

NOTICE:

WITH RESPECT TO THE LIABILITY COVERAGES, THIS IS A CLAIMS-MADE POLICY AND, SUBJECT TO ITS PROVISIONS, APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. NO COVERAGE EXISTS FOR CLAIMS FIRST MADE AGAINST THE INSURED AFTER THE END OF THE POLICY PERIOD UNLESS, AND TO THE EXTENT THAT, AN EXTENDED REPORTING PERIOD APPLIES. CLAIM EXPENSES REDUCE THE LIMIT OF INSURANCE AND ARE SUBJECT TO THE DEDUCTIBLE.

PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS IT WITH YOUR INSURANCE AGENT OR BROKER.

In consideration of the premiums paid and in reliance upon all statements made in the **Application** furnished to the Insurer designated in the Declarations, a stock insurance corporation, hereinafter called the "Insurer", the Insurer and the **Insureds** agree as follows:

I. LIABILITY COVERAGES

A. INSURING AGREEMENTS

If the Insuring Agreement has been purchased, as indicated in the Declarations, the Insurer will pay on behalf of the **Insured** all sums in excess of the Deductible and up to the applicable limit of insurance that the **Insured** shall become legally obligated to pay:

1. Content Injury Liability

as **Damages** resulting from any **Content Injury Claim** both first made against the **Insured** and reported to the Insurer in writing during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act** by the **Insured**, or by someone for whose **Wrongful Act** the **Insured** is legally responsible;

2. Privacy Injury Liability

A. Privacy Injury Claim

as **Damages** resulting from any **Privacy Injury Claim** both first made against the **Insured** and reported to the Insurer in writing during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act** by the **Insured**, or by someone for whose **Wrongful Act** the **Insured** is legally responsible;

B. Privacy Regulation Proceeding

as **Damages** and **Claim Expenses** resulting from any **Privacy Regulation Proceeding** both first made against the **Insured** and reported to the Insurer in writing during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act** by the **Insured** or by someone for whose **Wrongful Act** the **Insured** is legally responsible;

3. Professional Services Liability

as **Damages** resulting from any **Professional Services Claim** both first made against the **Insured** and reported to the Insurer in writing during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act** by the **Insured**, or by someone for whose **Wrongful Act** the **Insured** is legally responsible;

4. Network Security Liability

as **Damages** resulting from any **Network Security Claim** both first made against the **Insured** and reported to the Insurer in writing during the **Policy Period**, or any Extended Reporting Period, if

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applicable, alleging any **Wrongful Act** by the **Insured**, or by someone for whose **Wrongful Act** the **Insured** is legally responsible;

provided that, with respect to paragraphs 1. through 4. above:

1. prior to the inception date of this policy or the first such policy issued and continuously renewed by the Insurer, whichever is earlier;
 - A. no **Executive** had knowledge of or could have reasonably foreseen any circumstances which might have resulted in a **Claim**; and
 - B. the **Wrongful Act** or any **Interrelated Wrongful Act** has not been the subject of any notice given under any prior policy; and,
2. the **Wrongful Act** occurred on or after the applicable **Prior Acts Date** for each Insuring Agreement as set forth in the Declarations, in Item 3. Coverage Schedule, and prior to the end of the **Policy Period**.

Subject to the limits of insurance and in excess of any deductible, the Insurer will also pay all **Claim Expenses** in connection with any **Claim**.

B. Public Relations Event Expense Reimbursement

If **Public Relations Event Expense** Reimbursement coverage has been purchased, as indicated in the Declarations, the Insurer will reimburse the **Insured Entity** for **Public Relations Event Expenses** (up to the **Public Relations Event Expenses** limit of insurance and in excess of the **Public Relations Event Expenses** deductible) which amounts are incurred within twelve months of the date that the **Insured** reports the **Public Relations Event**, and which amounts are consented to by the Insurer (such consent not to be unreasonably withheld):

1. to respond to adverse or unfavorable publicity or media attention arising out of a **Public Relations Event**;
2. to effect compliance with:
 - a. a **Security Breach Notice Law**; or
 - b. any statute or regulation referenced under the definition of **Privacy Injury** where the **Insured Entity** has been notified that an **Insured** may be non-compliant with any such statute or regulation; or
3. to implement credit monitoring of changes to credit bureau records associated with any individual whose **Non-public Personal Information** may have been disclosed or used in an unauthorized manner while in **Insured Entity's** care and custody.

