



## ***Converging Risk Liability Policy***

*Content. Services. NetworkSecurity*

Form # D26100-A (3/2010)

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# ***Converging Risk Liability Policy Content. Services. Network Security***

Great American E&S Insurance Company

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# General Terms and Conditions

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the insurance company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the application for insurance and supporting materials, and subject to all terms, conditions and limitations in this Policy, the **Insurer** and **Insured** agree:

## Section I. Terms and Conditions

The General Terms and Conditions apply to all Coverage Parts unless stated to the contrary in any Coverage Part. Other than Definitions, the terms and conditions of each Coverage Part of this Policy apply only to that Coverage Part and shall not apply to any other Coverage Part. Coverage is provided under this Policy only with respect to Coverage Parts that are designated as **Included** in the Declarations.

## Section II. Definitions

The definitions that apply to this Policy are set forth in this section and in the Coverage Parts. Unless stated otherwise, definitions set forth in the Coverage Parts are applicable to the entire Policy whether or not such Coverage Parts are **Included**.

### A. **Claim** means:

- (1) any written notice received by an **Insured** that it is the intention of any person or entity to hold the **Insured** responsible for monetary damages or injunctive relief; or
- (2) any judicial, administrative or other proceeding against an **Insured** for monetary damages or injunctive relief.

### B. **Computer Systems** means any computer or network of computers owned, leased or operated by the **Insured** in connection with the **Insured's** ordinary business activities.

### C. **Content** means communicative material of any kind or nature whatsoever (including but not limited to words, pictures, sounds, images, graphics, code and data), regardless of the method or medium of communication of such material (including but not limited to print, broadcast, digital and electronic communication, and software) or the purpose for which the communication is intended (including but not limited to news, advertising, information, entertainment, corporate communications and art).

### D. **Costs of Defense** means reasonable and necessary legal fees, costs and expenses incurred in the investigation, defense or appeal of any **Claim**, including the costs of an appeal bond, attachment bond or similar bond (but without obligation on the part of the **Insurer** to apply for or furnish such bonds). However, **Costs of Defense** shall not include salaries, wages, overhead or benefit expenses accruing to any **Insured Person**.

### E. **Coverage Event** means any fact, circumstance or event that triggers or reasonably could trigger coverage under **Coverage Part D** of this Policy.

### F. **Covered Content** means the **Content** stated in Item X of the Declarations.

- F. Data Asset** means any data or information of any kind maintained by or on behalf of the **Insured**, whether maintained in electronic form or otherwise.
- G. Employee** means any individual whose labor or service is engaged and directed by the **Insured** in the ordinary course of the **Insured's** business, including past, present, future, part-time, seasonal, temporary or leased employees.
- H. First Named Insured** means the entity named first in Item 1 of the Declarations.
- I. Included** means that a Coverage Part is designated as "Included" in the Declarations.
- J. Insured(s)** means the **Named Insured**, any **Subsidiary** and all **Insured Persons**.
- K. Insured Persons** means all past or present directors, officers, management committee members, **Employees**, or natural person general partners of the **Named Insured** or any **Subsidiary**, but only while acting in the course and scope of their duties as such for the **Named Insured** or **Subsidiary**.
- M. Liability Coverage Part** means Coverage Parts A, B, and C if such Coverage Parts are **Included**.
- N. Loss** means payment of money as damages (including compensatory damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, consumer compensatory funds and settlements) and **Costs of Defense**; provided, however, **Loss** shall not include:
- (1) criminal or civil fines or penalties or taxes imposed by law against the **Insured**;
  - (2) any matter which may be deemed uninsurable under the law pursuant to which this Policy shall be construed;
  - (3) return of fees, deposits, commissions or charges for goods or services;
  - (4) costs incurred in the recall, re-performance or correction of insured services, goods or activities, or credits under any service level agreement or performance standard, unless those costs are incurred in the settlement or mitigation of an actual or potential **Claim** covered by this Policy and then only with the prior written consent of the Insurer in its sole discretion; or
  - (5) the costs of the **Insured's** compliance with, or any **Loss** (other than **Costs of Defense**) incurred as a result of, an injunction or other equitable order or judgment.

With respect to punitive, exemplary and multiplied damages, this insurance shall apply to the fullest extent permitted by law. The enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for such damages.

- O. Malicious Code** means any virus or similar software program or code intentionally or negligently designed to insert itself into computer memory or a computer disk, ultimately replicating itself or spreading onto other computer systems thereby causing damage or disruption.
- P. Media Peril** means:

- a. libel, slander or any other form of defamation or harm to the character or reputation of any person or entity;
  - b. invasion or infringement of the right of privacy or publicity, including the torts of intrusion upon seclusion, publication of private facts, false light, or misappropriation of name or likeness;
  - c. outrage, infliction of emotional distress or prima facie tort;
  - d. product disparagement; trade libel; dilution or infringement of title, slogan, trademark, trade name, service mark or service name;
  - e. copyright infringement, plagiarism, or misappropriation of property rights, information or ideas; or
  - f. negligence in **Covered Content**, including but not limited to a **Claim** alleging harm to any person or entity who acted or failed to act in reliance upon such **Covered Content**;
  - g. false arrest, detention or imprisonment; or
  - h. trespass, wrongful entry or eviction, eavesdropping, or other invasion of the right of private occupancy.
- Q. **Named Insured** means any entity or person named in Item I of the Declarations.
- S. **Non-Liability Coverage Part** means Coverage Part D (First-Party Network Security and Privacy Coverage), if such Coverage Part is **Included**.
- T. **Personally Identifiable Information** means information in any **Data Asset** pertaining to any specific individual, including but not limited to names, addresses, social security numbers, financial or medical information, or cardholder data.
- U. **Policy Period** means the period from the Inception Date to the Expiration Date, as set forth in the Declarations, or the earlier termination if applicable.
- V. **Privacy Law** means any federal, state local or foreign law or regulation relating to the maintenance, protection or disclosure of any **Data Asset**.
- W. **Privacy Policy** means any policy implemented by or on behalf of any **Insured** relating to the maintenance, protection or disclosure of any **Data Asset**.
- X. **Related Coverage Event** means **Coverage Events** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.
- Y. **Related Wrongful Acts** means **Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.
- Z. **Related Claim** means all **Claims** arising from any of the same **Wrongful Act** or **Related Wrongful Acts**, regardless of the number of claimants, **Insureds** or underlying transactions or events.

**AA. Subsidiary** means any entity in which an **Insured** owns, directly or indirectly, more than fifty (50) percent of the interests entitled to vote generally in the election of the governing body of such organization:

- (1) on or before the inception date of this Policy;
- (2) subsequent to the inception date of this Policy by reason of being created or acquired by an **Insured** after such date, if the entity's total assets do not exceed ten percent (10%) of the total consolidated assets of the **First Named Insured** as of the inception date of this Policy; or
- (3) subsequent to the inception date of this Policy by reason of being created or acquired by an **Insured** other than as described in (2) above, if the **Insured**, within ninety (90) days, provides the **Insurer** with written notice thereof and agrees to any premium adjustment and/or coverage revision required by the **Insurer**.

