

This Endorsement changes the Policy. Please read it carefully.

MISCELLANEOUS ERRORS & OMISSIONS INSURANCE

NETGUARD™ PLUS ENDORSEMENT – E1847EDF-0609

In consideration of the premium charged, and notwithstanding anything contained herein to the contrary, it is understood and agreed that NETGUARD™ PLUS is added as an endorsement to this Policy. The following terms, conditions and exclusions apply only to this endorsement:

Item 1. Limits of Liability for Insuring Agreement(s) Purchased:

Purchased:

- A. Network Security and Privacy Insurance: \$___ per **Claim** and in the aggregate
- B. Regulatory Fines and Penalties Insurance: \$___ per **Claim** and in the aggregate
- C. Customer Notification Costs Insurance: \$___ per **Claim** and in the aggregate
- D. Data Recovery Costs Insurance: \$___ per **Claim** and in the aggregate
- E. Media Liability Insurance: \$___ per **Claim** and in the aggregate

Item 2. Maximum Aggregate Limit of Liability: \$___

The limits shown in Items 1. and 2. above shall be part of, and not in addition to, Underwriters' Limit of Liability under the Policy, as stated in Item D. of the Declarations, and any payment under this Endorsement by Underwriters will reduce such remaining and available Limit of Liability.

Item 3. Deductible(s):

- A. Network Security and Privacy Insurance: \$___ per **Claim**
- B. Regulatory Fines and Penalties Insurance: \$___ per **Claim**
- C. Customer Notification Costs Insurance: \$___ per **Claim**
- D. Data Recovery Costs Insurance: \$___ per **Claim**
- E. Media Liability Insurance: \$___ per **Claim**

Item 4. Retroactive Date(s):

- A. Network Security and Privacy Insurance: _____
- B. Regulatory Fines and Penalties Insurance: _____
- C. Customer Notification Costs Insurance: _____
- D. Data Recovery Costs Insurance: _____
- E. Media Liability Insurance: _____

Item 5. Endorsement Period: _____ to _____

All other terms and conditions of the Policy remain unchanged.

ENDORSEMENT TERMS AND CONDITIONS

This is a Claims-made and reported coverage. Various terms and conditions in this Endorsement restrict coverage. Read the entire Endorsement carefully to determine the Insured's rights, duties and what is and is not covered.

Throughout this Endorsement the words "you" and "your" refer to the **Named Insured** shown in Item A. of the Declarations. The words "we," "us," and "our" refer to the Underwriters providing this insurance. The word "Insured" means any person or organization qualifying as such under **Part I. Coverages, B. Insured** of the Policy. Other words and phrases that appear in bold have special meaning as described in **Part IV. Definitions** of this Endorsement and **Part III. Definitions** of the Policy to which this Endorsement is attached.

In consideration of the payment of the premium and in reliance upon the statements, representations and warranties in the **Application**, the **Insured** and Underwriters agree as follows:

I. INSURING AGREEMENTS

A. Network Security and Privacy Insurance

If Insuring Agreement A, Network Security and Privacy Insurance, is purchased, we will pay on behalf of an **Insured** the **Damages** and **Claim Expenses** the **Insured** becomes legally obligated to pay as a result of a **Claim** first made against the **Insured** during the **Endorsement Period** and reported to Underwriters in accordance with **Part VI. Notice Provisions** of this Endorsement, for any **Network Security Wrongful Act** or **Privacy Wrongful Act** taking place after the **Retroactive Date**.

B. Regulatory Fines and Penalties Insurance

If Insuring Agreement B, Regulatory Fines and Penalties Insurance, is purchased, we will pay on behalf of an **Insured** the **Regulatory Fines and Penalties** the **Insured** becomes legally obligated to pay as a result of a **Claim** first made against the **Insured** during the **Endorsement Period** and reported to Underwriters in accordance with **Part VI. Notice Provisions** of this Endorsement, for any **Privacy Wrongful Act** taking place after the **Retroactive Date**.

C. Customer Notification Costs Insurance

If Insuring Agreement C, Customer Notification Costs Insurance, is purchased, we will pay **Customer Notification Costs** incurred by an **Insured** during the **Endorsement Period**, with Underwriters' prior written consent, by reason of a **Claim** reported to Underwriters in accordance with **Part VI. Notice Provisions** of this Endorsement, for any **Privacy Wrongful Act** taking place after the **Retroactive Date**.

All other terms and conditions of the Policy remain unchanged.

D. Data Recovery Costs Insurance

If Insuring Agreement D, Data Recovery Costs Insurance, is purchased, we will pay **Data Recovery Costs** incurred by an **Insured** during the **Endorsement Period**, with Underwriters' prior written consent, by reason of a **Claim** reported to Underwriters in accordance with **Part VI. Notice Provisions** of this Endorsement, for any **Data Interference Act** taking place after the **Retroactive Date**.

