

## AAAtraq™ - Costs Indemnification

Version 1.03  
Dated November 2<sup>nd</sup>, 2020

**THE AGREEMENT IN THIS POLICY IS PROVIDED ON A CLAIMS MADE AND REPORTED BASIS AND APPLY TO CLAIMS FIRST MADE AGAINST THE INDEMNIFIED AND REPORTED TO AAATRAQ DURING THE POLICY PERIOD.**

AAAtraq agrees with the **Named Indemnified**, in consideration of the payment of the subscription and reliance upon the statements contained in the information provided to AAAtraq in connection with the issuance of this policy and subject to all the provisions, terms and conditions contained herein or as amended by endorsement:

**I. Indemnification Agreement**

AAAtraq will reimburse the **Named Indemnified** up to the applicable **Sublimit of Liability** for **Loss** the **Named Indemnified** is legally obligated to pay for a **Claim** first made against the **Indemnified** during the Policy Period for a negligent act, error or omission in rendering or failing to render **Technology Services** for others for a fee.

**II. Definitions**

- Claim** means a written demand received by the **Indemnified** to provide defense and indemnification solely in respect of an allegation made in writing against a claimant that the claimant failed to make reasonable accommodations to the claimant's website for users with disabilities;
- Claims Expenses** means reasonable and necessary legal costs and expenses charged by a **Defense Panel** counsel to defend an allegation made in writing against a claimant that the claimant failed to make reasonable accommodations to the claimant's website for users with disabilities. **Claims Expenses** will not include any internal costs of the claimant, including salaries, wages or overhead, nor will **Claims Expenses** include any internal costs of any **Indemnified**, including salaries, wages or overhead.
- Continuity Date** means the date at which the service contract between the **Named Indemnified** and AAAtraq comes into force.
- Control Group** means a corporate executive, principal or partner, general counsel or risk manager or anyone with a substantially similar position regardless of actual title of the **Named Indemnified**.
- Damages** means a monetary judgment, award or settlement with respect to an allegation made in writing against a claimant that the claimant failed to make reasonable accommodations to the claimant's website for users with disabilities; however **Damages** does not include:
1. future profits, restitution, disgorgement of unjust enrichment or profits by the **Indemnified** or the costs of complying with orders granting future equitable or injunctive relief;
  2. return of offset of fees, charges or commission charge by or owed to the **Indemnified** for goods or services already provided or contracted to be provided, except at the sole discretion of AAAtraq such amounts of fees, charges or commissions to prevent a **Claim**;
  3. taxes, tax benefits, fines, sanctions, penalties or other foreign or domestic duties,
  4. punitive, exemplary or multiple damages or any damages which are a multiple of compensatory damages, unless insurable by law in any applicable venue that most favors coverage for such punitive, exemplary or multiple damages
  5. liquidated damages, but only to the extent that such damages exceed the amount for which the **Indemnified** would have been liable in the absence of such agreement for liquidated damages;

6. the value of any discounts, coupons, prizes, awards or other incentives offered to any customer or client of the **Indemnified**;
7. any amount the **Indemnified** is responsible to pay or reimburse under a **Merchant Services Agreement**;
8. any amounts for which the **Indemnified** has contractually agreed which the **Indemnified** would not otherwise be liable for in the absence of such contract or agreement, provided, however, this limitation shall not apply to any indemnity by the **Named Indemnified** in a written contract with a client for **Technology Services**;
9. any amounts for which the **Indemnified** is not liable, or for which there is no legal recourse against the **Indemnified**.

**Defense Panel**

means the defense counsel preapproved by AAAtraq.

