

MENORA

Top IT

Combined Errors & Omissions + Product Liability

For Technology Companies

2015 Edition

All enquiries in regard to this policy should be made to:

MENORA MIVTACHIM INSURANCE LTD.

SCHEDULE

THIS IS A CLAIMS MADE INSURANCE SCHEDULE. IT APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED AND NOTIFIED TO **MENORA Mivtachim Insurance Ltd** DURING THE POLICY PERIOD

PREAMBLE

Whereas the person or persons, firm or company, named in the Schedule hereto (hereinafter called "the Insured" and "the Schedule") have made to Menora Mivtachim Insurance (hereinafter called "**Menora**") a Written Proposal (hereinafter called the "Proposal") and in consideration of the Insured's undertaking to pay the premium stated in the Schedule, it is hereby agreed and conditioned as follows:

COVERAGE

Menora will indemnify the **Insured** up to the **Limit of Liability** for all sums for which the **Insured** is legally liable to pay as compensation in respect of any **Claim** first made against the **Insured** and notified to **Menora**, during the **Policy Period** arising out of:

- 1) Any negligent act, error or omission by or on behalf of the **Insured**:
 - a) In the performance of or failure to perform **Electronic Data Processing** for others; or
 - b) In the performance of or failure to perform **Other Computer Services**; or
 - c) Resulting in the failure of the **Insured's Software Products** to perform the function or serve the purpose intended; or
 - d) In respect of the failure of the **Insured's Electronic Products** to perform the function or serve the purpose intended after installation, testing and final acceptance by the user.
- and
- 2) **Bodily Injury and Property Damage** caused by the **Insured's Product** arising out of an **Occurrence**.

Provided that the act, error or omission detailed in section 1 above, and/or the Bodily Injury or Property Damage detailed in section 2 above, occurred on or after the Retroactive Date specified in the schedule.

Limit of Liability and Self Insured Retention

The most **Menora** will pay in respect of any **Claim, Occurrence** or **Claims Expenses** shall not exceed the **Limit of Liability** stated in the schedule regardless of the number of:

- a) **Insureds** or
- b) **Claims** brought or
- c) **Persons**

Subject to the above, the most **Menora** will pay during any the **Policy Period** for any **Claim, Occurrence** or **Claims Expenses** as a result of all **Claims** is stated as the annual aggregate **Limit of Liability** in the schedule.

In the event that the total aggregate **Limit of Liability** is exhausted by payment of **Claim** or **Occurrence**, including **Claims Expenses**, then this policy shall cover reasonable **Claims Expenses** in excess of the the total aggregate **Limit of Liability** for **Claim** or **Occurrence**. With respect to **Claim** or **Occurrence** filed/made, outside the jurisdiction of Israel, the "reasonability" of the **Claims Expenses** shall be determined in accordance with Israeli standards.

All **Claims** arising from a single negligent act, error or omission or a series of related negligent acts, errors or omissions shall be deemed to be a single **Claim** and a single **Limit of Liability** and a single **Self Insured Retention** shall apply to all such **Claims**.

EXCLUSIONS

This insurance does not apply to any Claim or Claims Expense arising out of any of the following:

- 1. Performance Delay**
a default by or on behalf of the Insured with respect to the delay in performance or non-completion of any contract or agreement. However, this exclusion does not apply to delay in performance due to negligent act, error or omission by the Insured.
- 2. Cost Guarantees**
cost guarantees or estimates of probable costs or cost estimates being exceeded.
- 3. Assumed Liability**
any liability assumed by the Insured under any contract or agreement but this exclusion does not apply to liability that the Insured would have in the absence of such contract or agreement.
- 4. Intentional Acts or Intentional Omissions**
Acts or omissions committed or loss or damage caused intentionally by or at the direction of the Insured.
- 5. Acts Errors or Omissions of a Dishonest Nature**
dishonest, fraudulent, criminal or malicious acts, errors or omissions of the Insured whether acting alone or in collusion with others.
- 6. Product Recall**
costs, expenses and damages in respect of the repair, reconditioning, replacement, making good or recall of the Insured's Software Products or the Insured's Electronic Products or of any inadequate or defective workmanship performed by or on behalf of the Insured.
- 7. Electric Power Supply Change**
any change in electric power supply, including power interruption or surge, brownout or blackout.
- 8. Wear and Tear**
wear and tear or gradual deterioration.
- 9. Security Breach**
failure or lack of the Insured's Software Products or the Insured's Electronics Products to prevent unauthorized access to or use of an electronic system or program.
- 10. War, Nuclear and Government Action as defined in the Definitions.**
- 11. Circumstances prior to the Retroactive Date meaning Any Circumstances which is either:**
 - i) Known to the Insured at the inception of this Policy and is likely to give rise to Claim against which the Insured would otherwise be entitled to be indemnified for;**
 - ii) Which has been notified under any other insurance attaching prior to the inception of this Policy.**

12. **Pollution**

Any liability arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants or any loss, cost or expense arising out of any request, demand or order that any Insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assess the effects of pollutants or any Claim by or on behalf of any governmental authority or others for damages in respect of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising, or in any way responding to, or assessing the effects of Pollutants.