E. Media Liability Insurance

If Insuring Agreement E, Media Liability Insurance, is purchased, we will pay on behalf of an **Insured** the **Damages** and **Claim Expenses** which the **Insured** becomes legally obligated to pay as a result of a **Claim** first made against the **Insured** during the **Endorsement Period** and reported to Underwriters in accordance with **Part VI. Notice Provisions** of this Endorsement, for a **Media Wrongful Act** taking place after the **Retroactive Date**.

II. DEFENSE AND SETTLEMENT OF CLAIMS

- A.** We have the right and duty to defend any **Claim** covered by this Endorsement even if the allegations of the **Claim** are groundless, false or fraudulent. We have the right to appoint defense counsel and to investigate any **Claim** as we deem necessary. We shall not be obligated to investigate, defend, pay or settle any **Claim** after the applicable Limits of Liability, as stated in Item 1 of this endorsement, have been exhausted by payment of **Damages, Claim Expenses, Regulatory Fines and Penalties, Customer Notification Costs** or **Data Recovery Costs**.
- B.** The Insureds will not incur any **Claim Expenses, Regulatory Fines and Penalties, Customer Notification Costs** or **Data Recovery Costs** or settle, or offer to settle any **Claim**, assume any contractual obligation, admit liability, voluntarily make any payment or confess or otherwise consent to any **Damages** or judgments with respect to any **Claim** without our prior written consent, which will not be unreasonably withheld. We will not be liable for any **Claim Expenses, Regulatory Fines and Penalties, Customer Notification Costs, Data Recovery Costs**, settlement, assumed obligation, admitted liability, voluntary payment, or confessed **Damages** or judgments to which we have not consented.
- C.** We have the right to settle any **Claim** in the manner and to the extent that we believe is proper; however, we will not settle any **Claim** without your consent. If you refuse to consent to any settlement recommended by us or our representatives and you elect to contest the **Claim** or continue any legal proceedings in connection with such **Claim**, then our liability for such **Claim** shall not exceed the amount for which we could have settled the **Claim** plus **Claim Expenses** incurred as of the date you withheld consent to such settlement. Our

All other terms and conditions of the Policy remain unchanged.

obligation to pay shall in all events be subject to the provisions of **Part V. Limits of Liability and Deductible** of this Endorsement.

III. DATA RECOVERY COSTS ADJUSTMENT

- A.** In the event that **Data** belonging to an **Insured** has been compromised, damaged, lost, erased, eradicated, altered, corrupted or tainted by reason of a **Data Interference Act**, the **Insured** shall, as soon as practicable following notification to Underwriters in accordance with the **Part VI. Notice Provisions** of this Endorsement, provide to Underwriters a written statement detailing: 1) the harm or damage known to have resulted from the **Data Interference Act**; 2) the circumstances under which the Insureds first discovered the **Data Interference Act**; 3) the proposed plan for remediation and/or recovery of said **Data**, including the name and identity of the professional or consultant proposed for carrying out the remediation and/or recovery; 4) the proposed or estimated costs of the remediation and/or recovery; and 5) the proposed date and time for both commencing and completing such remediation and/or recovery.
- B.** No **Data Recovery Costs** shall be incurred without Underwriters' prior written consent, and Underwriters shall not be responsible to pay or reimburse the Insureds for any **Data Recovery Costs** that were not so approved. Notwithstanding the foregoing, an **Insured** may incur **Data Recovery Costs** without Underwriters' prior written approval if the circumstances are such that there is no practical or reasonable opportunity to obtain Underwriters' prior written consent and the exigencies then and there existing require immediate action to mitigate the potential for damages or harm to an **Insured** or to third parties.

IV. DEFINITIONS

The following terms, whenever used in this Endorsement in boldface type, shall have the meanings indicated. Other terms, whenever used in this Endorsement in boldface type, shall have the meanings indicated in **Part III. Definitions** of the Policy to which this Endorsement is attached:

- A. Bodily Injury** means physical injury, sickness, disease, pain or death, and, if arising out of the foregoing, mental anguish, mental injury, shock, humiliation or emotional distress sustained by a person at any time.
- B. Claim** means:
1. with respect to Insuring Agreement A only:
 - a. any written demand for monetary damages or other non-monetary relief against an **Insured**;
 - b. any civil proceeding or arbitration proceeding against an **Insured**, commenced by the service of a complaint or similar pleading or notification;

All other terms and conditions of the Policy remain unchanged.