**Indemnified**

means:

1. the **Named Indemnified**;
2. any present, past or future member of the **Control Group**, but only as respect to the performance of their duties as such on behalf of the **Indemnified**;
3. any present, past or future employee, including part time, temporary, leased or seasonal employee or volunteer of the **Indemnified Organization** but only with respects to work done while acting within the scope of their employment and related to the **Indemnified Organization's** business;
4. a lawful spouse, including any natural person qualifying as domestic partner of the **Indemnified**, but solely for any act, error or omission of the **Indemnified** other than such spouse or domestic partner.
5. Any person or legal entity holding any current or prior ownership interest in the **Indemnified**, but only to the extent the **Indemnified** would have been liable and coverage provided under the terms and conditions of this Policy had such **Claim** been made against the **Indemnified** in the performance of the **Indemnified's** ongoing operations, for which such person or legal entity is or is alleged to be or have been vicariously liable while such ownership interest did exist;
6. in the event of any **Indemnified's** death, incapacity, insolvency or bankruptcy then the estate, heirs, executors, administrators, assigns and legal representatives of such **Indemnified** but only to the extent coverage would have otherwise been provided to such **Indemnified** under this Policy;

**Media Activities**

means one or more of the following acts actually or allegedly committed by, or on behalf of the **Indemnified Organization** in the course of creating, disseminating, displaying or releasing of **Media Material** to the public:

1. defamation, slander, libel, disparagement, trade libel, prima facie tort, infliction of emotional distress or mental anguish, outrage, outrageous conduct or other tort related to disparagement or harm to the reputation or character of any product, person or organization;
2. a violation of any right to privacy including false light, intrusion upon seclusion, public disclosure of private facts; or a violation of right of publicity; or any claim of trespass, wrongful entry or wrongful eviction;

3. invasion of or interference with of any name, likeness, voice or persona for commercial advantage;
4. misappropriation of any trade secret;
5. false arrest, detention, or imprisonment;
6. plagiarism, piracy or misappropriation of ideas under any implied contract;
7. infringement of copyright, trade dress, domain name including improper framing or deep-linking, title or slogan, or the dilution or infringement of trade name, trademark or service mark;
8. unfair competition; or
9. negligence regarding any **Media Material**, including the harm caused through reliance or failure to rely upon such **Media Material**.

<b>Media Material</b>	means any content or information in any format including words, numbers sounds, images or graphics.
<b>Named Indemnified</b>	means the entity which has entered into a contract with AAAtraq under which AAAtraq shall provide limited indemnity for legal costs.
<b>Policy Aggregate Limit</b>	is \$50,000.
<b>Policy Period</b>	means the period of time during which the <b>Named Indemnified</b> has an effective and paid up-to-date service contract with AAAtraq that includes indemnity for legal costs.
<b>Private Information</b>	means: <ol style="list-style-type: none"> <li>1. any information pertaining to an individual which is defined as personal information under any applicable <b>Privacy Regulations</b>;</li> <li>2. any non-public information pertaining to an individual which allows the individual to be uniquely identified or contacted or allows access to the individual's non-public financial or medical accounts or information; or</li> <li>3. any trade secret, data, design, interpretation, forecast, formula, method, practice, financial information, process, report or other item of information of a third party not an <b>Indemnified</b> under this Policy.</li> </ol>
<b>Sublimit of Liability</b>	means the maximum monetary amount AAAtraq will pay for any one <b>Claim</b> , which shall be based upon the compliance status of the claimant at the time the claimant's website allegedly failed to make reasonable accommodations for users with disabilities, as follows: <p>Zero-star compliance: \$2,500</p> <p>One-star compliance: \$10,000</p> <p>Two-star compliance: \$25,000</p> <p>Three-star compliance and above: \$50,000</p>
<b>Technology Services</b>	means the provision of technology analysis and consulting related to compliance with regulations governing website and internet content used by persons with disabilities.