**BB. Wrongful Act** means a **Wrongful Act** as that term is defined in each **Liability Coverage Part**.

### Section III. Limits of Liability

**A.** Each **Liability Coverage Part** of this Policy that is **Included** is subject to both a Per-Claim Limit of Liability applicable to all **Loss** arising out of any one **Claim** or **Related Claims**, and an Aggregate Limit of Liability applicable in the aggregate to all **Loss** arising out of all **Claims** or **Related Claims**, as set forth in Item 3 of the Declarations.

**B.** The **Liability Coverage Parts** of this Policy are offered with either a Single Aggregate Limit of Liability applicable in the aggregate to all **Loss** arising under all **Liability Coverage Parts**, or a Separate Limit of Liability for all **Loss** arising under each **Liability Coverage Part**, as set forth in Item 3 of the Declarations, but never with both.

(1) If a Single Aggregate Limit of Liability is designated in Item 3 of the Declarations:

- i. The **Insurer's** maximum aggregate Limit of Liability for all **Loss** under the **Liability Coverage Parts** of this Policy, regardless of the number of Coverage Parts **Included** or **Claims**, shall be the amount shown in Item 3 of the Declarations;
- ii. The **Insurer's** obligations under the **Liability Coverage Parts** of this Policy shall be deemed completely fulfilled and extinguished if the Limit of Liability is exhausted by payment of **Loss** regardless of the time of payment or the number of **Claims**; and
- iii. The **Insurer** shall be liable to pay all **Loss** in excess of the applicable Retention amount set forth in Item 3 of the Declarations up to the applicable Limit of Liability stated in Item 3 of the Declarations.

(2) If Separate Limits of Liability are designated in Item 3 of the Declarations, there shall be a Separate Limit of Liability for each Coverage Part **Included**. Each such Separate Limit of Liability shall be the maximum aggregate Limit of Liability for all **Loss** pursuant to each

respective Coverage Part regardless of the number of **Claims** made against the **Insureds** under such Coverage Part.

- C. **Costs of Defense** shall be part of, and not in addition to, the applicable Limit of Liability and such **Costs of Defense** shall serve to reduce the Limit of Liability. Once the applicable Limit of Liability has been exhausted by the payment of **Loss** (including **Costs of Defense**), the **Insurer's** duty to defend **Claim(s)** shall cease.
- D. The **Non-Liability Coverage Part** of this Policy, if **Included**, has a Separate Aggregate Limit of Liability for all Insuring Agreements set forth in the **Non-Liability Coverage Part**. This Separate Aggregate Limit of Liability is set forth in Item 3 of the Declarations.
- E. Only one Limit of Liability shall be applicable to any **Claim** (or **Related Claim**), regardless of the number of **Insureds** involved.

#### Section IV. **Retention**

- A. The retention(s) for the **Liability Coverage Parts** are set forth in Item 3 of the Declarations. The retention shall apply to any combination of **Costs of Defense**, damages, settlements, and any other costs that comprise **Loss**.
- B. The **Insurer** shall pay one hundred percent (100%) of all **Loss** arising from any **Claim** (or **Related Claim**) in excess of the applicable Retention, if any, up to the applicable Limit of Liability stated in Item 3 of the Declarations. The Insured shall be responsible for, and shall hold the **Insurer** harmless from, any amount within the Retention. The Retention shall be borne by the **Insured**, and cannot be insured or transferred to another party.
- C. Only one Retention shall be applicable to any **Claim** (or **Related Claim**), regardless of the number of **Insureds** involved. In the event more than one Retention applies to the **Loss**, only the highest Retention shall be applied.

#### Section V. **Exclusions Applicable to the Entire Policy**

The **Insurer** shall not be liable to pay **Loss**, including **Costs of Defense**, under any **Liability Coverage Part**, or to make indemnification under the **Non-Liability Coverage Part**:

- A. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged:
  - (1) seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals, or waste;
  - (2) defect, deficiency, inadequacy or dangerous condition of any of the **Insured's** products, including warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of such products;
  - (3) redemption of tickets, coupons, or prizes for any contest, lottery, sweepstakes, promotion, or game of chance, including but not limited to any actual or attempted redemption arising out of the misprinting or miswording of notices, tickets or coupons for any of the foregoing; or for the violation of any laws regulating any of the foregoing activities; or

- (4) war or civil unrest, insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of the foregoing; or any seizure, confiscation, expropriation, nationalization, or destruction or other order of any governmental authority;
- (5) fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail or other act of God;
- (6) mechanical or electrical failure or outage, routine wear and tear, or a disruption or failure of any infrastructure service or utility supplied by a third party, including but not limited to power, water, gas, communications or connectivity.

provided, however, that if Coverage Part A.1 is **Included**, the exclusions set forth in Section V.A shall not apply to any **Claim** for any **Media Wrongful Act** arising exclusively out of **Content** concerning or relating to any of the foregoing.

**B.** based upon or arising out of any **Claim** for:

- (1) any actual or alleged price fixing, restraint of trade, or monopolization, or any actual or alleged violation of:
  - i. the Federal Trade Commission Act, the Sherman Act, the Clayton Act, or any other federal or state statutory provision involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities; or
  - ii. any rules or regulations promulgated under or in connection with the statutes described in clause a. above;
  - iii. or any similar provision of any statutory or common law anywhere in the world;
- (2) any actual or alleged violation of the Telephone Consumer Protection Act, or any other similar state or federal statutes or regulations relating to unsolicited facsimile transmissions, email transmissions, text message transmissions and/or telephone communications to any person or entity; provided, however, that if Coverage Part C is **Included**, this exclusion shall not apply to any **Claim** resulting directly from a **Network Security and Privacy Wrongful Act**;
- (3) any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, any similar state “blue sky” statute, any rule or regulation promulgated under any of the foregoing, or any amendment to any of the foregoing, or any provision of the common law imposing liability in connection with the offer, sale or purchase of securities;
- (4) any actual or alleged false advertising or unfair or deceptive trade practice with respect to the advertising or sale of an **Insured’s** own products, publications or services, or any unfair competition allegations arising out of the foregoing;



- (5) any actual or alleged violation by an **Insured** of the Employee Retirement Income Security Act of 1974 (except Section 510), the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act or any rules or regulations promulgated under these acts or any similar provisions of any federal, state, local or foreign law; or
  - (6) any actual or alleged: (i) infringement of any patent, contributing to the infringement of any patent, or inducing the infringement of any patent; (ii) false designation or description of any patent; or (iii) misappropriation, infringement or theft, or the inducement of misappropriation, infringement or theft, of trade secrets.
- C.** based upon or arising out of any **Claim** brought by or on behalf of:
- (1) an **Employee**, former **Employee** or prospective **Employee** based on or directly or indirectly arising out of or resulting from the employment relationship or the nature, terms or conditions of employment, including but not limited to claims of discrimination, harassment, wrongful discharge, breach of contract, employment-related defamation or workplace torts; or
  - (2) any other **Insured**, except this Exclusion **V.C.(2)** shall not apply to a **Claim** brought by an **Employee** under **Coverage Part C**.
- D.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:
- (1) any fact, circumstance, transaction, event, or **Wrongful Act** that, before the Inception Date set forth in Item 2 of the Declarations, was the subject of any notice of claim or loss, or notice of potential claim or potential loss, given under any other policy of insurance;
  - (2) any demand, suit or other proceeding that was pending, or order, decree or judgment that was entered, against any **Insured** on or prior to the Inception Date set forth in Item 2 of the Declarations, or any **Wrongful Act**, fact, circumstance or situation underlying or alleged therein;
  - (3) any fact, circumstance, transaction, event, or **Wrongful Act** of which, as of the Inception Date set forth in Item 2 of the Declarations, any **Insured** had knowledge and that was reasonably likely to give rise to a **Claim** that would fall within the scope of the insurance afforded by this Policy; or
  - (4) any other **Wrongful Act** whenever occurring, which together with a **Wrongful Act** described in (1) through (3) above, constitute **Related Wrongful Acts**;
- E.** which is insured in whole or in part by another valid policy or policies (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies) whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise.