- c. any written request to toll or waive a statute of limitations relating to a potential **Claim** against an **Insured**, including any appeal therefrom; or
- d. a **Government Investigation** commenced against an Insured by letter notification, complaint, order of investigation or subpoena.

A **Claim** will be deemed to be first made when any of the foregoing is first received by an **Insured**.

- 2. with respect to Insuring Agreement B only, a **Government Investigation** commenced against an **Insured** by letter notification, complaint, order of investigation or subpoena. A **Claim** will be deemed to be first made when it is first received by an **Insured**.
- 3. with respect to Insuring Agreement C only, a written report by an **Insured** to Underwriters of an actual or potential **Privacy Wrongful Act(s)**. A **Claim** will be deemed to be first made when such written report is received by Underwriters.
- 4. with respect to Insuring Agreement D only, a written report by an **Insured** to Underwriters of a **Data Interference Act** in accordance with the provisions of **Part III. Data Recovery Costs Adjustment** of this Endorsement. A **Claim** will be deemed to be first made when such written report is received by Underwriters.
- 5. with respect to Insuring Agreement E only:
 - a. any written demand for monetary damages or other non-monetary relief against an **Insured**;
 - b. any civil proceeding or arbitration proceeding against an **Insured**, commenced by the service of a complaint or similar pleading or notification; or
 - c. any written request to toll or waive a statute of limitations relating to a potential **Claim** against an **Insured**, including any appeal therefrom.

A **Claim** will be deemed to be first made when any of the foregoing is first received by an **Insured**.

- C. **Claim Expenses** means reasonable and necessary fees, costs and expenses incurred in the investigation, defense and appeal of any **Claim**; but **Claim Expenses** shall not include any **Regulatory Fines and Penalties** or wages, salaries, fees, or expenses of any Insureds.
- D. **Customer Notification Costs** means all reasonable and necessary legal expenses, public relations expenses, postage expenses, and related advertising expenses incurred by an **Insured** in notifying third persons of any actual or potential **Privacy Wrongful Act**. **Customer Notification Costs** also includes

All other terms and conditions of the Policy remain unchanged.

the costs of credit monitoring services provided to individuals affected by any actual or potential **Privacy Wrongful Act**.

- E. Damages** means the amount that an Insured is legally obligated to pay solely on account of a covered **Claim** for a **Network Security Wrongful Act**, **Privacy Wrongful Act** or **Media Wrongful Act**, including but not limited to, judgments (including prejudgment and post-judgment interest awarded against an Insured on that part of any judgment paid or to be paid by Underwriters); settlements negotiated with our consent; punitive and exemplary damages where insurable; and any legal fees and costs awarded pursuant to such judgments.

Damages does not include: (1) taxes; (2) any amount for which the **Insured** is absolved from payment; (3) amounts owed under any contract; (4) any return, withdrawal, restitution or reduction of professional fees, profits or other charges; (5) the multiple portion of any multiplied damages; (6) **Regulatory Fines and Penalties**; or (7) any matters that are uninsurable under applicable law.

For the purpose of determining the insurability of punitive damages or exemplary damages under this Endorsement, the laws of the jurisdiction most favorable to the insurability of such damages shall control, provided that such jurisdiction is: (1) the location of the court which awarded or imposed such punitive damages; (2) where the **Named Insured** is incorporated, or otherwise organized, or has a place of business; or (3) where Underwriters are incorporated or otherwise organized or have their place of business.

- F. Data** means any and all information stored, recorded, appearing or present in or on the **Insured's** computer systems, electronic communication systems, devices and telephony, including, but not limited to, information stored, recorded, appearing or present in or on the **Insured's** electronic and computer databases, the Internet, intranet, extranet and related websites, facsimile and electronic mail.
- G. Data Interference Act** means any act by a party other than an **Insured** that occurs during the **Endorsement Period** and is carried out without an **Insured's** consent or knowledge, whether intentional, malicious, reckless or negligent, which act causes harm or damage to the **Data** maintained by an **Insured**, including but not limited to interference with, or intrusion or incursion into, any of the **Insured's** computer systems, electronic communication systems, devices and telephony, including, but not limited to, the **Insured's** electronic and computer databases, the Internet, intranet, extranet and related websites, facsimile and electronic mail.
- H. Data Recovery Costs** means all reasonable and necessary sums required to recover and/or replace **Data** that is compromised, damaged, lost, erased, eradicated, altered, corrupted or tainted by reason of a **Data Interference Act**, including but not limited to the costs associated with the repair or replacement of any software that is compromised, damaged, lost, erased, eradicated, altered, corrupted or tainted by reason of a **Data Interference Act**. **Data Recovery Costs** shall not include: 1) costs of repairing or replacing any hardware, equipment or wiring; 2) wages, salaries or other compensation or income of any

All other terms and conditions of the Policy remain unchanged.