13. **Penalties**

Punitive, exemplary or aggravated damages, penalties imposed by statute or any criminal or civil fines.

14. **Intellectual Property**

Actual or alleged infringement of patent copyright, trademark, service mark, design right, registered design right; passing off; theft or misuse of confidential information or other intellectual property, computer systems or programmes of others;

15. **Personal injury or Advertising Injury.**

16. **Directors and Officers**

Directors, officers or employees of the Insured acting as directors or officers of any company or organisation in their managerial capacity.

17. **Insolvency or bankruptcy of the Insured.**

18. **Retroactive Date**

Any act, error or omission which took place before the Retroactive Date if shown in the schedule;

19. **Terrorism;**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism. If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

20. **Asbestos**

It is hereby understood and agreed that this contract shall not apply to and does not cover any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of asbestos, in whatever form or quantity.

DEFENITIONS

For the purpose of the insurance afforded in this schedule the following definitions apply to the policy:

Advertising Injury:

Injury arising solely out of one or more of the following offences committed in the course of advertising the **Insured's** goods, products or services:

1. oral or written publication of material which slanders or libels a person or organisation or disparages a person's or organisation's goods, products or services
2. oral or written publication of material which violates a person's right of privacy;

Asbestos:

Asbestos in any form, including but not limited to its presence or use in any alloy, by-product or other material waste.

Waste includes material to be recycled, reconditioned or reclaimed;

Bodily Injury:

Bodily injury, sickness or disease sustained by any person including death at any time resulting therefrom;

Claim(s):

1. Any legal proceeding, any demand for money or service, resulting from actual or alleged negligence, or damage.
2. Notice given of any specific event or circumstance that may give rise to a claim or claims, that forms the subject of indemnity by this policy.

Claims Expense:

Fees charged by a lawyer or legal advisor designated by **Menora**; and all other fees, costs and expenses resulting from the investigation, adjustment, defence and appeal of a **Claim**. Such fees, costs and expenses must be incurred by **Menora**; a lawyer or legal advisor that **Menora** designates; or by the **Insured** with **Menora's** consent. However, **Claims Expense** does not include salary of the **Insured's** regular employees and overhead expenses of **Insured**.

Electronic Data Processing:

those activities usual to the processing of data or records of others.

Government Action:

1. order of civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any cause excluded in this coverage;
2. seizure or destruction of property under quarantine or customs regulations;
3. confiscation of property by order of any government or public authority;
4. contraband
 - (a) illegal or prohibited traffic;
 - (b) goods or merchandise whose importation or possession is forbidden.

Insured:

- (a) The Named Insured specified in the schedule (herein: **The Named Insured**);
- (b) Any officer, director, stockholder, trustee or member of the board of management thereof and any employee or volunteer worker of the **Named Insured** but only while acting for and on behalf of the Insured, other than in their managerial capacity;
- (c) Any joint ventures where the **Named Insured** is engaged in a joint venture that has, by virtue of its share holdings in the joint venture or by any contract has the controlling interest in a joint venture;

- (d) Any **Subsidiary** of the **Named Insured**;
- (e) Any named customer or named principal for whom the **Insured** is carrying out any work and against whom a claim is brought arising from an **Occurrence** for which the insured is responsible arising in connection with the carrying out of such work;

Provided that such persons or organisations shall observe, fulfil and be subject to the terms, conditions and limits of this insurance and that the conduct and control of all **Claims** be vested in **Menora**.

Insured's Electronic Product(s):

Analysis, design or development of an electronic component, system or program including software, firmware or hardware which the **Insured** or others trading under the **Insured's** name manufactured, provided, sold, handled or distributed.

Insured's Software Product(s):

non customised computer software which the **Insured** or others trading under the **Insured's** name created, manufactured, sold, licensed, handled or distributed provided it is widely available and was sold or supplied for use without the need for specialised installation.