**Section VI. Coordination Among Liability Coverage Parts**

In the event any **Claim** (or **Related Claim**) is covered under more than one **Liability Coverage Part**, then:

- A. It is understood and agreed the maximum Limit of Liability for any **Claim** covered under more than one **Liability Coverage Part** shall not exceed the highest available remaining Limit of Liability of the applicable **Liability Coverage Parts**. This Section VI.A in no way increases the Limit of Liability available under any individual Coverage Part.
- B. If the applicable **Liability Coverage Parts** have conflicting provisions regarding defense and settlement, the provisions of Section VII, General Terms and Conditions, will apply.

#### **Section VII. Defense and Settlement**

Unless otherwise provided, the following provisions shall apply.

- A. The **Insurer** shall assume the duty to defend any **Claim** covered under any **Liability Coverage Part**.
- B. The **Insured** shall at all times have the right to associate with the **Insurer** in the investigation, defense or settlement of any **Claim** to which coverage under this Policy may apply.
- C. In addition to furnishing notice of any **Claim** as provided in Section IX, the **Insured** shall give to the **Insurer** any such assistance, cooperation and information as the **Insurer** may reasonably require, including copies of reports, investigations, pleadings and other papers in connection therewith.
- D. The **Insurer** may settle any **Claim** only with the consent of the **Insured**. In the event the **Insurer** recommends a settlement and the **Insured** refuses to consent thereto, the **Insurer's** liability for such **Claim** is limited to the amount in excess of the Retention that the **Insurer** would have contributed to the settlement had the **Insured** consented to such settlement, the **Costs of Defense** covered by the Policy and incurred prior to the date of such refusal to settle, and fifty percent (50%) of any additional covered **Loss**, including **Costs of Defense**, incurred subsequent to such refusal. In no event shall the **Insurer** be liable for any amounts in excess of the applicable Limit of Liability.
- E. The **Insured** shall not retain counsel, incur **Costs of Defense**, admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insured** shall provide the **Insurer** with all information and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any **Costs of Defense** incurred, admission of liability, or any offer or agreement to settle prior to the **Insurer's** consent shall not be covered.

#### **Section VIII. Allocation**

If:

- A. There is a **Claim** made against any **Insured**, or there is a **Coverage Event**, and such **Claim** or **Coverage Event** includes both covered and uncovered matters pursuant to this Policy; or
- B. Coverage is extended for a **Claim** made against an **Insured**, or for a **Coverage Event**, and such **Claim** or **Coverage Event** involves others who are not entitled to such

coverage (including **Insureds** who are not extended coverage for such **Claim** or **Coverage Event**),

then the **Insured** and the **Insurer** recognize and agree there must be an allocation between the insured and uninsured portion of any **Loss**. The **Insured** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation, and if they are unable to agree upon such allocation, the issue of allocation shall be submitted to dispute resolution in accordance with Section XXII of this Policy.

#### **Section IX. Notice**

With respect to any coverage provided under any **Liability Coverage Part** or **Non-Liability Coverage Part**, the **Insureds** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing as required by the applicable **Liability Coverage Part** or **Non-Liability Coverage Part**.

#### **Section X. Claim First Made**

All **Claims** (or **Related Claims**) shall be deemed to have been made on the earlier of the following dates: (i) the earliest date on which any such **Claim** (or **Related Claim**) was first made; or (ii) the earliest date on which any **Wrongful Act** or **Related Wrongful Act** giving rise to such **Claims** was reported under this Policy or any other policy providing similar coverage.

#### **Section XI. Cancellation or Non-Renewal**

- A. This Policy may be canceled by the **First Named Insured** at any time by written notice to the **Insurer**. Upon cancellation, the **Insurer** shall retain the customary short rate portion of the premium, unless otherwise provided by Endorsement.
- B. This Policy may only be canceled by the **Insurer** if the **First Named Insured** does not pay the premium when due.
- C. If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **First Named Insured** with no less than sixty (60) days advance notice thereof.

#### **Section XII. Statements in Application**

By acceptance of this Policy, all **Insureds** agree that the statements contained in the application for insurance submitted to the **Insurer** in connection with this Policy, any application for insurance of which this Policy is a renewal, and any supplemental materials submitted therewith are their statements and representations, that they shall be deemed material to the risk assumed by the **Insurer**, and that this Policy is issued in reliance upon the truth thereof.

#### **Section XIII. Action Against the Insurer**

- A. With respect to any **Liability Coverage Part**, no action shall be taken against the **Insurer** unless, as a condition precedent thereto, there has been full compliance with all the terms of this Policy (including submission to the dispute resolution process described in Section XXII), and until the **Insured's** obligation to pay has been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, claimant and the **Insurer**.
- B. With respect to any **Non-Liability Coverage Part**, no action shall be taken against the **Insurer** unless, as a condition precedent thereto, there has been full compliance with all the terms of this Policy (including submission to the dispute resolution process described in Section XXII), and until 90 days after the **Insured** has given the **Insurer** notice and

has provided the **Insurer** with an affirmative proof of loss with full particulars and unless brought within two (2) years from the date the **Insured** discovers the loss.

- C. No person or organization shall have any right under this Policy to join the **Insurer** as a party to any action against the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such action.

#### Section XIV. Merger or Acquisition

- A. If, during the **Policy Period**, the **Insured** acquires the assets of another entity, by merger or otherwise, and the acquired assets of such other entity exceed ten percent (10%) of the assets of the **First Named Insured** as of the Inception Date of the Policy, written notice thereof shall be given to the **Insurer** as soon as practicable, but in no event later than ninety (90) days from the effective date of the transaction, together with such information as the **Insurer** may request. Premium adjustment and coverage revisions shall be effected as may be required by the **Insurer**.
- B. There is no coverage for any **Wrongful Act** or **Coverage Event** of any **Subsidiary** or the **Insured Persons** of such **Subsidiary** or any entity that merges with the **Insured** or the **Insured Persons** of such entity occurring:
  - (1) prior to the date such entity became a **Subsidiary** or was merged with the **Insured**;
  - (2) subsequent to the date such entity became a **Subsidiary** or was merged with the **Insured** which: (i) in the case of a **Wrongful Act**, together with another **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Insured**, would constitute **Related Wrongful Acts**; or (ii) in the case of a **Coverage Event**, together with another **Coverage Event** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Insured**, would constitute **Related Coverage Events**.
  - (3) subsequent to the date the **First Named Insured** ceased to own, directly or indirectly, more than fifty percent (50%) of the voting stock of such **Subsidiary**.