Insureds; 3) costs of recovering or replacing data for any third party, or any data that was not within the care, custody or control of the **Insured**.

- I. **Endorsement Period** means the period of time specified in Item 5 of this Endorsement. Coverage may be canceled or otherwise terminated before the **Endorsement Period** end date.
- J. **Government Investigation** means an investigation conducted by any federal, state or local government agency or authority, the subject matter of which is a **Privacy Wrongful Act** committed by an **Insured**.
- K. **Interrelated Data Interference Acts** means more than one **Data Interference Act** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
- L. **Interrelated Media Wrongful Acts** means more than one **Media Wrongful Act** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions, or causes.
- M. **Interrelated Network Security Wrongful Acts** means more than one **Network Security Wrongful Act** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions, or causes.
- N. **Interrelated Privacy Wrongful Acts** means more than one **Privacy Wrongful Act** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions, or causes.
- O. **Media Material** means information in the form of words, sounds, numbers, images or graphics in electronic, print or broadcast form, including advertising, but shall not mean computer software.
- P. **Media Wrongful Act** means injury, other than **Bodily Injury**, arising out of one or more of the following acts, whether actual or alleged, but only if committed or allegedly committed by an **Insured** in the course of displaying, broadcasting, disseminating, distributing or releasing **Media Material** to the public and/or gathering, collecting or recording of **Media Material** in the ordinary course of the **Insured's** business:
 - 1. False arrest, detention or imprisonment or malicious prosecution;
 - 2. Wrongful entry, wrongful eviction or invasion of, or violation of, the right of private occupancy;
 - 3. Defamation, libel, slander, product or service disparagement, trade libel, prima facie tort, infliction of emotional distress, mental anguish, or other tort related to disparagement or harm to the reputation or character of

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any person or organization;

4. Unauthorized use of advertising material, slogans or titles in advertising the products, work or services of others;
5. Plagiarism, piracy or misappropriation of literary or artistic titles or works, formats, characters, performances or other similar material;
6. Negligence regarding the content of any **Media Material**, including harm caused through any reliance or failure to rely upon such content; or
7. Infringement of copyright, trade dress, domain name, title or slogan, or the dilution or infringement of trademark or service mark.

Q. Network Security Wrongful Act means an actual or alleged act, error or omission by an **Insured**, including an unauthorized act by an employee, which results in the unauthorized access or unauthorized use of the **Insured's** computer system, the consequences of which include, but are not limited to:

1. the failure to prevent unauthorized access to, use of, or tampering with a third party's computer systems;
2. the inability of an authorized third party to gain access to the **Insured's** services;
3. the failure to prevent denial or disruption of Internet service to an authorized third party;
4. the failure to prevent identity theft or credit/debit card fraud; or
5. the inadvertent transmission of harmful or corrupt software code including, but not limited to computer viruses, Trojan horses, worms, logic bombs, spy ware or spider ware.

R. Privacy Wrongful Act means any of the below, whether actual or alleged, but only if committed or allegedly committed by an **Insured**:

1. wrongful entry or eviction, trespass, eavesdropping, false arrest or malicious prosecution, outrage or outrageous conduct;
2. breach of confidence, invasion, infringement, interference or violation of any rights to privacy including, but not limited to, breach of your privacy statement, breach of a person's right of publicity, false light, intrusion upon a person's seclusion, public disclosure of a person's private information, intrusion or misappropriation of a person's name or likeness for commercial gain; or
3. any breach or violation of U.S. federal, state and local statutes and regulations associated with the control and use of personally identifiable financial or medical information, including but not limited to:

All other terms and conditions of the Policy remain unchanged.

- a. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) ("HIPAA"), including Title II which requires protection of confidentiality and security of electronic protected health information, and the rules and regulations promulgated thereunder as they currently exist and as amended, including related state medical privacy laws as they currently exist and as amended;
 - b. Gramm-Leach-Bliley Act of 1999 (G-L-B), also known as the Financial Services Modernization Act of 1999, including sections concerning security protection and standards for customer records maintained by financial services companies, and the rules and regulations promulgated thereunder as they currently exist and as amended;
 - c. State Attorneys General and Federal Trade Commission enforcement actions regarding the security and privacy of consumer information;
 - d. Governmental privacy protection regulations or laws, such as California Database Protection Act of 2003 (Cal. SB 1386) and California A.B. 1950, as they currently exist now or in the future, which require commercial Internet sites or on-line services that collect personal information or medical information (as defined by such laws or acts) to post privacy policies and adopt specific privacy controls or to notify those impacted by identity or data theft, abuse or misuse; and
 - e. Federal and state consumer credit reporting laws, such as the federal Fair Credit Reporting Act (FCRA) and the California Consumer Credit Reporting Agencies Act (CCCRAA).
- S. Property Damage** means injury to tangible property, including all resulting loss of use of that property, and loss of use of tangible property that is not physically injured.
- T. Regulatory Fines and Penalties** means any fines and penalties an **Insured** becomes legally obligated to pay as a result of a penalty or sanction imposed against such **Insured** in connection with a **Government Investigation**.
- U. Retroactive Date** means the date specified in Item 4. of this Endorsement.