II. FIRST PARTY INSURING AGREEMENTS

Subject always to Section VIII, Conditions, Paragraph W, Proof, Valuation and Payment of **First Party Loss**, if the Insuring Agreement has been purchased, as indicated in the Declarations, the Insurer will pay the **Insured Entity** all sums in excess of any applicable Deductible and up to the applicable limit of insurance that the **Insured Entity** incurs:

A. Network Extortion

for **Network Extortion Expense** resulting from a **Network Extortion** that occurs during the **Policy Period**;

B. Loss of or Damage to Insured Entity's Network

for the **Insured Entity's** reasonable and necessary expenses resulting from an **Exploit** that occurs during the **Policy Period**, that are required to restore the **Insured Entity's Network** or information residing on the **Insured Entity's Network** to substantially the form in which it existed immediately prior to such **Exploit**;

C. Business Interruption and Extra Expense

1. for reduction of business income the **Insured Entity** sustains during a **Period of Restoration** due to the interruption of **Commerce Operations** by a **Network Impairment** that has been caused by an **Exploit** during the **Policy Period**; and,
2. for **Extra Expense** that the **Insured Entity** sustains to minimize any such **Network Impairment** in order to resume **Commerce Operations**;

D. Emergency Response Fund

for the **Insured Entity's** reasonable and actual expenses resulting from an **Exploit**, an **Electronic Theft** or a **Network Extortion** that occurs during the **Policy Period** in engaging a suitably qualified third party security expert to:

1. assist the **Insured** in investigating, stopping, or minimizing damage due to such **Exploit**, **Electronic Theft** or **Network Extortion** while such **Exploit**, **Electronic Theft** or **Network Extortion** is ongoing; or
2. collecting and analyzing and preserving forensic evidence of such **Exploit**, **Electronic Theft** or **Network Extortion** for use in identifying the perpetrator and in supporting legal action against the perpetrator;

E. Basic Electronic Theft

for

1. loss of the **Insured Entity's Money** or **Securities**, including loss resulting from alteration; or
2. loss of the **Insured Entity's Goods**,

resulting from **Electronic Theft** of the **Insured Entity's Money**, **Securities** or **Goods** perpetrated directly against the **Insured Entity** by an **External Source** during the **Policy Period**;

F. Electronic Theft of Services

for loss of the **Insured Entity's Services** resulting from **Electronic Theft** of such **Services** perpetrated directly against the **Insured Entity** by an **External Source** during the **Policy Period**;

G. Electronic Theft of Intangible Property

for loss of the **Insured Entity's Intangible Property** resulting from an **Electronic Theft** of such **Intangible Property** perpetrated directly against the **Insured Entity** during the **Policy Period**.

III. LIMITS OF INSURANCE AND DEDUCTIBLES

A. Policy Aggregate

The amount set forth as the Policy Aggregate Limit of insurance in Item 3.A. in the Declarations shall be the maximum aggregate limit of insurance of the Insurer for all **Damages** and **Claims Expenses**, all **Public Relations Event Expenses** and all **First Party Loss** under this Policy, regardless of the number of **Occurrences**, **Insureds**, **Claims** made, or persons or entities bringing such **Claims**. The Scheduled Limits of Insurance set forth in the Coverage Schedule in the Declarations are sub-limits which further limit and do not increase the Insurer's limit of insurance under this Policy Aggregate Limit. The limits of insurance set forth in paragraphs B, C, D, and E below are subject always to this Policy Aggregate.

B. Liability Limits of Insurance

1. Related Claims and Related Public Relations Events

- a. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be considered as one **Claim** which shall be deemed to have been first made on the earlier of:
 - i. the date on which the earliest such **Claim** was first made; or
 - ii. the first date valid notice was given by the **Insureds** to the Insurer under this Policy of any **Wrongful Act** or under any prior policy of any **Wrongful Act** or any fact, circumstance, situation, event or transaction which underlies any such **Claim**.
- b. More than one **Public Relations Event** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be considered as one **Public Relations Event** which shall be subject to the **Public Relations Event** Limit applicable to the earliest such **Public Relations Event** reported to the Insurer under this Policy or under any prior policy.

2. Each Claim

Subject to the applicable **Claims** Aggregate, a separate “Each **Claim** limit” applies to each Liability Insuring Agreement in the amounts and as set forth in Item 3.B. of the Coverage Schedule in the Declarations . Such amounts are the limits of insurance for all **Damages** and **Claim Expenses** for each separate **Claim** as set forth therein.

3. All Claims in the Aggregate

The amounts set forth in the Declarations, in Item 3.B. of the Coverage Schedule, is the limit of insurance for all **Damages** and **Claim Expenses** for all **Claims** combined.

4. All Public Relations Event Expenses in the Aggregate

The amount set forth in the Declarations in Item 3.B. of the Coverage Schedule is the limit of insurance for all **Public Relations Event Expenses** for all **Public Relations Events**.

C. First Party Limits of insurance

1. Each Occurrence

Subject to the applicable **Occurrences** Aggregate Limit, a separate “Each **Occurrence** limit” applies to each First Party Insuring Agreement in the amounts and as set forth in Item 3.C. of the Coverage Schedule.

2. All Occurrences in the Aggregate

The amounts set forth in the Declarations, in Item 3.C. of the Coverage Schedule, is the limit of insurance for all **Occurrences** combined, provided however that the most the Insurer will pay in the aggregate for **Occurrences** resulting from failure of any third party service provider on whom the **Insured** relies, is the Dependent **Occurrence** Sub limit of insurance listed in the Policy Declarations, item 4.