#### Section XV. Conversion to Run-Off Coverage

If, during the **Policy Period**, a transaction occurs wherein another entity gains control of the **First Named Insured** through the ownership of more than fifty percent (50%) of the voting stock of the **First Named Insured**; or the **First Named Insured** merges into another entity or consolidates with another entity such that the **First Named Insured** is not the surviving entity; then:

- A. the **First Named Insured** must give written notice of such transaction to the **Insurer** within ninety (90) days after the effective date of such transaction and provide the **Insurer** with such information in connection therewith as the **Insurer** may deem necessary;
- B. this Policy shall only apply to any **Wrongful Acts** actually or allegedly committed on or before the effective date of such transaction, or any **Coverage Event** that occurred before the effective date of such transaction, and shall be excess of any other insurance available, and;
- C. if the change of control arises in connection with the appointment of a receiver, conservator, liquidator, trustee, rehabilitator, or similar official to take control of,

supervise, manage, or liquidate the **First Named Insured**; or any other taking over of, or taking control of the **First Named Insured** by any governmental agency, body or representatives; or the **First Named Insured** becoming a debtor-in-possession under United States bankruptcy law, there shall be no coverage under a **Non-Liability Coverage Part** for any **Coverage Event** reported after the effective date of the change of control.

#### **Section XVI. Coverage Extensions and Territory**

##### **A. Spousal Provision**

The coverage provided by this Policy shall also apply to the lawful spouse of an **Insured Person**, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.

##### **B. Estates and Legal Representatives**

The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Person**.

##### **C. Worldwide Coverage**

The coverage provided under this Policy shall apply worldwide.

#### **Section XVII. Subrogation**

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insured's** rights of recovery. The **Insured** shall execute all papers required and shall do everything necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured**.

#### **Section XVIII. Assignment**

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

#### **Section XIX. Conformity to Statute**

Any terms of this Policy in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

#### **Section XX. Entire Agreement**

This Policy (including the Declarations, Proposal Forms submitted to the **Insurer**, and any information provided therewith) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

#### **Section XXI. First Named Insured Represents Insureds**

By acceptance of this Policy, the **First Named Insured** shall be designated to act on behalf of all **Insureds** for all purposes including but not limited to the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

## Section XXII. Representative of the Insurer

ThinkRisk Underwriting Agency shall act on behalf of the **Insurer** for all purposes including but not limited to the giving and receiving of all notices and correspondence.

## Section XXIII. Dispute Resolution

It is agreed that any disputes or disagreements which arise in connection with this Policy and cannot be resolved through informal negotiation shall be resolved according to the following dispute resolution process. The party asserting a dispute or disagreement shall notify the other party in writing of such dispute or disagreement. The other party shall respond to such notice in writing within 10 days after receiving it, and the parties shall hold at least one telephone conference or meeting within 20 days after the date of the original written notice asserting the dispute or disagreement. If the parties have not resolved the dispute or disagreement to their mutual satisfaction within 30 days after the original written notice asserting such dispute or disagreement, then the parties shall submit the dispute or disagreement to mediation to be held in Kansas City, Missouri in accordance with the Commercial Mediation Procedures of the American Arbitration Association, with the mediator's expenses and fees to be split equally by the parties. If the dispute or disagreement has not been resolved to the mutual satisfaction of the parties upon conclusion of the mediation process, then either party may file suit in any court having jurisdiction over the parties and the subject matter of the dispute or disagreement.

**XXIV. Discovery Period.** With respect to all Coverage Parts that are **Included** and are written on a claims made basis:

- A.** In the event the **Insurer** refuses to renew this Policy or the **First Named Insured** chooses to cancel or not renew this Policy, the **First Named Insured** shall have the right, upon payment of one hundred percent (100%) of the annual premium (or if the **Policy Period** is other than annual, one hundred percent (100%) of the annualized premium), to an extension of the coverage provided by this Policy with respect to any **Claim(s)** first made against any **Insured** during the period of twelve (12) months after the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This twelve (12) month period shall be referred to in this Policy as the "**Discovery Period**."
- B.** As a condition precedent to the right to purchase the **Discovery Period**, the total premium for this Policy must have been paid, and a written request together with payment of the appropriate premium for the **Discovery Period** must be provided to the **Insurer** no later than thirty (30) days after the end of the **Policy Period**.
- C.** The purchase of the **Discovery Period** shall not in any way increase the Limit(s) of Liability stated in Item 3 of the Declarations. For purposes of the Limit(s) of Liability, the **Discovery Period** is part of, and not in addition to, the **Policy Period**.

**In witness whereof** the **Insurer** has caused this Policy to be signed by its President and Secretary and countersigned, if required, on the Declarations page by a duly authorized agent of the **Insurer**.

GREAT AMERICAN E&S INSURANCE COMPANY

  
Secretary

  
President

# ***Converging Risk Liability Policy Media/Tech/Network Security***

Great American E&S Insurance Company

## **COVERAGE PART A.1**

### **Content Liability (for Media Companies)**

#### **Section I. Insuring Agreement**

If this Coverage Part is **Included**, the **Insurer** agrees to pay on behalf of the **Insured** all **Loss**, in excess of the Retention, as a result of any **Claim** arising out of the **Insured's Media Wrongful Acts**, provided that the **Media Wrongful Acts** giving rise to such **Claim** occurred during the **Policy Period**.

#### **Section II. Definitions**

The following definitions apply to this Policy in addition to those set forth in Section II of the General Terms and Conditions:

- A. First Inception Date** means the Inception Date for Coverage Part A that is shown on the Declarations of the first policy of insurance issued by the **Insurer** to the **Insured** that includes Coverage Part A, provided that insurance under Coverage Part A is renewed and maintained in force continually thereafter by the **Insured** with the **Insurer**.
- B. Insured Persons** shall have the same meaning as set forth in Section II of the Policy's General Terms and Conditions, provided that only for purposes of this Coverage Part **Insured Persons** shall also include any agent or independent contractor of the **Insured** or any **Subsidiary**, including but not limited to stringers, freelancers and photographers, but only with respect to **Claims** arising out of **Media Wrongful Acts** done for or at the direction of the **Insured** or any **Subsidiary**, and only if and to the extent that the **Insured** or any **Subsidiary**, after evaluating the merits of the **Claim**, has agreed in writing to include such agent or independent contractor as an **Insured** under this Policy.
- C. Media Wrongful Act(s)** means:
- (1) The dissemination of **Covered Content** by the **Insured**, by any form, method or medium of communication, where such dissemination gives rise to a **Claim**, including but not limited to a **Claim** asserting an actual or alleged **Media Peril**;
  - (2) The creation or gathering of **Covered Content** by the **Insured**, where such creation or gathering gives rise to a **Claim**, including but not limited to a **Claim** asserting an actual or alleged **Media Peril**;

- (3) The creation, gathering or dissemination by the **Insured** of **Content** advertising, publicizing or promoting the **Covered Content** or the general business activities of the **Insured**, where such creation, gathering or dissemination gives rise to a **Claim** alleging a **Media Peril**.
- (4) The dissemination of **Covered Content** by any party with whom the **Insured** has entered into a written, oral or implied-in-fact indemnification or hold harmless agreement regarding such **Covered Content**, where such dissemination results in a **Claim** asserting an actual or alleged **Media Peril**.