V. LIMITS OF LIABILITY AND DEDUCTIBLE

A. Limits of Liability for Insuring Agreement(s) Purchased:

1. With respect to Insuring Agreement A:

The amount set forth in Item 1. of this Endorsement for Insuring Agreement A shall be our maximum Limits of Liability under that Insuring

All other terms and conditions of the Policy remain unchanged.

Agreement for the sum of all **Damages** and **Claim Expenses** incurred by an **Insured** on account of each **Claim** first made against an **Insured** during the **Endorsement Period**, and in the aggregate.

2. With respect to Insuring Agreement B:

The amounts set forth in Item 1. of this Endorsement for Insuring Agreement B shall be our maximum Limits of Liability under that Insuring Agreement for the sum of all **Regulatory Fines and Penalties** imposed against an **Insured** on account of each **Claim** first made during the **Endorsement Period**, and in the aggregate.

3. With respect to Insuring Agreement C:

The amount set forth in Item 1. of this Endorsement for Insuring Agreement C shall be our maximum Limits of Liability under that Insuring Agreement for the sum of all **Customer Notification Costs** incurred by an **Insured** on account of each **Claim** first made during the **Endorsement Period**, and in the aggregate.

In excess of the applicable Deductible, and subject to the maximum Limits of Liability under Insuring Agreement C, the **Insured** shall bear uninsured and at its own risk ten percent (10%) of **Customer Notification Costs** resulting from any **Claim**, and our liability shall apply only to the remaining percentage of such **Customer Notification Costs**.

4. With respect to Insuring Agreement D:

The amount set forth in Item 1. of this Endorsement for Insuring Agreement D shall be our maximum Limits of Liability under that Insuring Agreement for the sum of all **Data Recovery Costs** incurred by an **Insured** on account of each **Claim** first made during the **Endorsement Period**, and in the aggregate.

5. With respect to Insuring Agreement E:

The amount set forth in Item 1. of this Endorsement for Insuring Agreement E shall be our maximum Limits of Liability under that Insuring Agreement for the sum of all **Damages** and **Claim Expenses** incurred by an **Insured** on account of each **Claim** first made against an **Insured** during the **Endorsement Period**, and in the aggregate.

B. Maximum Aggregate Limit of Liability

1. The amount set forth in Item 2. of this Endorsement shall be our maximum aggregate Limit of Liability under all Insuring Agreements purchased for the sum of all **Damages** and **Claim Expenses**, **Regulatory Fines and Penalties**, **Data Recovery Costs** and **Customer Notification Costs** on account of all **Claims** under this Endorsement.

All other terms and conditions of the Policy remain unchanged.

2. Underwriters' maximum aggregate Limit of Liability under this Endorsement, as set forth in Item 2. of this Endorsement, is part of, and not in addition to, the aggregate Limit of Liability under the Policy, as stated in Item D. of the Declarations, and any payments made under this Endorsement shall reduce such remaining and available Limit of Liability.
3. **Damages, Claim Expenses, Regulatory Fines and Penalties, Data Recovery Costs and Customer Notification Costs** shall be part of, and not in addition to, the Limit of Liability set forth in Item 2. of this Endorsement, and **Damages, Claim Expenses, Regulatory Fines and Penalties, Data Recovery Costs and Customer Notification Costs** shall reduce such Limit of Liability.
4. If our maximum aggregate Limit of Liability, as set forth in Item 2. of this Endorsement, is exhausted by payment of **Damages, Claim Expenses, Regulatory Fines and Penalties, Data Recovery Costs or Customer Notification Costs**, or any combination thereof, our obligations under this Endorsement shall be deemed completely fulfilled and extinguished.
6. The Limit of Liability for the Extended Reporting Period, if purchased, shall be part of, and not in addition to, the Limit of Liability for the **Endorsement Period**. The purchase of the Extended Reporting Period shall not increase or reinstate the Limit of Liability set forth in Item 2. of this Endorsement, which shall be our maximum aggregate Limit of Liability for the sum of all **Damages, Claim Expenses, Regulatory Fines and Penalties, Data Recovery Costs and Customer Notification Costs** on account of all **Claims** first made during the **Endorsement Period** and Extended Reporting Period.