3. All Emergency Response Fund Expenses in the Aggregate

The amount set forth in the Declarations in Item 3.C. of the Coverage Schedule is the aggregate limit of insurance for all covered expenses under Insuring Agreement II D, **Emergency Response Fund**.

D. Deductibles

1. Common Provision

The deductibles shall be uninsured. The Insurer will have no obligation to pay all or any portion of any applicable deductible. In the event more than one deductible applies to any **Claim** or to any

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Occurrence, the maximum total deductible amount applicable to such **Claim** or such **Occurrence** shall be the highest of such applicable deductibles.

2. Liability Deductibles

a. Liability Insuring Agreement Deductibles

A separate deductible applies to each Insuring Agreement in the amount and as indicated in Item 3.B. of the Coverage Schedule in the Declarations. The Insurer shall only be liable for the amount of **Damages** and **Claim Expenses** arising from each **Claim** which is in excess of the applicable deductible amounts.

b. Public Relations Event Expenses Reimbursement Deductible

The Insurer shall only be liable for reimbursement of reasonable and necessary fees, costs and expenses arising from all **Public Relations Events** in excess of the **Public Relations Event Expenses** deductible amount stated in Item 3.B. of the Coverage Schedule in the Declarations.

3. Occurrence Deductibles

A separate deductible applies to each **Occurrence** under each First Party Insuring Agreement in the amount and as specified in Item 3.C. of the Coverage Schedule in the Declarations. The Insurer shall only be liable for the amount of **First Party Loss** which is in excess of the applicable deductible amounts.

E. Coinsurance

Solely with respect to all **Loss** (excess of the applicable Deductible) in connection with any **Claim** or **Occurrence**, the **Insured Entity** shall bear uninsured and at its own risk the percentage of all such **Loss** as a Coinsurance percentage in the amount and as specified in the Declarations. This percentage shall be applied to all **Loss** on account of all such **Claims** or **Occurrences**. The Insurer's liability shall apply only to the remaining percent of all such **Loss**.

IV. LIABILITY COVERAGES - DUTY TO DEFEND AND SETTLEMENT

A. Defense

The Insurer shall have the right and duty to defend in the **Insured's** name and on the **Insured's** behalf a **Claim** even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Insurer has the right to make such investigation and conduct negotiations and enter into such settlement of any **Claim** as the Insurer deems necessary.

B. Consent to Settlement

The Insurer shall not settle any **Claim** without the prior written consent of the **Named Insured**. If however, the **Named Insured** refuses to consent to such settlement or compromise recommended by the Insurer and agreed to by the claimant, the Insurer's duty to defend shall then cease and the **Named Insured** shall thereafter at the **Named Insured's** own expense negotiate or defend such **Claim** independently of the Insurer, and the Insurer's liability shall be limited to the amount of **Damages** for which the **Claim** could have been settled, if such recommendation was consented to, and for all **Claim Expenses** incurred up to the time of such refusal.

C. Exhaustion of Limits

The Insurer shall not be obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle a **Claim** after the applicable limit of insurance has been exhausted by payment of **Damages** or **Claim Expenses**, or any combination thereof. In such case, the Insurer shall have the right to withdraw

from the further investigation, defense, payment or settlement of such **Claim** by tendering control of said investigation, defense or settlement of the **Claim** to the **Insured**.

V. COMMON EXCLUSIONS

Whether in connection with any First Party Coverage or any Liability Coverage, the Insurer shall not be liable to pay any **Loss**:

A. War

based upon, directly or indirectly arising out of, or in any way involving:

1. war, including undeclared or civil war;
2. warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents;
3. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these;

B. Interruptions

based upon, directly or indirectly arising out of, or in any way involving any:

1. **Telecommunications Services Provider** interruptions;
2. interruptions in leased, managed or hosted services provided by another including but not limited to: Application Service Providers, Managed Security Providers, hosting service providers or any similar service;
3. partial or total electrical failure including electrical power interruption, surge, brownout or blackout; or interruptions or outages to any other utilities or elements of infrastructure, including gas, water, telephone (on-line, wireless or other), cable or satellite services, unless such utilities or elements of infrastructure were under the sole operational control of the **Insured Entity**.

including (but not limited to) planned outages or reductions in service involving items identified in subsections 1. through 3. above;

C. Pollution

based upon, directly or indirectly arising out of, or in any way involving: any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**; any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; any action by or on behalf of any governmental authority, domestic or foreign, for damages arising out of the testing of, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing or assessing the effects of **Pollutants** or any nuclear reaction, radiation or contamination; or any actual or alleged **Property Damage**, or **Bodily Injury**, sickness, disease or death of any person, or financial loss to **Insured Entity**, their security holders, or their creditors resulting from any of the aforementioned matters;

D. Securities/Management Liability

based upon, directly or indirectly arising out of, or in any way involving:

1. the filing of any registration statement under the Securities Acts of 1933, or the Securities Exchange Act of 1934, any State Blue Sky Law, or any other state or local securities law; or
2. the Securities Act of 1933, the Securities and Exchange Act of 1934, rules or regulations of the Securities Exchange Commission under either or both acts, similar securities laws or regulations of state, or any laws of any state relating to any transaction arising out of, involving, or relating to the public offering of securities;
3. any breach of any duty which an **Executive** owes to a corporation or other legal entity for which such **Executive** serves or by which he is employed;

E. Claims by Governmental Agency

involving, by, on behalf of, or for the benefit of any federal, state or local government agency, whether domestic or foreign, including but not limited to the Federal Trade Commission or the Federal Communications Commission. Provided, however, this exclusion shall not apply to:

1. **Claims** under the Professional Liability Coverage grant in the Liability Coverage Part for a **Wrongful Act** (as defined with respect to the Professional Liability Coverage) committed by the **Insured** in performing **Professional Services** for a government agency which is a direct customer of the **Insured**;
2. **Privacy Regulation Proceedings**;

F. Licensing Organization

involving, by, or on behalf, of or for the benefit of any licensing organization, including but not limited to ASCAP, SESAC, or BMI;

G. ERISA or any Similar Act

based upon, directly or indirectly arising out of or in any way involving any actual or alleged violation of **ERISA or any Similar Act**;

H. Proprietary Rights

based upon, directly or indirectly arising out of, or in any way involving:

1. patent infringement; or
2. misappropriation of any trade secret or proprietary information, provided, however, that this paragraph **H.** shall not apply to:
 - i) **Electronic Theft of Intangible Property**,
 - ii) misappropriation of others' **Confidential Commercial Information** in **Insured Entity's** custody under **Network Security Liability** and **Privacy Injury Liability Coverages** and
 - iii) misappropriation of **Confidential Commercial Information** in the course of providing **Professional Services** under the **Professional Services Liability Coverage**;

I. Bodily Injury/Property Damage

based upon, directly or indirectly arising out of, or in any way involving any actual or alleged **Bodily Injury** (except for wrongful infliction of emotional distress arising out of a **Privacy Injury** or **Content Injury**) or **Property Damage**;

J. Contractual Liability

based upon, directly or indirectly arising out of, or in any way involving:

1. an **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; or
2. liability of others assumed by the **Insured** under any oral or written contract or agreement. Provided, however, that this subsection 2 shall not apply to any **Claim** under the Content Coverage. Notwithstanding the foregoing exclusion, coverage otherwise available to an **Insured** shall apply to such **Insured's** liability that exists in the absence of such oral or written contract or agreement;

K. Over-Redemption

based upon, directly or indirectly arising out of, or in any way involving **Over-Redemption**;

L. Advertising

based upon, directly or indirectly arising out of, or in any way involving:

1. the inaccurate, inadequate or incomplete description of the price of goods, products or services or failure of goods, products or services to conform with an advertised quality or performance, or the

Insured's cost guarantees, cost representations, contract price, or estimates of probable costs or cost estimates being exceeded; or

2. intentional misrepresentation in **Advertising**, false **Advertising**, unfair or deceptive business practices, provided, however, that this subsection 2 applies only where:
 - a. it is established in a final adjudication by a judge, jury or arbitrator; or
 - b. where there is an adverse admission by an **Insured**; or
 - c. where there is a finding of fact that the **Insured** committed the foregoing conduct; or
 - d. the **Insured** pleads no contest;in which event the **Insured** shall reimburse the Insurer for all **Claims Expenses**.

For purposes of determining the applicability of this exclusion, the **Wrongful Act** of a natural person who is an **Insured** shall not be imputed to any other natural person who is an **Insured**;

M. Claims by Insureds

by or on behalf of any **Insured** in any capacity provided, however that this Exclusion shall not apply to:

1. any **Claim** that is in the form of a crossclaim, third-party **Claim** or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy;
2. any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, liquidator, receiver or rehabilitator for an **Insured Entity** or any assignee of such trustee, examiner, liquidator, receiver or rehabilitator; or
3. any **Claim** that is by an **Insured Person** and alleges **Privacy Injury** resulting from the unauthorized disclosure of such **Insured Person's Nonpublic Personal Information**;

N. Owned Entity

for a **Claim** made against an **Insured** by any entity, if at the time of the **Wrongful Act** giving rise to such **Claim**:

1. any **Insured** controlled, owned, operated or managed such entity; or
2. any **Insured** was an owner, partner, director, officer or employee of such entity;

For the purpose of this exclusion, a 5% or more owner of the voting stock of a publicly held corporation or a 40% or more owner of the voting stock of a privately held corporation shall be deemed to own such entity;

O. Failure to Follow Minimum Required Practices

based upon, directly or indirectly arising out of, or in any way involving:

1. Any failure of an **Insured** to continuously implement the procedures and risk controls identified in the **Insured's** application for this Insurance and all related information submitted to the Insurer in conjunction with such application whether orally or in writing;
 2. Failure to follow (in whole or part) any Minimum Required Practices that are listed in Minimum Required Practices Endorsement; or
 3. The **Insured's** failure to meet any service levels, performance standards or metrics;
- Item 3 above shall apply only to **Insureds** whose services are required to satisfy service levels, performance standards or metrics.