C. **Wrongful Act** for purposes of this Coverage Part means a **Media Wrongful Act**.

### Section III. Exclusions

The **Insurer** shall not be liable under this Coverage Part to pay **Loss**, including **Costs of Defense**:

- A. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged delay, disruption or failure of any communication network, service, hardware or software, including but not limited to any **Claim** for lost profits or opportunities as a result of such delay, disruption or failure;
- B. based upon or arising out of any **Claim** brought by or on behalf of any federal, state or local regulatory agency or other governmental body alleging the violation of any federal, state or local laws or regulations; provided, however, that this Exclusion shall not apply to any **Claim** brought by the Federal Communications Commission arising directly out of actual or alleged indecency in **Content** produced or disseminated by the **Insured**.
- C. based upon or arising out of any **Claim** for:
  - (1) any actual or alleged breach of any express or implied contract, agreement, warranty or guarantee, except that this exclusion shall not apply to:
    - i. any liability which an **Insured** would have incurred in the absence of such contract, agreement, warranty or guarantee;
    - ii. any actual or alleged agreement between an **Insured** and the source of any information supplied to the **Insured**, regarding the confidentiality to be afforded to such source or such information, or other use of such information;
    - iii. any actual or alleged breach of an implied-in-fact contract regarding use of **Content** supplied to the **Insured**; or
    - iv. breach of any written, oral or implied-in-fact indemnification or hold harmless agreement between the **Insured** and any person or entity distributing **Content** by or behalf of the **Insured**, where the **Claim** arises out of the distribution of such **Content**.
  - (2) bodily injury or property damage, except for:
    - i. bodily injury arising exclusively out of emotional distress allegedly caused by any **Media Wrongful Acts**; or



ii. bodily injury or property damage actually or allegedly resulting from a **Claim** of negligent publication as described in clause (f) of the definition of **Media Peril**.

(3) any actual or alleged negligence or other error or omission in the performance of, or failure to perform, any services for others for a fee or other consideration, including any **Professional or Technology Services Wrongful Act**; provided, however, this exclusion shall only apply to **Claims** brought by or on behalf of individuals and/or entities for whom such services were performed; or

(4) any actual or alleged **Network Security and Privacy Wrongful Act**.

**D.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of:

(1) any conduct which is determined by a court or jury to constitute a willful violation of a criminal statute;

(2) any dishonest or fraudulent act or omission by any **Insured**; and

(3) the gaining by any **Insured** of any profit, remuneration or advantage to which such **Insured** is not legally entitled;

provided, however, that:

i. this Exclusion III.D will not apply to **Costs of Defense** until there is a judgment against, final adjudication against, adverse finding of fact against, admission by, or plea of *nolo contendere* or no contest by an **Insured** as to such conduct, at which time such **Insured** shall reimburse the **Insurer** for any such **Costs of Defense** advanced;

ii. in determining the applicability of this Exclusion, the **Wrongful Act(s)** of any **Insured** shall not be imputed to any other **Insured**;

iii. this exclusion shall not apply if the **Insured**, through its General Counsel or outside legal counsel, approves such conduct in advance based on a good faith belief that such conduct is protected by the First Amendment to the United States Constitution.

**Section IV. Date of Occurrence.** In the event of a **Claim** (or **Related Claims**) arising out of a series of **Media Wrongful Acts**, the following will apply:

**A.** The **Media Wrongful Acts** will be deemed to have occurred on the date of the first publication, dissemination or release of the **Content** giving rise to such **Claim** (or **Related Claims**); provided, that if there was no such publication, dissemination or release during the **Policy Period** or any **Renewal Period**, then the **Media Wrongful Acts** will be deemed to have occurred on the date of the earliest act, error or omission giving rise to such **Claim** (or **Related Claims**).

**B.** If the date on which the **Media Wrongful Acts** are deemed to have occurred under clause (1) above is prior to the **First Inception Date**, and if there is no coverage for such **Claim** under any other policy of insurance, then such **Media Wrongful Acts** shall be

deemed to have occurred on the date of the first publication, dissemination or release of the **Content** giving rise to the **Claim** (or **Related Claims**) subsequent to the **First Inception Date**; or, if there was no such publication, dissemination or release, then on the date of the first act, error or omission giving rise to such **Claim** (or **Related Claims**) subsequent to the **First Inception Date**.

- C. Notwithstanding the provisions of clauses (1) and (2) above, in no event will the **Insurer** be responsible for any portion of **Loss** fairly attributable to **Media Wrongful Acts** occurring prior to the **First Inception Date** or subsequent to the conclusion of the **Policy Period** or any **Renewal Period**.

#### **Section V. Confidential Sources and Retraction Demands**

- A. The **Insured's** rights under this Coverage Part shall not be prejudiced by the **Insured's** refusal to reveal the identity of a confidential source, or to produce reporter's notes or any other documents or information obtained by the **Insured** with respect to which the **Insured** has asserted a claim of reporter's privilege or other applicable First Amendment, statutory or common-law privilege relating to the protection of newsgathering activities.
- B. The **Insured** shall have sole discretion regarding whether and under what circumstances to issue a retraction of **Content** previously communicated, distributed or released by any **Insured**.

#### **Section VI. Notice of Claims**

As a condition precedent to coverage under this Policy, the **Insured** must give written notice to the **Insurer**, at the address set forth in ITEM 5 of the Declarations, of any **Claim** as soon as practicable after such **Claim** is first received by the **Insured**.

# ***Converging Risk Liability Policy Content.Services.Network Security***

Great American E&S Insurance Company

## **Coverage Part A.2 Content Liability (for All Businesses other than Media Companies)**

### **Section I. Insuring Agreement**

If this Coverage Part is **Included**, the Insurer shall pay on behalf of any **Insured** all **Loss**, in excess of the Retention, as a result of any **Claim** first made against such **Insured** during the **Policy Period** or **Discovery Period** arising out of an **Advertising and Communications Wrongful Act**, where such **Advertising and Communications Wrongful Act** occurred on or after the Prior Acts Date set forth in the Declarations and before the expiration of the **Policy Period**.

### **Section II. Definitions**

The following definitions apply to this Policy in addition to those set forth in Section II of the General Terms and Conditions:

#### **A. Advertising and Communication Wrongful Act(s) means:**

- (1) The dissemination of **Covered Content** by the **Insured**, by any form, method or medium of communication, where such dissemination gives rise to a **Claim** asserting an actual or alleged **Media Peril**;
- (2) The creation or gathering of **Covered Content** by the **Insured**, where such creation or gathering gives rise to a **Claim** asserting an actual or alleged **Media Peril**; or
- (3) The dissemination of **Covered Content** by any party with whom the **Insured** has entered into a written, oral or implied-in-fact indemnification or hold harmless agreement regarding such **Covered Content**, where such dissemination results in a **Claim** asserting an actual or alleged **Media Peril**.