C. Deductible Provisions

1. We shall only be liable to pay **Damages, Claim Expenses, Regulatory Fines and Penalties, Data Recovery Costs or Customer Notification Costs** in excess of the applicable Deductible set forth in Item 3. of this Endorsement, which shall be your uninsured responsibility.
2. The application of a Deductible under one Insuring Agreement is separate from and shall not reduce the Deductible under any other Insuring Agreement.

VI. NOTICE PROVISIONS

A. Notice of Claim

1. The **Insured** shall, as a condition precedent to their rights under this Endorsement, give our authorized representatives, as identified in the Item H. of the Declarations, written notice of any **Claim** as soon as practicable, but in no event later than sixty (60) days after the end of the **Endorsement Period**. The Insured shall provide such authorized representatives with copies of all documentation comprising the **Claim** as

All other terms and conditions of the Policy remain unchanged.

well as all authorizations, cooperation, or assistance as we may require. With respect to Insuring Agreement D, the **Insured** shall also comply with the provisions of **Part III. Data Recovery Costs Adjustment** of this Endorsement as a further condition precedent to coverage.

2. We are not obligated to pay any **Damages, Claim Expenses, Regulatory Fines and Penalties, Customer Notification Costs** or **Data Recovery Costs** (except as provided in **Part III. Data Recovery Costs Adjustment**) incurred prior to notification of a **Claim**.

B. Notice of Potential Claim

If, during the **Endorsement Period**, any **Insured** first becomes aware of any facts or circumstances which could give rise to a **Claim** covered under this Endorsement, and if the **Insured**, during the **Endorsement Period**, provides our authorized representatives, as identified in Item H. of the Declarations, with written notice as soon as practicable of: a) such facts or circumstances which could give rise to a **Claim** under this Endorsement; b) the nature of the alleged or potential damages; c) the identity of the potential claimants and **Insureds** involved; d) the manner in which the **Insured** first became aware of the facts and circumstances; and e) the consequences which have resulted or may result therefrom, then any **Claim** subsequently arising from such facts or circumstances will be deemed first made on the date such notice was given to Underwriters, and any **Customer Notification Costs** or **Data Recovery Costs** subsequently incurred will be deemed first incurred on the date such notice was given to Underwriters.

VII. EXCLUSIONS

We are not obligated to defend any **Claim** or pay any **Damages, Claim Expenses** or **Regulatory Fines and Penalties**, nor to pay or reimburse any **Data Recovery Costs** or **Customer Notification Costs**:

- A. For, based upon, arising out of, or attributable to any **Network Security Wrongful Act, Privacy Wrongful Act, Media Wrongful Act** or **Data Interference Act**, or fact, circumstance, or situation:
 1. That was the subject of any notice given prior to the **Endorsement Period** under any other similar insurance policy; or any other **Network Security Wrongful Act, Privacy Wrongful Act, Media Wrongful Act** or **Data Interference Act**, whenever occurring, which together with a **Network Security Wrongful Act, Privacy Wrongful Act, Media Wrongful Act** or **Data Interference Act** which has been the subject of such prior notice, would constitute **Interrelated Network Security Wrongful Acts, Interrelated Privacy Wrongful Acts, Interrelated Media Wrongful Acts** or **Interrelated Data Interference Acts**;
 2. That was the subject of any prior or pending written demand, administrative or arbitration proceeding or civil litigation against any

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Insured, or the same or substantially the same fact, circumstance, or situation underlying or alleged in the prior matter; or

3. That was identified in any summary or statement of claims or potential claims submitted in connection with the **Application**;

B. For, based upon, arising from, or in any way related to:

1. The actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or

2. Any direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, nuclear material or nuclear waste;

Pollutants include, but are not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including mold, smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos-containing products and waste, and any electric, magnetic or electromagnetic field of any frequency. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed;

C. Based upon, arising out of, or attributable to, liability of others assumed by an **Insured** under any contract or agreement, except to the extent the **Insured** would have been liable in the absence of the contract or agreement;

D. Based upon, arising out of, or attributable to any breach of contract, warranty or guarantee, except that with respect to allegations of breach of contract, this exclusion shall not apply to the extent the **Insured** would have been liable in the absence of such contract;

E. Based upon, arising out of, or attributable to any business, joint venture or enterprise not named in the Declarations which is owned, controlled, operated or managed in whole or in part by an **Insured**; nor will this Endorsement respond to any **Claim** arising out of, based upon, attributable to, or alleging any conduct, act, error or omission of any **Insured** serving in any capacity other than as your principal, partner, officer, director or employee;

F. Based upon, arising out of, or in any way involving an **Insured** gaining in fact any profit, remuneration or financial advantage to which such **Insured** was not legally entitled;