This exclusion shall not apply to:

1. an **Insured Person's** negligent circumvention of controls; or
2. an **Insured Person's** intentional circumvention of controls where such circumvention was not authorized by the **Insured**;

P. Project Planning

based upon, directly or indirectly arising out of, or in any way involving project planning, including but not limited to mistakes in determining capacity needs;

Q. Inadequate Software

based upon, directly or indirectly arising out of, or in any way involving the inability to use or lack of performance of software programs:

1. due to expiration, cancellation or withdrawal;
2. that have not yet been released from their development stage;
3. that have not passed all test runs or proven successful in applicable daily operations; or
4. that result from the **Insured's** modification of software programs in violation of any software license agreement (e.g. particularly license provisions regarding modification that invalidate warranty);

R. Commingling

based upon, directly or indirectly arising out of, or in any way involving the commingling, misappropriation or misuse of funds;

S. Anti-Trust

based upon, directly or indirectly arising out of, or in any way involving any:

1. charges of price fixing, restraint of trade, monopolization or unfair trade; or
2. any actual or alleged violation of:
 - a. the Federal Trade Commission Act, the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade;
 - b. any rules or regulations promulgated under or in connection with the above statutes; or
 - c. any similar provision of any state, federal or local statutory law or common law.

Provided, however, that this exclusion does not apply to any **Content Injury Claim** or **Privacy Injury Claim**;

T. Deliberate Acts

based upon or arising out of the committing of any deliberate fraudulent or deliberate criminal act by the **Insured** or out of the commingling, misappropriation or misuse of funds if a judgment, ruling or other finding of fact in any proceeding establishes that such act, or such commingling, misappropriation or misuse was committed. If such act, or such commingling, misappropriation or misuse is so determined to have been committed, the **Insured** will reimburse the Insurer for all **Claim Expenses** paid. The Insurer will not defend any criminal act which was the subject of a criminal prosecution in which the **Insured** was found guilty, pleaded guilty, *nolo contendere* or no contest. Criminal proceedings are not covered under this Policy regardless of the allegations made against any **Insured**;

For purposes of determining the applicability of this Exclusion:

1. the facts pertaining to and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
2. only facts pertaining to and knowledge possessed by any **Executive** shall be imputed to the **Insured Entity**;

U. Theft of Video Games

based upon, directly or indirectly arising out of, or in any way involving theft of computer or video game points, earnings, awards or other intangible property;

V. Governmental Action

based upon, directly or indirectly arising out of, or in any way involving an action by any law enforcement, administrative, regulatory, or judicial body, domestic or foreign, to:

1. confiscate, ban, limit, or restrict data or software, the **Insured Entity's Network** or **Network Activity**;

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2. **Exploit** or attack in any way, by means of **Electronic Transfer** to interfere with data and software, the **Insured Entity's Network** or the **Insured Entity's** preparedness or ability to conduct **Network Activity** or **Professional Services**; or
3. intercept, monitor or analyze data or software or other information transmitted over the **Insured Entity's Network** or other **Network** to which it connects, whether under the USA Patriot Act or other law, regulation or order, whether domestic or foreign.

VI. LIABILITY COVERAGE PARTS EXCLUSIONS

A. This Insurer shall not be liable to pay any **Liability Loss**:

1. Employment Practices

based upon, directly or indirectly arising out of, or in any way involving employment practices or any discrimination, humiliation or harassment of any person or entity on any basis, including but not limited to: race, creed, color, religion, ethnic background, national origin, age, handicap, marital status, disability, sex, sexual orientation or pregnancy;

2. Media Activity

based upon, directly or indirectly arising out of, or in any **Media Activity**.

B. Exclusions applicable to Content Injury Claims

The Insurer shall not be liable to pay any **Liability Loss** in connection with any **Content Injury Claim**:

1. Contractual Rights

based upon, directly or indirectly arising out of, or in any way involving any contractual rights to the ownership of **Material**;

2. Merchandising Activities

based upon, directly or indirectly arising out of, or in any way involving any **Merchandising Activities**;

3. Production/Recall Costs

based upon, directly or indirectly arising out of, or in any way involving the **Insured's** production costs, or the **Insured's** cost of reprinting, recalling, recovering, shipping, correcting, reprocessing, restoring, repairing, replacing, or reproducing erroneous, damaged or lost data or **Material**.

