respect of the same type of insurance on the cancellation date, pro-rata to the remaining period up to the end of the *Policy Period*

Any amount not paid by the *Insurer* within 28 days will incur interest as stipulated in the section 4(a) of the Adjudication of Interest and Linkage Law, 1961 until the day of actual payment. The reimbursement of the *Premium* by the *Insurer* shall not be a condition to the validity of the cancellation.. However, such payment will be made as soon as applicable.

In case of cancellation due to non-payment of *Premium*: if the *Insured* did not pay the *Premium* within 15 days following the *Insurer's* written demand, the *Insurer* may notify the *Insured* in writing that this policy be cancelled after 21 additional days unless payment is made within such period.

### 6.14 Insolvency

Insolvency, receivership or bankruptcy of any *Insured* shall not relieve the *Insurer* of any of its obligations hereunder.

### 6.15 Plurals, Headings and Titles

The descriptions in the headings and titles of this policy are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular shall include the plural and vice versa. In this policy, words in *inclined and larger* typeface have special meaning and are defined. Words that are not specifically defined in this policy have the meaning normally attributed to them.



### 6.16 Scope and Governing Law

Where legally permissible and subject to the U.S.A./Canada Exclusion, this policy shall apply to any *Claim* made against any *Insured* anywhere in the world. Any interpretation of this policy relating to its construction, validity or operation shall be made in accordance with the laws of the State of Israel and in accordance with the English text as it appears in this policy.

### 6.17 Subrogation

If the *Insured* has any right for compensation or indemnification against a *Third Party*, regarding any *Loss*, not by virtue of an insurance policy, this right will be transferred to the *Insurer* once it has paid insurance benefits and to the extent thereof.

The *Insurer* may not exercise the right transferred to it under this Condition in a manner which will prejudice *Insured's* right to recover compensation or indemnification from a *Third Party* in excess of the benefits received from the *Insurer*,

The *Insurer* shall be entitled to pursue and enforce such rights in the name of the *Insured*, who shall provide the *Insurer* with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. The *Insured* shall do nothing to prejudice these rights. Any amount recovered in excess of the *Insurer's* total payment shall be restored to the *Insured* less the cost to the *Insurer* of such recovery. The *Insurer* agrees not to exercise any such rights of recovery against any *Employee* unless the *Claim* is brought about or contributed to by the dishonest, fraudulent, intentional criminal or malicious act or omission of the *Employee*. The *Insurer* may, in writing, waive any of its rights set forth in this Subrogation Clause.

## Premium Payments and other Fees

- A. Unless otherwise agreed between the parties, the insurance *Premium* and other fees due from the *Insured* to the *Insurer* in connection with the policy will be fully paid within 28 days following commencement of the *Policy Period*, either in US Dollars, or in NIS calculated according to the representative NIS-US dollar exchange rate at the Bank of Israel on the payment date.
- B. In case the *Premium* has not been paid within the aforementioned 28 days, or at other times explicitly agreed upon, any amount in arrears shall bear interest as stipulated in section 4(a) of the Adjudication of Interest and Linkage Law, 1961.

### Linkage

The *Limit of Liability* of the *Policy*, which is specified in US dollars, shall be calculated in accordance with the representative NIS-US dollar exchange rate at the Bank of Israel on the date of actual payment of the *Claim*. The *Retention* specified in US dollars shall also be calculated in accordance with the representative NIS-US dollar exchange rate at the Bank of Israel on the date of actual payment of the *Claim*