#### **B. Wrongful Act** for purposes of this Coverage Part means an **Advertising and Communications Wrongful Act**.

### **Section III. Exclusions**

The **Insurer** shall not be liable under this Coverage Part to pay **Loss** (including **Costs of Defense**):

- A.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged delay, disruption or failure of any communication network, service, hardware or software, including but not limited to any **Claim** for lost profits or opportunities as a result of such delay, disruption or failure;
- B.** based upon or arising out of any **Claim** brought by or on behalf of any federal, state or local regulatory agency or other governmental body alleging the violation of any federal, state or local laws or regulations;
- C.** based upon or arising out of any **Claim** for:
- (1) any actual or alleged breach of any express or implied contract, agreement, warranty or guarantee, except that this exclusion shall not apply to:
    - i. any liability which an **Insured** would have incurred in the absence of such contract, agreement, warranty or guarantee; or
    - ii. breach of any written, oral or implied-in-fact indemnification or hold harmless agreement between the **Insured** and any person or entity distributing **Content** by or behalf of the **Insured**, where the **Claim** arises out of the distribution of such **Content**;
  - (2) infringement, contributing to the infringement or inducing the infringement of any copyright, trademark, or any other intellectual property right in the design of tangible products (including but not limited to **Claims** arising out of photographs or other images of such products in advertising);
  - (3) bodily injury or property damage, except for bodily injury arising exclusively out of emotional distress allegedly caused by any **Media Wrongful Acts**;
  - (4) any actual or alleged negligence or other error or omission in the performance of, or failure to perform, any services for others for a fee or other consideration, including any **Professional or Technology Services Wrongful Act**; or
  - (5) any actual or alleged **Network Security and Privacy Wrongful Act**.
- D.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of:
- (1) any conduct which is determined by a court or jury to constitute a willful violation of a criminal statute;
  - (2) any dishonest or fraudulent act or omission by any **Insured**; or
  - (3) the gaining by any **Insured** of any profit, remuneration or advantage to which such **Insured** is not legally entitled;

provided, however, that:

- i. this Exclusion III.D will not apply to **Costs of Defense** until there is a judgment against, final adjudication against, adverse finding of fact against, admission by, or plea of *nolo contendere* or no contest by an **Insured** as to

such conduct, at which time such **Insured** shall reimburse the **Insurer** for any such **Costs of Defense** advanced; and

- ii. in determining the applicability of this Exclusion, the **Wrongful Act(s)** of any **Insured** shall not be imputed to any other **Insured**.

#### **Section IV. Notice of Claims; Prior Acts**

##### **A. Notice of Claims**

As a condition precedent to coverage under this Coverage Part, the **Insured** must give written notice to the **Insurer**, at the address set forth in ITEM X of the Declarations, of any **Claim** as soon as practicable after such **Claim** is first received by the **Insured**.

If, during the **Policy Period** or **Discovery Period**, any **Insured** first becomes aware of a specific **Advertising and Communications Wrongful Act** and gives notice to the **Insurer** of:

- (1) the specific **Advertising and Communications Wrongful Act**;
- (2) the injury or damage which has or may result therefrom; and
- (3) the circumstances by which the **Insured** first became aware thereof;

then any **Claim** arising out of such **Advertising and Communications Wrongful Act** which is subsequently made against the **Insured** shall be deemed to have been made at the time the **Insurer** received such written notice from the **Insured**.

##### **B. Date of Occurrence**

In the event of a **Claim** (or **Related Claims**) arising out of a series of **Advertising and Communications Wrongful Acts**, the following will apply:

- (1) The **Advertising and Communications Wrongful Acts** will be deemed to have occurred on the date of the first publication, dissemination or release of the **Content** giving rise to such **Claim** (or **Related Claims**); provided, that if there was no such publication, dissemination or release during the **Policy Period** or any **Renewal Period**, then the **Advertising and Communications Wrongful Acts** will be deemed to have occurred on the date of the earliest act, error or omission giving rise to such **Claim** (or **Related Claims**).
- (2) If the date on which the **Advertising and Communications Wrongful Acts** are deemed to have occurred under clause 1 above is prior to the Prior Acts Date set forth in the Declarations, and if there is no coverage for such **Claim** under any other policy of insurance, then such **Advertising and Communications Wrongful Acts** shall be deemed to have occurred on the date of the first publication, dissemination or release of the **Content** giving rise to the **Claim** (or **Related Claims**) subsequent to the Prior Acts Date set forth in the Declarations; or, if there was no such publication, dissemination or release, then on the date of the first act, error or omission giving rise to such **Claim** (or **Related Claims**) subsequent to the Prior Acts Date set forth in the Declarations .

- (3) Notwithstanding the provisions of clauses (1) and (2) above, in no event will the **Insurer** be responsible for any portion of **Loss** fairly attributable to **Advertising and Communications Wrongful Acts** occurring prior to the Prior Acts Date set forth in the Declarations or subsequent to the conclusion of the **Policy Period** or any **Renewal Period**.

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# ***Converging Risk Liability Policy*** ***Content.Services.Network Security***

Great American E&S Insurance Company

## **Coverage Part B** **Professional and Technology Services Liability**

### **Section I. Insuring Agreement**

If this Coverage Part is **Included**, the Insurer shall pay on behalf of any **Insured** all **Loss**, in excess of the Retention, arising from any **Claim** first made against such **Insured** during the **Policy Period** or **Discovery Period** for a **Professional or Technology Services Wrongful Act**, where such **Professional or Technology Services Wrongful Act** was committed on or after the Prior Acts Date set forth in the Declarations and before the expiration of the **Policy Period**.

### **Section II. Definitions**

The following definitions apply to this Policy in addition to those set forth in Section II of the General Terms and Conditions:

- A. Professional or Technology Services** means the services listed in Item X of the Declarations or otherwise modified by Endorsement.
- B. Professional or Technology Services Wrongful Act** means a negligent act, error or omission actually or allegedly committed by or on behalf of the **Insured** in the performance of **Professional or Technology Services**.
- C. Wrongful Act** for purposes of this Coverage Part means a **Professional or Technology Services Wrongful Act**.

### **Section III. Exclusions**

The **Insurer** shall not be liable under this Coverage Part to pay **Loss** (including **Costs of Defense**):

- A.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged:
  - (1) **Media Wrongful Act** or **Advertising and Communications Wrongful Act** (including infringement of copyright or any other intellectual property right in any software, computer program, computer code or computer system);
  - (2) **Network Security and Privacy Wrongful Act**; or
  - (3) delay, disruption or failure of any communication network, service, hardware or software, including but not limited to any **Claim** for lost profits or opportunities as a result of such delay, disruption or failure;

provided, however, that Exclusions IV.A(1), A(2), and A(3) shall not apply if the **Claim** arises directly out of the provision of **Professional or Technology Services** by the **Insured** and such **Claim** is brought by the client or customer of the **Insured** to whom such **Professional or Technology Services** were provided.