VII. FIRST PARTY EXCLUSIONS

This Policy does not cover any **First Party Loss**:

A. Failure to Communicate

based upon, directly or indirectly arising out of, or in any way involving any defensive measure taken by the **Insured Entity** in response to directions from the **Insured Entity's** third party Internet Service Provider to take such defensive measures to counter an on-going, threatened or emerging threat to any **Network**;

B. Defects in Data and Software and Network

based upon, directly or indirectly arising out of, or in any way involving:

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1. any defect of design, implementation, operation, incompatibility or any other fault of data and software or the **Insured Entity's Network**, or any part thereof where such defect or fault is introduced by the **Insured Entity's**:
 - a. use of a third party product, including but not limited to software and equipment, in a manner inconsistent with the manufacturer's intended use;
 - b. modification of a third party product or integration of "components" in violation of the manufacturer's warranty or other license terms;
 - c. integration of "components" in a manner inconsistent with any of the any components' intended use as established by its manufacturer; or
 - d. failure to maintain any "component" by including and incorporating the most recent patches, updates, upgrades or new versions in accordance with **Insured Entity's** schedule and procedures for such maintenance as described in the **Insured Entity's** CNANetProtect application, or the Minimum Required Practices Endorsement (whichever is more restrictive) where the **Loss** would have been prevented by such maintenance.

As used in **b**, **c** and **d** above, the word "components" includes, but is not limited to software, systems, data or equipment developed either by the **Insured Entity** or third parties.
2. any wear, tear, or gradual deterioration of data and software or the **Insured Entity's Network**, or any part thereof;

C. Intellectual and Proprietary Rights

based upon, directly or indirectly arising out of, or in any way involving:

1. allegations of violation of any software license, or impairment of property rights to proprietary software or data;
 2. allegations of impairment of property rights to proprietary business models, or loss of competitive advantage; or
 3. **Privacy Injury**, and any other allegations of violation of an individual's rights to privacy or misuse of personal information under any law, order or regulation, whether domestic or foreign;
- or any potential future income, including but not limited to interest, dividends, or any other indirect or consequential loss associated with **1.**, **2.**, or **3.** above;

D. Extortion

based upon, directly or indirectly arising out of, or in any way involving any demands by an extortionist; Provided however that this exclusion shall not apply to Extortion Coverage;

E. Profit and Loss

where the existence of **First Party Loss** is dependent upon an inventory computation or a profit and loss computation provided, however, this exclusion shall not apply with respect to reduction of business income to the extent it is covered by the **Basic Electronic Theft** Coverage;

F. Value of Stocks

based upon, directly or indirectly arising out of, or in any way involving the value of shares, stock or securities. This exclusion does not apply to **First Party Loss** to the **Insured Entity's Securities** to the extent it is covered by the **Electronic Theft Coverage**;

G. Wireless Networks

based upon, directly or indirectly arising out of, or in any way involving **Exploits** involving wireless networks or components thereof unless:

1. all transmitters and receivers in such networks are under the direct physical control of the **Insured Entity**;
2. all information exchanged over such wireless networks is encrypted; and
3. all cryptographic keys for encryption are distributed in a manner that precludes compromise of such keys;

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4. all such wireless networks operate externally to the **Insured Entity's Network** perimeter defenses, including firewalls.

This exclusion shall not apply to:

1. an **Insured Person's** negligent circumvention of controls; or
2. an **Insured Person's** intentional circumvention of controls where such circumvention was not authorized by the **Insured**;

H. Leased Services

based upon, directly or indirectly arising out of, or in any way involving **Exploits** involving leased, managed or hosted services provided by third party **Telecommunication Service Providers** and other public network/infrastructure providers;

I. Goodwill

based upon, directly or indirectly arising out of, or in any way involving any actual or alleged adverse impact on goodwill, reputation, revenue or potential future income.

VIII. CONDITIONS

A. Territory/Payments

Coverage shall apply worldwide.

All payments made by the Insurer under this Policy shall be made in United States Dollars at the exchange rate listed in the *U.S. Wall Street Journal* on the date payment is made.

B. Assistance and Cooperation

The **Insured** shall cooperate with the Insurer and, upon the Insurer's request, shall attend hearings and trials. The **Insured** shall assist in effecting settlements, securing and giving of evidence, obtaining the attendance of witnesses and in the conduct of suits in connection with any **Claim** or **Loss** covered by the insurance afforded by this Policy. The **Insured** shall assist in the enforcement of any right of contribution or indemnity against any person or organization who or which is or may be liable to the **Insured**.

C. Action Against the Insurer

No legal action may be brought against the Insurer, unless, as a condition precedent thereto, the **Insured** shall have fully complied with all of the terms of this Policy, or until the amount of the **Insured's** obligation to pay shall have been fully determined either by judgment against the **Insured** after actual trial and appeal or by written agreement of the **Insured**, the claimant and the Insurer.

The **Insured** may not bring any legal action against the Insurer concerning this Policy:

1. until the **Insured** has fully complied with all the provisions of this Policy; and
2. such legal action is commenced within 12 months of the Insurer's rejection of the written proof of **First Party Loss** or the Insurer's rejection of a **Claim** under the **LIABILITY COVERAGES**;

Recovery is limited to the extent of the insurance afforded by this policy. No entity has the right under this Policy to include the Insurer in any action against the **Insured** to determine the **Insured's** liability, nor will the Insurer be brought into such action by the **Insured** or its representative.