Insured's product(s):

Anything sold, manufactured, supplied, repaired, installed, erected, altered, cleaned or treated by the **Insured**

Nuclear:

1. ionising radiations or contaminations by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
2. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
3. nuclear weapons material; or

the hazardous properties of nuclear material if such liability arises out of the furnishing by the Insured of services, material, part or equipment in connection with planning, construction, maintenance, operation or use of any Nuclear Facility;

Nuclear Facility means:

- a. any nuclear reactor; or
- b. any equipment or device designed or used for:
 - separating the isotopes of uranium or plutonium, or
 - processing or utilising fuel, or
 - handling, processing or packaging waste; or
- c. any equipment or devices used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at such premises where such equipment or device is located, consists of or contains more than 25 grams of plutonium or uranium 233 or combination thereof or more than 250 grams of uranium 235; or
- d. any structure, basin, excavation, premises or place prepared for the storage or disposal of nuclear waste; or
- e. the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

Occurrences(s):

An event including continuous or repeated exposure to substantially the same harmful conditions which results in accidental Bodily Injury or Property damage/

Other Computer Services:

Computer hardware maintenance for others.

Personal injury:

Injury, other than bodily injury, arising out of one or more of the following offences committed in the course of the **Insured's** business, other than its advertising activities:

1. false arrest, detention or imprisonment;
2. malicious prosecution;
3. wrongful entry into, or eviction of a person from a room, dwelling or premises which the person occupies;
4. invasion of the right of privacy;
5. oral or written publication of material which slanders or libels a person or organisation, disparages a person's or organisation's goods, products or services.

Pollutants:

any solid, liquid gaseous or thermal irritant or contaminant including smoke, fumes, acids, alkalis, chemicals, waste, materials to be disposed of, recycled, reconditioned or reclaimed.

Property Damage

physical injury to or destruction of tangible property including loss of use thereof at any time resulting therefrom.

Self Insured Retention:

the amount borne by the **Insured** in respect of each **Claim** and **Claims Expense** before **Menora** shall become liable to make payment here under.

Subsidiary:

Entities in which the **Insured**, either directly or indirectly, through one or more of its subsidiaries

- (a) controls the composition of the board of directors; or
- (b) controls 50% or more of the voting power; or
- (c) holds 50% or more of the share capital;

War:

1. hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack by:
 - (a) any government or sovereign power (de jure or de facto) or by any authority maintaining or using military, naval or air forces or;
 - (b) military, naval or air forces or;
 - (c) any agent of any such government, power, authority or forces;
2. insurrection, rebellion, revolution, civil war, usurped power, or any activity of any organisation the objects of which are or include the overthrowing or influencing of any de jure or de facto government by terrorism or by any violent means, or action taken by governmental authority in hindering, combating or defending against such an occurrence;
3. any weapon of war employing atomic fission, radioactive force or radioactive material, whether in time of peace or war.

GENERAL EXTENSION

Extended Reported Period Option

If, for any reason other than non-payment of premium, **Menora** cancel or refuse to renew this insurance, the **Insured** may:

1. by giving written notice to **Menora** on or before the effective date of the cancellation or no later than 10 days after the effective date of non-renewal; and
2. upon payment of an additional premium of 75% of the annual premium, such premium to be non refundable and paid to **Menora** within 20 days of the non-renewal

secure an extended reporting period of 180 days following the effective date of such cancellation or non-renewal, to report **Claims** which may be made against the **Insured** during the Extended Reporting Period. Such **Claims** shall be deemed to have been made and reported during the **Policy Period**, but only if the act or omission giving rise to the **Claim** occurred:

1. during the **Policy Period**; and
2. prior to the effective date of cancellation or non-renewal.

All other provisions of this insurance, including those relating to the **Limit of Liability** are unchanged by this provision

GENERAL INSURANCE CONDITIONS

Handling a Claim:

Menora may investigate and defend any Claim or suit.

Menora's decision to settle a **Claim** against the **Insured**, is subject to **Menora** notification to the **Insured** in writing thirty days in advance and subject that the **Insured** does not object during that period.

Should the settlement of a **Claim** required by the **Menora** fail due to the unreasonable opposition of the **Insured**, **Menora** shall not bear the additional expenditure for damages, interest and costs arising after the date of such objection. The Company will not defend any suit or pay any **Claim** and/or **Claims Expense** after the exhaustion of the applicable Limit of Liability by payment of **Claims** and reasonable **Claims Expenses** in excess of the total aggregate **Limit of Liability**.

Subrogation:

In the event of any payment under this policy, **Menora** shall be subrogated to the extent of such payment to all of the **Insured's** rights of recovery in respect of the payment,

The **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing after loss to prejudice such rights.

Menora will not exercise its subrogation rights in such manner as to impair the right of the **Insured** to collect from a third party compensation or indemnification in excess of the benefits he has received from **Menora**. **Menora's** rights of subrogation will not apply where the event Insured against was brought about unintentionally by a person from whom a reasonable insured would not claim compensation or indemnification by reason of a family relationship or employer-employee relationship between them.

Other Insurance:

In the event that it has been stated in another policy which covered the insured risk that such other policy shall be primary, or in the event that the other policy is intended to specifically cover the insured risk, then cover under this policy shall cover as a second layer in excess of the covered amount under such other policy.