## Exclusions

The coverage under this insurance policy will not apply to any **Loss** based upon, arising out of, or resulting from, directly or indirectly:

### Media Liability

1. Any **Media Activities** of the **Indemnified Organization**;
2. Any actual or alleged obligation to make licensing fees or royalty payments;
3. Any rights or claims brought by or on behalf of any intellectual property licensing entities in their capacity as a licensor or regulator;
4. Any claim brought by or on behalf of any independent contractor, joint venture or other venture partner involving disputes related to the ownership of or rights in **Media Material**;
5. Any false, deceptive or misleading advertising;
6. The recall, removal or disposal or reprinting of any **Media Material**, including media or products containing such **Media Material**;

### Bodily Injury and Property Damage

1. the physical injury, illness or death of any person;
2. the destruction of any tangible property, including the loss of use of such property;

### Gathering or Distribution of Content

1. the unlawful collection or retention of **Private Information** or other personal information;
2. the actual or alleged violation of any domestic or foreign statute, ordinance, regulation or other law addressing or related to any unsolicited telemarketing, solicitations, emails, facsimiles, text or multimedia messages, other communications or wire-tapping or audio or video recording;

### Prior Knowledge, Ongoing Acts

1. any act, error, omission, incident or event committed by or occurring prior to the inception date of this Policy if any member of the **Control Group** prior to the **Continuity Date** knew or reasonably could have foreseen such act, error or omission, incident or event might be expected to be the basis of a **Claim** or **Loss**;
2. any **Claim** or **Loss**, incident or circumstance for which notice of has been provided to any policy of which this Policy is a renewal or replacement; or
3. any allegation against a claimant, made prior to that claimant becoming a client of the **Indemnified for Technology Services**;

### Intentional, Criminal, Fraudulent Acts or Trade Practices

1. any criminal, dishonest, fraudulent or malicious act or omission, intentional or wilful violation of the law;
2. any ownership, sale or purchase of, or offer to sell or purchase any securities, or the actual or alleged violation of a securities law or regulation;
3. any liability or breach of duty or obligation owed as a current, prior or potential employer;
4. any alleged or actual violation of the Organized Crime Control Act of 1970 (commonly known as "Racketeer Influenced And Corrupt Organizations Act" or "RICO"), as amended, or any regulation promulgated thereunder, or any federal, state, local, or foreign law similar to the foregoing statute; whether such law is statutory, regulatory, or common law;
5. any alleged or actual antitrust violations, restraint of trade, unfair competition, or unfair or deceptive trade practices, including without limitation, violations of the Sherman Act, the Clayton Act, the Robinson-Patman

Act, or the Lanham Act, or any other federal, state, local, or foreign laws regulating the same or similar conduct;

### **Patent, Misappropriation of Information**

1. Any actual or alleged abuse, infringement or misuse of patent or patent rights;
2. Any actual or alleged use or misappropriation of any ideas or trade secrets;

### **Government Actions**

1. any action, proceeding, or investigation brought by or on behalf of any domestic or foreign governmental entity, in such entity's capacity as a regulatory or their official capacity;
2. the confiscation or nationalization or destruction of property or data by order of any regulatory, government or public authority;

### **War and Civil War**

Any acts directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign or domestic enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or destruction of property or data by order of any regulatory, government or public authority;

### **Related Entities**

Any **Claim** by or on behalf of any **Indemnified** against any other **Indemnified**;

### **Trading Losses, Loss of Value**

The actual or alleged loss, theft or unauthorized transfer of funds, securities or tangible property of any **Indemnified** or others in the care custody or control of any **Indemnified**;

### **First Party Losses**

1. the failure or malfunction of telecommunications or utility infrastructure or services unless under the direct operational control of the **Indemnified**;
2. fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, an act of God, or any other physical event, however caused;

### **Speculative Risk**

Any gambling, prizes, awards or coupons.