D. Bankruptcy

Bankruptcy or insolvency of the **Insured** or the **Insured's** estate shall not relieve the Insurer of any of its obligations hereunder.

E. Subrogation

In the event of any payment of **Loss** under this Policy, the Insurer shall be subrogated in the amount of such payment to the **Insured's** rights of recovery therefore against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights, including assigning such rights to the Insurer upon its request. The **Insured** shall do nothing to prejudice such rights. All salvages, recoveries, and payments recovered or received after settlement of a **Loss** or **Claim**, shall be applied as if recovered or received prior to settlement of **Loss** or **Claim** and all necessary adjustments to reduce the **Loss** shall be made.

F. Loss Participation/Other Insurance

The **Insured** agrees that the Deductible identified in the Declarations shall remain uninsured. In the event that any other insurance provides coverage to the **Insured** for **Loss** within the Deductible identified in the Declarations, the Insurer has no duty to participate in or interact with that insurer.

If any **Loss** is insured under any other policies, this policy shall apply:

1. only if such **Loss** exceeds the amount payable under such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over this policy; or
2. only if and to the extent such **Loss** is not covered under such other insurance.

The Insurer will have no duty under this policy to defend any **Claim** that any other insurer has a duty to defend or pay any **Claim Expenses** that any other insurer has the duty to pay. If no other insurer defends such **Claim**, the Insurer will undertake to do so; but will then be entitled to the **Insured's** rights against all those other insurers.

Nothing contained in this policy shall be construed to make it subject to the terms, conditions and limitations of any other insurance.

G. Cancellation/Nonrenewal

This Policy may be canceled by the **Named Insured** by surrender of this Policy to the Insurer or by giving written notice to the Insurer stating when thereafter such cancellation shall be effective. This Policy may also be canceled by the Insurer by mailing to the **Named Insured** by registered, certified or other first class mail, at the **Named Insured's** address specified in Item 1 of the Declarations, written notice stating when, not less than 30 days thereafter (or 10 days thereafter when cancellation is due to non-payment of premium), the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and the Policy shall terminate at the date and hour specified in such notice. If this Policy is canceled by the **Named Insured**, the Insurer shall retain the customary short rate proportion of the premium hereon. If the Insurer cancels this Policy, the Insurer shall retain the pro-rata proportion of the premium hereon.

The Insurer may non-renew this Policy by written notice to the **Named Insured** at the address last known to the Insurer. The Insurer will provide written notice at least 30 days before the non-renewal is to be effective.

H. Changes

Notice to or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or prohibit the Insurer from asserting any right under the provisions of this Policy, nor shall the terms of this Policy be waived or changed except by written endorsement issued to form a part of this Policy.

I. Application

1. The **Insureds** represent and acknowledge that the statements contained on the Declarations and in the **Application**, and any materials submitted or required to be submitted therewith (all of which shall be maintained on file by the Insurer and be deemed attached to and incorporated into this Policy as if physically attached), are the **Insured's** representations, are true and: (i) are the basis of this Policy

and are to be considered as incorporated into and constituting a part of this Policy; and (ii) shall be deemed material to the acceptance of this risk or the hazard assumed by the Insurer under this Policy. This Policy is issued in reliance upon the truth of such representations.

2. This Policy shall be null and void if the **Application** contains any misrepresentation or omission:
 - a. made with the intent to deceive, or
 - b. which materially affects either the acceptance of the risk or the hazard assumed by the Insurer under the Policy.

J. Coverage for New Subsidiaries

1. If, after the Effective Date of this Policy, the **Named Insured** (i) creates or acquires an entity, or (ii) merges with another entity such that the **Named Insured** is the surviving entity, then such entity and any of its **Executives** or **Employees** who otherwise would thereby become **Insureds** shall be covered under this Policy, subject to its terms and conditions, only if:
 - a. the revenue of such entity as reflected on its most recent audited consolidated financial statement is less than 10% of the total revenue of the **Named Insured** as of the date of the **Insured Entity's** most recent audited consolidated financial statement prior to such transaction; or
 - b. other than as described in paragraph a. immediately above, the Insurer, at its sole option upon submission of such information as the Insurer may require, and payment of any additional premium and/or amendment of the provisions of the Policy, agrees in writing to provide coverage for such entity, its **Executives** or **Employees**.
2. There shall be no coverage under this Policy for any act or omission by, or **Loss** due to or sustained by, such created or acquired entity, or by any persons considered to be **Insureds** pursuant to paragraph a. above, where such act or omission or **Loss** occurred in whole or in part before the effective date of such acquisition or merger, or for any act or omission or **Loss** occurring on or after such date which, together with any acts or omissions or **Loss** occurring before such date, would be considered causally connected by reason of any common fact, circumstance, situation, transaction or event.