- B. based upon or arising out of any **Claim** brought by or on behalf of
- C. any federal, state or local regulatory agency or other governmental body alleging the violation of any federal, state or local laws or regulations.
- D. based upon or arising out of any **Claim** for:
  - (1) any actual or alleged breach of any express or implied contract, agreement, warranty or guarantee, except that this exclusion shall not apply to:
    - i. any liability which an **Insured** would have incurred in the absence of such contract, agreement, warranty or guarantee; or
    - ii. any actual or alleged breach of any express or implied contract or agreement entered into by an **Insured** for the provision of **Professional or Technology Services**.
  - (2) bodily injury or property damage, except for bodily injury arising exclusively out of emotional distress allegedly caused by a **Professional or Technology Services Wrongful Act**;
  - (3) any liability of others assumed by an **Insured** under any contract, except that this Exclusion shall not apply to any liability that would have attached to the **Insured** even in the absence of such contract.
- E. The **Insurer** shall not be liable under this Coverage Part to make any payment for **Loss** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of:
  - (1) any conduct which is determined by a court or jury to constitute a willful violation of a criminal statute;
  - (2) any dishonest or fraudulent act or omission by any **Insured**; or
  - (3) the gaining by any **Insured** of any profit, remuneration or advantage to which such **Insured** is not legally entitled;

provided, however, that this Exclusion will not apply to **Costs of Defense** until there is a judgment against, final adjudication against, adverse finding of fact against, admission by, or plea of *nolo contendere* or no contest by an **Insured** as to such conduct, at which time such **Insured** shall reimburse the **Insurer** for any such **Costs of Defense** advanced. In determining the applicability of this Exclusion, the **Professional or Technology Services Wrongful Act(s)** of any **Insured** shall not be imputed to any other **Insured**.

#### Section IV. Notice

- A. As a condition precedent to coverage under this Coverage Part, the **Insured** must give written notice to the **Insurer**, at the address set forth in ITEM X of the Declarations, of any **Claim** as soon as practicable after such **Claim** is first received by the **Insured**.



**B.** If, during the **Policy Period** or **Discovery Period**, any **Insured** first becomes aware of a specific **Wrongful Act** and gives notice to the **Insurer** of:

- (1) the specific **Professional or Technology Services Wrongful Act**;
- (2) the injury or damage which has or may result therefrom; and
- (3) the circumstances by which the **Insured** first became aware thereof;

then any **Claim** arising out of such **Professional or Technology Services Wrongful Act** which is subsequently made against the **Insured** shall be deemed to have been made at the time the **Insurer** received such written notice from the **Insured**.

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# ***Converging Risk Liability Policy Content.Services.Network Security***

Great American E&S Insurance Company

## **Coverage Part C Network Security and Privacy Liability Coverage**

### **Section I. Insuring Agreement**

If this Coverage Part is **Included**, the Insurer shall pay on behalf of any **Insured** all **Loss**, in excess of the Retention, arising from any **Claim** first made against such **Insured** during the **Policy Period** or **Discovery Period** for a **Network Security and Privacy Wrongful Act**, where such **Network Security and Privacy Wrongful Act** was committed on or after the Prior Acts Date set forth in the Declarations and before the expiration of the **Policy Period**.

### **Section II. Definitions**

The following definitions apply to this Policy in addition to those set forth in Section II of the General Terms and Conditions:

- A. **Loss** for purposes of this Coverage Part only shall include civil fines and penalties imposed by law against the **Insured** where insurable by applicable law
- B. **Network Security and Privacy Wrongful Act** means the **Insured's** actual or alleged negligent acts, errors or omissions which cause or fail to prevent one or more of the following:
  - (1) theft of or unauthorized disclosure or use of a **Data Asset** maintained by the **Insured**, or maintained on behalf of the **Insured** by a third party (such as a service provider) under contract with the **Insured**, whether stored on the **Insured's Computer Systems** or elsewhere, including but not limited to theft of a **Data Asset** containing **Personally Identifiable Information** that results in identity theft or other misuse of such **Data Asset**;
  - (2) alteration, corruption, destruction, deletion, or damage to a **Data Asset** stored on the **Insured's Computer Systems**;
  - (3) transmission of **Malicious Code** from the **Insured's Computer Systems**;
  - (4) access to the **Insured's Computer Systems** by any unauthorized person or entity, when such access leads to damage or disruption to the computer systems of any third party;

- (5) actions of any unauthorized person intended to make the **Insured's Computer Systems** unavailable to authorized users, commonly referred to as denial of service attacks; or
- (6) violation of a **Privacy Law** or that part of a **Privacy Policy** that specifically:
  - a. prohibits or restricts the **Insured's** disclosure, sharing or selling of a person's **Personally Identifiable Information**;
  - b. requires the **Insured** to provide access to **Personally Identifiable Information** or to correct incomplete or inaccurate **Personally Identifiable Information** after a request is made by a person; or
  - c. establishes procedures and requirements to prevent the loss of **Personally Identifiable Information**.

**B. Wrongful Act** for purposes of this Coverage Part means a **Network Security and Privacy Wrongful Act**.

### Section III. Exclusions

The **Insurer** shall not be liable under this Coverage Part to pay **Loss**, including **Costs of Defense**:

- A.** for any **Claim** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged:
  - (1) **Media Wrongful Act** or **Advertising or Communications Wrongful Act**;
  - (2) **Professional or Technology Services Wrongful Act**; or
  - (3) infringement of copyright or any other intellectual property right in any software, computer program, computer code or computer system.
- B.** based upon or arising out of any **Claim** for:
  - (1) any actual or alleged breach of any express or implied contract, agreement, warranty or guarantee, except that this exclusion shall not apply to:
    - i. any liability which an **Insured** would have incurred in the absence of such contract, agreement, warranty or guarantee; or
    - ii. any actual or alleged breach of any express or implied contract or agreement entered into by an **Insured** in connection with maintenance of **Data Assets**;
  - (2) bodily injury or property damage, except for bodily injury arising exclusively out of emotional distress allegedly caused by a **Network Security and Privacy Wrongful Act**;
  - (3) any liability of others assumed by an **Insured** under any contract, except that this Exclusion shall not apply to any liability that would have attached to the **Insured** even in the absence of such contract; or

- (4) fines or penalties assessed against the **Insured** for actual or alleged violation of the Payment Card Industry Data Security Standard, any credit card merchant agreement, credit card processing agreement or credit card service provider agreement.

C. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of:

- (1) any conduct which is determined by a court or jury to constitute a willful violation of a criminal statute;
- (2) any dishonest or fraudulent act or omission by any **Insured**; or
- (3) the gaining by any **Insured** of any profit, remuneration or advantage to which such **Insured** is not legally entitled;

provided, however, that this Exclusion will not apply to **Costs of Defense** until there is a judgment against, final adjudication against, adverse finding of fact against, admission by, or plea of *nolo contendere* or no contest by an **Insured** as to such conduct, at which time such **Insured** shall reimburse the **Insurer** for any such **Costs of Defense** advanced. In determining the applicability of this Exclusion and the **Insurer's** entitlement to any reimbursement, conduct of any **Insured** shall not be imputed to any other **Insured**.

#### Section IV. Notice

A. As a condition precedent to coverage under this Coverage Part, the **Insured** must give written notice to the **Insurer**, at the address set forth in ITEM X of the Declarations, of any **Claim** as soon as practicable after such **Claim** is first received by the **Insured**.