### **D&O**

Any of the following:

1. Purchase, sale, offer of, or solicitation of an offer to purchase or sell securities, or alleged or actual violation of any securities law, including but not limited to the provisions of the Securities Act of 1933, or the Securities Exchange Act of 1934, as amended, the Sarbanes-Oxley Act of 2002, or any regulation promulgated under the foregoing statutes, or any federal, state, local, or foreign laws similar to the foregoing statutes (including "Blue Sky" laws), whether such law is statutory, regulatory or common law;
2. Alleged or actual violation of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, as amended;

### **Environmental**

Any of the following:

1. Any presence of pollutants or contamination of any kind;
2. Any actual, alleged or threatened discharge, dispersal, release, or escape of pollutants or contamination of any kind;
3. Any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants or in any way respond to or assess the effects of pollutants or contamination of any kind;
4. Manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials, or products containing asbestos, asbestos fibers or dust;

5. Ionizing radiation or contamination by radioactivity from any nuclear fuel or any nuclear waste from the combustion of nuclear fuel;
6. Actual, potential or alleged presence of mold, mildew or fungi of any kind;
7. The radioactive, toxic, or explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
8. The existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment or that affects the value, marketability, condition or use of any property;

## Conditions

### Representation by the Indemnified

The **Control Group** agree that the statements contained in the information and materials provided to AAAtraq for the purpose of underwriting and issuing this Policy are truthful, accurate and not misleading and that AAAtraq's offered and issued this Policy, and assumed the covered risks as a result of their reliance upon the truthfulness of such statements.

### Assignment and Named Indemnified as Agent

This Policy is issued to the **Named Indemnified** and as such no interest hereunder of any **Indemnified** may be assigned to any other party. In the event of the death or incapacitation of the **Indemnified**, such indemnity will cover the **Indemnified's** legal representative as if such representative were the **Indemnified** in accordance with the full terms and conditions of the Policy.

The **Named Indemnified** will serve as agent for all **Indemnified** for the purposes of providing or receiving notice pertaining to the Policy. The **Named Indemnified** is responsible for payment of any and all subscription fees as well as receipt of any and all returned fees.

### Notification of Claim or Circumstance

If the **Control Group** becomes aware of a **Claim**, or a circumstance from which a **Loss** or **Claim** could reasonably arise, the **Indemnified** shall provide written notification to AAAtraq via the customer portal on AAAtraq's website at <https://aaatraq.com/>. The notification shall contain the following information: (i) the name of the claimant, (ii) date defense/indemnity demand made, (iii) date the claimant's website allegedly failed to make reasonable accommodations for users with disabilities, (iv) confirmation of the claimant's on-going status as a client of the **Indemnified**, (v) the claimant's compliance status (by star level), (vi) the claimant's chosen defense counsel, and (vii) any **Loss** incurred. The **Indemnified** shall provide all additional information as requested by AAAtraq. In no event shall AAAtraq be provided notice of **Claim** later than fifteen (15) days after the expiration date of the **Policy Period** for **Claims** made during the final fifteen (15) days of the Policy Period. Any subsequent **Claim** made against the **Indemnified** arising out of such written notice of a circumstance shall be deemed to have been made at the time written notice complying with the requirements herein was first given to AAAtraq.

### Proof of Loss and Settlement of Claims

Prior to AAAtraq reimbursing any **Loss**, the **Indemnified** shall submit to AAAtraq or their representative a signed and sworn proof of loss detailing the amount of **Claims Expenses** and **Damages**. Said proof of loss shall also include copies of (i) the dated defense/indemnity demand from the claimant, (ii) detailed time records/invoices from **Defense Panel** counsel, and (iii) any settlement agreement or court order or judgment.

### Assistance and Cooperation

AAAtraq shall have the right to initiate any investigation they deem necessary and the **Indemnified** shall cooperate and assist in any such investigations including executing or causing to be executed all papers, documents or information requested by AAAtraq. However, notwithstanding the above, the **Indemnified's** rights under this Policy shall not be prejudiced by any order of a government authority to withhold or redact any information directly related to their ongoing investigation.

### Limit of Liability

1. The most AAAtraq will pay in the aggregate under this Policy for all **Losses, Damages, and Claim Expenses**, regardless of the number of **Claims**, shall be not more than the **Policy Aggregate Limit**.
2. The most that AAAtraq shall pay for any one Claim shall be the applicable **Sublimit of Liability**, which shall be based upon the compliance status of the claimant.
3. The **Indemnified** shall provide satisfactory proof of the claimant's compliance status to AAAtraq.