G. For, based upon, or arising from any deliberately dishonest, malicious or fraudulent act or omission or any willful violation of law by an **Insured**, if judgment or other final adjudication adverse to the **Insured** establishes such an act, omission or willful violation; however, this Exclusion shall not apply to any **Insured** that did not commit, participate in, or have knowledge of any such act, omission or violation of law described in this Exclusion;

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- H. That is covered under any General Liability, Comprehensive General Liability, or other Professional Liability Insurance Policy;
- I. For, based upon, arising out of, or in any way related to the False Claims Act, or any similar federal or state law, rule or regulation concerning billing errors or fraudulent billing practices or abuse;
- J. For, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving infringement, in any form, of patent or trade secret;
- K. For, based upon, arising from, or in any way related to price fixing, restraint of trade or a violation of any securities, anti-trust or consumer protection laws;
- L. Based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any employment or employment-related matters;
- M. For, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged **Bodily Injury** or **Property Damage**;
- N. Based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving harassment or discrimination including, but not limited to, harassment or discrimination because of or relating to race, creed, color, age, sex, sexual orientation or preference, national origin, religion, handicap, disability, political affiliation or marital status;
- O. Based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged electrical failure, including electrical power interruption, surge, brownout or blackout;
- P. Based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged malfunction or defect of any hardware, equipment or component, except that this exclusion shall not apply where the malfunction or defect is solely the result of an **Insured's** negligence;
- Q. Brought by or on behalf of an **Insured** or any entity that is owned, in whole or in part, by an **Insured**, or directly or indirectly controlled, operated or managed by an **Insured**, or any entity or person that is a parent, affiliate, subsidiary, joint venturer of any entity or person in which or with which an **Insured** is a partner. This Exclusion, VII. Q., shall not apply to an otherwise covered **Claim** by an employee alleging a breach or violation of U.S. federal, state and local statutes and regulations as set forth in **Part IV. Definitions, R. 3.**;
- R. For, based upon, arising from, or in any way related to a violation of any of United States of America's economic or trade sanctions including, but not limited to, sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC");

All other terms and conditions of the Policy remain unchanged.

- S. Based upon, directly or indirectly resulting from, in consequence of, or in any way involving loss of business income arising from the interruption, suspension or degradation of an **Insured's** own computer network;
- T. Brought by any person or entity that is an **Insured** under this Policy against another **Insured** under this Policy. This Exclusion, VII. T., shall not apply to an otherwise covered **Claim** by an employee alleging a breach or violation of U.S. federal, state and local statutes and regulations as set forth in **Part IV. Definitions, R. 3**;
- U. Based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of any provisions of the Employee Retirement Income Security Act of 1974, or any amendment, regulation, ruling or order issued pursuant thereto; or any acts related to any pension, healthcare, welfare, profit sharing, investment plan or trust;
- V. Based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - 1. any **Network Security Wrongful Act, Privacy Wrongful Act, Media Wrongful Act** or **Data Interference Act** actually or allegedly occurring prior to the applicable **Retroactive Date**; or
 - 2. any other **Network Security Wrongful Act, Privacy Wrongful Act, Media Wrongful Act** or **Data Interference Act** actually or allegedly occurring on or subsequent to the applicable **Retroactive Date** which, together with a **Network Security Wrongful Act, Privacy Wrongful Act, Media Wrongful Act** or **Data Interference Act** actually or allegedly occurring prior to such date would constitute **Interrelated Network Security Wrongful Acts, Interrelated Privacy Wrongful Acts, Interrelated Media Wrongful Acts** or **Interrelated Data Interference Acts**.

VIII. CONDITIONS

- A. **Interrelated Claims, Interrelated Data Recovery Costs and Interrelated Customer Notification Costs**
 - 1. More than one **Claim** arising out of the same **Network Security Wrongful Act, Privacy Wrongful Act, Media Wrongful Act, or Data Interference Act, or Interrelated Network Security Wrongful Acts, Interrelated Privacy Wrongful Acts, Interrelated Media Wrongful Acts** or **Interrelated Data Interference Acts** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Endorsement Period**.
 - 2. All **Data Recovery Costs** attributable to the same **Data Interference Act** or **Interrelated Data Interference Acts** shall be deemed to have been

All other terms and conditions of the Policy remain unchanged.

incurred when the earliest of such **Data Interference Acts** was discovered, regardless of whether such date is before or during the **Endorsement Period**.

3. All **Customer Notification Costs** attributable to the same **Privacy Wrongful Act** or **Interrelated Privacy Wrongful Acts** shall be deemed to have been incurred when the earliest of such **Privacy Wrongful Acts** was discovered, regardless of whether such date is before or during the **Endorsement Period**.