Assignment:

Assignment of interest under this insurance shall not bind **Menora** without its written consent. If, however, the **Insured** dies, this insurance shall apply to the Insured's legal representative while acting in the scope of his duties as such or to the person having custody of the **Insured's** property pending appointment and qualification of a legal representative.

Material Alteration:

The **Insured** shall advise **Menora** in writing, as soon as reasonably possible, of any material change, which affects the risk insured. For the purpose of this condition, material change means any representation made in writing by the Insured in the proposal form or in any other document prior to inception of this policy. The Insured's duty to notify of any material change and -the remedies afforded to Menora in case of breach of such duty, will be subject to sections 17-19 of the Insurance Contract Law 1981.

Cancellation:

This policy may be cancelled by the **Insured** at any time by mailing written prior notice to **Menora**. In such case, **Menora** shall return of a proportionate part of the premium corresponding to the unexpired **Policy Period**.

This insurance or any coverage included herein may be cancelled at any time by **Menora** by sending sixty days' notice by registered letter to the Insured at the last known address. The **Insured** shall be entitled to the return of a proportionate part of the premium corresponding to the unexpired **Policy Period**.

However, in case of cancellation by the insurer due to non-payment of premium, the following instructions shall apply: if, within 15 days after the insurer's written demand to pay the outstanding premium, the insured failed to pay such premium, the insurer may notify the insured in writing of cancellation of the policy within additional 21 days, unless the outstanding premium shall be paid beforehand.

Notwithstanding the above, if this policy shall be cancelled by **Menora**, and the reason for the cancellation is not breach of the policy terms or attempted fraud towards the insurer by the **Insured**, then **Menora** shall return to the **Insured** the premium that **Menora** would have charged from a similar insured for the same insurance on the date of cancellation, in a proportion to the remaining period up to the end of the policy period.

Dispute Procedure:

Any dispute concerning the interpretation of the terms, conditions, limitations and/or exclusions contained in this policy is understood and agreed by both the **Insured** and **Menora** to be subject to Israeli Law. Each party agrees to submit to the exclusive jurisdiction of any court of competent jurisdiction within Israel and agree to comply with all requirements necessary to give such court jurisdiction.

When This Insurance Applies:

This insurance applies to **Claims** first made against the **Insured** during the **Policy Period**. The **Claim** must be reported to **Menora** during the **Policy Period**. A **Claim** will be deemed to have been made only when suit or brought or written notice of such **Claim** is received by the **Insured**. If, during the **Policy Period**, the **Insured** becomes aware of any circumstances which may later give rise to a **Claim**, and shall, during the **Policy Period**, give **Menora** written notice, then such written notice will also be considered a **Claim** hereunder.

Claims:

- a. The **Insured** shall give written notice to **Menora** of any **Claim** or proceeding as soon as reasonably practicable after such have come to the knowledge of the **Insured** or his representative and provide **Menora** with all information and documents it requires for ascertaining the liability.

The Insured's duties stated above **Menora** and -the remedies afforded to **Menora** in case of breach of such duty, will be subject to sections 22-25 of the Insurance Contract Law 1981.

- b. The **Insured** shall not admit liability for or negotiate the settlement of any **Claim** without the written consent of **Menora**.

ENDORSEMENT A**UNITED STATES OF AMERICA AND CANADA CONDITIONS CLAUSE**

Any claim made or legal proceedings made within the United States of America and/or Canada and/or territories which come under the jurisdiction of the United States of America and/or Canada including the enforcement by courts of any other country of any judgment originally obtained in any court of the United States of America and/or Canada and/or territories which come under the jurisdiction of the United States of America and/or Canada shall be subject to the following conditions and exclusions:

Conditions:

The maximum amount payable in respect of all claims made under this policy shall not exceed in the aggregate the Limit of Liability specified in the schedule.

In the event that the total aggregate **Limit of Liability** is exhausted by payment of Claim or Occurrence, including Claims Expenses than this policy shall cover reasonable Claims Expenses in excess of the total aggregate Limit of Liability for Claim or Occurrence. The "reasonability" of the Claims Expenses shall be determined in accordance with Israeli standards.

Exclusions:**This Policy shall not apply to:-**

- 1. Any punitive and/or exemplary damages awarded against the Insured.**
- 2. Claims based upon the Employment Retirement Income Security Act of 1974 and any amendment thereto, or any rules or regulations promulgated thereunder.**
- 3. Claims arising out of any actual or alleged violations of the Racketeer Influenced and Corrupt Organisation Act 18 USC Sections 1961 et seq and any amendments thereto, or any rules and regulations promulgated thereunder.**
- 4. Claims arising out of seepage, pollution and/or contamination howsoever caused.**

Policy interpretation

Israeli Law and courts only – as per original wording.

ALL OTHER TERMS REMAIN UNCHANGED.