4. AAAtraq shall have no obligation with respect to any **Claim** or **Loss**, Damages, or Claims Expenses after AAAtraq have paid the applicable **Sublimit of Liability** for that **Claim**.

### **Subrogation**

If any **Loss** is paid under this Policy and the **Indemnified** has not, prior to an incident or event giving rise to such **Loss**, waived any rights of recovery from any other party, then AAAtraq shall maintain all such rights of recovery. Any recoveries shall first be applied to the expenses paid or loss incurred by AAAtraq. Any additional recoveries shall be paid to the **Indemnified**.

### **Changes in Indemnified**

If, during the **Policy Period**, any **Indemnified** is dissolved or sells or transfers more than fifty percent (50%) of the voting securities or rights to any entity who is not an **Indemnified** under this Policy, then coverage under this Policy shall continue with the full terms and conditions of the policy until the expiration date or earlier cancellation but only with respect to any acts, events or incidents that occur prior to such cancellation, merger or acquisition.

### **Whole Policy**

With the acceptance of this Policy and consideration of the fees paid to AAAtraq, the **Control Group** on behalf of all **Indemnified** agree that this Policy embodies a complete agreement between AAAtraq and the **Indemnified**. Notice to or knowledge possessed by any agent or other person shall not be cause for waiver or a change in any part of this Policy or preclude AAAtraq from asserting any rights under the terms and conditions of this Policy; nor shall the terms of this Policy be waived or altered except by formal endorsement to and forming a part of this Policy as signed by AAAtraq.

The titles of any paragraph, provision, clause or endorsement of this Policy are intended solely for reference and convenience and are not deemed in any other way to limit or expand upon the terms and conditions to which they relate and are not otherwise a part of this Policy.

The use of any word shall have the same meaning in singular or plural form as required by context.

### **Actions against AAAtraq**

As condition precedent to any action against AAAtraq, the **Indemnified** shall fully comply with the complete terms and conditions of this Policy and any amount of the **Indemnified's** obligation to pay has been fully determined either by judgement or award against the **Indemnified** after trial, regulatory proceeding, binding alternative dispute resolution or by written agreement or settlement between the **Indemnified**, the claimant and AAAtraq.

No person or organization shall have any right under this Policy to join AAAtraq as a party to any action against any **Indemnified** to determine the liability of the **Indemnified** nor shall AAAtraq be impleaded by any **Indemnified** or its legal representatives. Bankruptcy or insolvency of any **Indemnified** or of the estate of any **Indemnified** shall not relieve AAAtraq of its obligations nor deprive AAAtraq of its rights or defenses under this Policy.

### **Cancellation**

This Policy may be cancelled by the **Named Indemnified** by providing written notice to AAAtraq.

If the **Indemnified** fails to pay the fees when due, this Policy may be cancelled by AAAtraq by emailing or delivering written notice to the **Named Indemnified** (including by email) stating when such cancellation shall be effective. Mailing notice shall be sufficient proof of such notice.

If this Policy is cancelled, the earned fees shall be calculated pro rata. Fee adjustment shall be made as soon as practicable after such cancellation becomes effective. Payment or return of unearned fees shall not be a condition of any cancellation.

If any **Claim** or **Loss** or any circumstance which could reasonably be the basis of a **Claim** or **Loss** is reported to AAAtraq under this Policy on or before the date of cancellation, the fees shall be deemed fully earned.

### **Sanctions Limitations and Exclusion**

AAAtraq shall not be deemed to provide cover and AAAtraq shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose AAAtraq to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

### **Choice of Law**

This Policy shall be interpreted in accordance with the law of New York, without giving effect to conflicts of laws principles, other than such principles directing application of New York law.

### **Other Indemnity or Insurance**

The indemnity under this Policy will apply in excess of any other valid and collectible insurance or other indemnity available to the **Indemnified**.