B. Other Insurance

Except for **Claims** for which coverage is available under General Liability, Comprehensive General Liability or other Professional Liability Insurance Policy, and unless expressly written to be excess over other insurance, this Endorsement is intended to apply as primary insurance for **Network Security Wrongful Acts, Privacy Wrongful Acts, Media Wrongful Acts** or **Data Interference Acts** covered by this Endorsement. Nothing in this provision, however, shall prevent Underwriters or the **Insured** from seeking contribution or coverage from any other insurer or indemnitor.

C. Changes in Exposure

1. If, during the **Endorsement Period**, a **Named Insured** is acquired, or control assumed by another entity, coverage under this Endorsement will continue but only with respect to any **Claim** arising from **Network Security Wrongful Acts, Privacy Wrongful Acts, Media Wrongful Acts** or **Data Interference Acts** that occur prior to the effective date of the acquisition or change of control.
2. If, after the inception of the **Endorsement Period**, the **Named Insured** acquires, merges into or with, or creates another entity or operation, and at the time of the transaction, the revenues of the new entity or operation do not exceed ten percent (10%) of the annual revenues of the **Named Insured**, as reflected in the most recent Application, then for a period of sixty (60) days after the effective date of the transaction, the newly formed entity or operation shall be included within the definition of **Insured**, but only with respect to **Network Security Wrongful Acts, Privacy Wrongful Acts, Media Wrongful Acts** or **Data Interference Acts** committed or allegedly committed after the effective date of such transaction.
3. If, after the inception of the **Endorsement Period**, the **Named Insured** sells any entity or operation, that entity or operation shall be an **Insured**, but only with respect to **Network Security Wrongful Acts, Privacy Wrongful Acts, Media Wrongful Acts** or **Data Interference Acts** committed or allegedly committed before such date.

All other terms and conditions of the Policy remain unchanged.

4. Refer to **Part V. Conditions, G. Changes in Exposure** of the Policy to which this is Endorsement is attached for the **Insured's** duties in the event of any changes in exposure.

D. Representations and Severability

1. In issuing this Endorsement, we relied upon the statements and representations in the **Application**. The **Insured** represents that all such statements and representations are true and deemed material to the acceptance of the risk or the hazard assumed by us under this Endorsement.
2. The **Insured** agrees that in the event any such statements or representations are untrue, this Endorsement will not afford any coverage with respect to an **Insured** who knew the facts that were not truthfully disclosed in the **Application**, whether or not such **Insured** knew that the **Application** contained an untruthful disclosure.

E. Assistance, Cooperation and Subrogation

1. The Insureds agree to provide us with such information, assistance and cooperation as we may reasonably request to conduct an investigation, defend a **Claim**, or to reach a settlement of a **Claim**. The **Insureds** agree that in the event of a **Claim**, they will do nothing which in any way increases our exposure under the Endorsement or which may prejudice our position or rights of recovery.
2. In the event of a **Claim** under this Endorsement, we shall be subrogated to the rights of recovery of each and every **Insured** against any person or organization, and the **Insureds** will execute and deliver instruments and papers, and do whatever else is necessary, to secure such rights, including the execution of all documents to enable us to effectively bring suit in the name of an **Insured**. The **Insureds** shall do nothing to prejudice such rights.

F. Territory

The coverage afforded under this Endorsement applies to **Claims** brought against an **Insured** anywhere in the world, except countries where the United States of America has declared or imposed sanctions or trade embargos.

G. Arbitration

Notwithstanding any other provisions of this Endorsement or the Policy, Underwriters and the **Insured** agree that any dispute or controversy arising out of, or relating to, this Endorsement will be submitted to final and binding arbitration in accordance with the rules of the American Arbitration Association then in effect. The arbitrator shall be selected by you, and us, and each party will bear its own legal fees and expenses.

All other terms and conditions of the Policy remain unchanged.

H. Extended Reporting Period

Subject to the provisions of **Part I. Coverages E. Extended Reporting Period** of the Policy, if purchased, the Extended Reporting Period will provide for an extension of the coverage available under this Endorsement with respect to any **Claim** first made during the Extended Reporting Period, but only for **Network Security Wrongful Acts, Privacy Wrongful Acts, Media Wrongful Acts** or **Data Interference Acts** committed or allegedly committed prior to the effective date of the non-renewal or cancellation of the Policy.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

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FORM NETGUARD PLUS END. 06/09

SPECIMEN

This endorsement is to take effect on «f4».

Policy No.: «f1»

Name: «f2» «f3»

Policy Effective Date: «f4»

Expiration: «f5»

Endorsement No.:

All other terms and conditions of the Policy remain unchanged.