B. If, during the **Policy Period** or **Discovery Period**, any **Insured** first becomes aware of a specific fact or circumstance that could give rise to a **Claim** under this **Coverage Part** and gives notice to the **Insurer** of:

- (1) the specific facts or circumstances that could give rise to a **Claim**;
- (2) the injury or damage which has or may result therefrom; and
- (3) the circumstances by which the **Insured** first became aware thereof;

then any **Claim** arising out of such specific facts or circumstances that is subsequently made against the **Insured** shall be deemed to have been made at the time the **Insurer** received such written notice from the **Insured**.

# ***Converging Risk Liability Policy*** ***Content.Services.Network Security***

Great American E&S Insurance Company

## **Coverage Part D** **First-Party Network Security and Privacy Coverage**

### **Section I. Insuring Agreements**

If this Coverage Part is **Included**, the following Insuring Agreements shall apply:

#### **A. First-Party Data Protection**

The **Insurer** will indemnify the **Insured** for **Data Restoration Loss**, in excess of the Retention and up to the Aggregate Limit of Liability for this Coverage Part, incurred by the **Insured** as a direct result of a **Security Breach** that directly causes a **System Compromise**

that first takes place during the **Policy Period**.

#### **B. Notification Costs, Crisis Management Expense and Cyber-Investigation**

- (1) The **Insurer** will indemnify the **Insured**, in excess of the Retention and up to the Aggregate Limit of Liability for this Coverage Part, for the reasonable and necessary costs of providing notification of an actual or potential **Security Breach** to impacted or potentially impacted individuals pursuant to any applicable state, federal or other **Privacy Law**, provided that such actual or potential **Security Breach** first occurred during the **Policy Period**. If notification is not required by law, the **Insurer** will still indemnify the **Insured** if, in the **Insurer's** sole discretion, the notification will significantly mitigate the likelihood or severity of a **Claim** that would be covered by this policy.
- (2) The **Insurer** will indemnify the **Insured**, in excess of the Retention, for the reasonable and necessary costs, up to but not exceeding the Crisis Management Sublimit set forth in Section X of the Declarations, of credit monitoring monitoring for individuals effected by the **Security Breach** and of a public relations consultation for the **Insured** with the **Insurer's** prior written consent when such consultation will avert or mitigate material damage to the **Insured's** reputation that results or reasonably will result from a **Security Breach**, provided that such **Security Breach** first occurred during the **Policy Period**.
- (3) The **Insurer** will indemnify the **Insured**, in excess of the Retention, for the reasonable and necessary costs, up to but not exceeding the Cyber Investigation Sublimit set forth in Section X of the Declarations, of a computer or network security consultant hired by the **Insured** with the **Insurer's** prior written consent for the purpose of investigating the causes of a **Security Breach** in order to avert or mitigate a **System Compromise** or other harm that reasonably could result from such **Security Breach**, provided that such **Security Breach** first occurred during the **Policy Period**.

- (3) The Sublimits set forth in this section are included within, and shall not increase, the Aggregate Limit of Liability for this Coverage Part.

**C. Cyber Extortion**

The **Insurer** will indemnify the **Insured** for any **Cyber Extortion Loss** up to but not exceeding the Cyber Extortion Sublimit set forth in Section X of the Declarations, reasonably paid by the **Insured** in responding to a **Cyber Extortion Threat** first made against the **Insured** and reported to the **Insurer** during the Policy Period.

**Section II. Definitions**

The following definitions apply to this Policy in addition to those set forth in Section II of the General Terms and Conditions:

- A. Cyber Extortion Loss** means payments made with the **Insurer**'s prior written approval to third parties who have made a **Cyber Extortion Threat**, as well as reasonable and necessary costs incurred by the **Insured** in responding to such **Cyber Extortion Threat**.
- B. Cyber Extortion Threat** means a threat or series of threats made against the **Insured** by a third party to cause or prolong **System Compromise**.
- C. Data Restoration Loss** means the reasonable and necessary cost of restoring any **Data Asset** maintained in electronic form by or on behalf of an **Insured** where such **Data Asset** was damaged or destroyed as a result of a **Security Breach**, provided that **Data Restoration Loss** shall not include:
- (1) costs to update, replace, restore or improve **Data Assets** to a level beyond that which existed prior to such **Security Breach**;
  - (2) costs to identify or remediate software programs or vulnerabilities, or costs to update, replace, upgrade, restore, maintain or improve any **Security System**; or
  - (3) the economic or market value or any **Data Asset**, including trade secrets.
- D. Security Breach** means an event whereby a person or organization gains unauthorized access to a **Data Asset** maintained by or on behalf of an **Insured**.
- E. Security Systems** means hardware, software, firewalls, encryption protocols, password protection, physical security, personnel policies, business practices or any other protocols implemented by or on behalf of the **Insured** to prevent a **Security Breach** or any other unauthorized access to or use of **Computer Systems**.
- F. System Compromise** means the alteration, corruption, destruction, theft, deletion, damage or unauthorized copying of or access to a **Data Asset** or the inability of the **Insured** to access or use a **Data Asset**;

**Section III. Notice**

- A.** Discovery of a **Coverage Event** under this **Coverage Part** occurs when the **Insured** first becomes aware of facts that would cause a reasonable person to assume a **Coverage**

**Event** has occurred, even though the exact amount or details of loss may not then be known. Discovery also occurs when the **Insured** receives notice of an actual or potential claim alleging facts that, if true, would constitute a **Coverage Event** under this Coverage Part.

**B.** After discovery of a **Coverage Event** under this **Coverage Part**, the **Insured** shall, as a condition precedent to their rights under this Policy:

- (1) notify the **Insurer** immediately, not to exceed three (3) calendar days after the date of discovery, at the address set forth in Item X of the Declarations;
- (2) take reasonable measures to stop or mitigate the damage caused by such **Coverage Event**;
- (3) give the **Insurer**, upon request, a detailed proof of the damage caused by such **Coverage Event**;
- (4) submit, upon request, to examination under oath at the request of the **Insurer** and give the **Insurer** a signed statement of the **Insured's** answers; and
- (5) cooperate with the **Insurer** in the investigation and settlement of any loss under this **Coverage Part**.

#### **Section IV. Exclusions**

**A.** The **Insurer** shall not make any indemnification to the **Insured** under this Coverage Part for or arising out of:

- (1) any **Security Breach** resulting from the failure of the **Insured** to maintain **Security Systems** equal to or superior than those disclosed in the application for insurance, or the failure of the **Insured** to use best efforts to install or implement commercially available updates to such **Security Systems**;
- (2) the knowing failure by the **Insured** to maintain minimum commercially reasonable standards of **Security Systems** to protect the security of the **Insured's Computer Systems** and **Data Assets**;
- (3) the knowing failure of the **Insured** to comply with any measures or requirements for **Security Systems** that the **Insured** is required to follow by law, contract or industry standard, including (but not limited to) those related to HIPAA, GLBA, or the Payment Card Industry Data Security Standard;
- (4) any **Data Restoration Loss** or costs described in Section I.B of this Coverage Part that are incurred by the **Insured** in performing its duty to cooperate and assist the **Insurer** with its defense of any **Claim**; or
- (5) any obligation to pay money as compensation for damages to any third party, including (but not limited to) any **Loss**.