K. Coordination Among Insuring Agreements

Coverage exists only for those Insuring Agreements designated as included in Item 3 of the Declarations and attached to this Policy. Each contains terms which limit coverage to the scope of the coverage grant for that Insuring Agreement. Should two or more Insuring Agreements apply to the same **Claim** the Insurer will not pay more than the actual loss or the highest available remaining limit of insurance under any one Liability Coverage, whichever is less. Should two or more First Party Insuring Agreements apply to the same **Occurrence**; the Insurer will not pay more than the lowest applicable limit of insurance. In no instance, shall the Insurer be required to pay more than the Policy Aggregate identified in the Declarations.

L. Change of Status of Insured Entity

1. **Takeover of Named Insured**

In the event of a **Takeover** of the **Named Insured**, coverage under this Policy shall continue until this Policy is otherwise terminated, but only with respect to acts or omissions occurring before the effective date of the **Takeover**, unless the Insurer is notified in writing of the **Takeover** prior to the **Takeover** effective date and agrees in writing to provide coverage for such acts or omissions occurring on or after such effective date, and **Named Insured** accepts any special terms, conditions, exclusions or additional premium charge required by the Insurer.
2. **Cessation of Subsidiary**

If any organization ceases to be a **Subsidiary** there shall be no coverage under this Policy for any act or omission by such organization, or any **Executive** or **Employee** of such organization, occurring after the date such organization ceased to be a **Subsidiary**.

M. Notice of Material Change

The **Named Insured** agrees to notify the Insurer as soon as possible, but in no event later than 30 days after a **Material change**, of any such **Material change** to the **Insured Entity's** business or **Network**. This includes providing the Insurer all details of any such changes to the **Insured Entity's** business or **Network**. The Insurer reserves the right to re-underwrite this Policy and re-price premiums based on these changes. In the event that the **Named Insured** fails to notify the Insurer of a **Material Change** to the **Insured Entity's** business or **Network** and a related **Loss** or **Claim** results from that **Material Change**, the Insurer reserves the right to deny payment of any such **Loss** or refuse to defend any such **Claim**.

N. Company Authorization

The **Insureds** agree that **Named Insured** will act on behalf of the **Insureds** with respect to giving of all notice to the Insurer, the receipt of notices from the Insurer, the payment of the premiums, the receipt of any return premiums that may become due under this Policy, and the acceptance of endorsements.

O. Assignment

Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed to this Policy.

P. Entire Agreement

The **Named Insured** and all **Insureds** agree that this Policy, including the **Application**, any materials submitted or required to be submitted therewith, and any written endorsement attached, constitute the entire contract existing between them and the Insurer or any of its agents relating to this insurance.

Q. Minimum Required Practices

The **Insured** warrants, as a condition precedent to coverage under this Policy, that it shall:

1. follow the Minimum Required Practices that are listed in the Minimum Required Practices endorsement as a condition of coverage under this policy, and
2. maintain all risk controls identified in the **Insured's Application** and any supplemental information provided by the **Insured** in conjunction with **Insured's Application** for this Policy.

R. Examination of Your Books and Records

The **Insured** agrees to allow the Insurer to examine and audit the **Insured Entity's** books and records that relate to this Policy, at any time during the **Policy Period** and up to 3 years thereafter.

S. Inspections and Surveys

The Insurer has the right but is not obligated to do the following, on its own or through its independent contractors:

1. make remote electronic scan inspections of all or any part of the **Insured Entity's Network** or of the **Network** of any entities newly acquired by the **Insured** at any time;
2. give the **Insured** reports on the conditions the Insurer finds;
3. recommend changes to the **Insured Entity's Network**; or
4. conduct loss control and prevention activity.

Any inspections, surveys, reports, or recommendations relate only to insurability and the premiums to be charged. The Insurer, by such inspections, surveys, reports, or recommendations, does not warrant that the **Insured Entity's Network** is safe or in compliance with laws, regulations, codes or standards, domestic or foreign. This condition applies not only to the Insurer, but also to any rating, advisory, rate service, or similar organization which makes insurance inspections, surveys, reports or recommendations.

T. Estates, Legal Representatives and Domestic Partners

The estates, heirs, legal representatives, assigns and any **Domestic Partner** of an **Insured Person** shall be considered **Insured Persons** under this Policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, assigns and **Domestic Partners** only for a **Claim** arising solely out of their status as such and, in the case of a **Domestic Partner**, where such **Claim** seeks **Damages** from marital community property, jointly held property or property transferred from such **Insured Person** to the **Domestic Partner**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, assign, **Domestic Partner**. All terms and conditions of this Policy, including without limitation the retention, applicable to **Damages** or **Claim Expenses** incurred by the **Insured Person** shall also apply to **Damages** and **Claim Expenses** incurred by such estates, heirs, legal representatives, assigns and **Domestic Partners**.

U. Notice of Claims or Potential Claims

1. If, during the **Policy Period** or **Extended Reporting Period**, if applicable, any **Claim** is first made against the **Insureds**, the **Insureds** shall, as a condition precedent to the obligations of the Insurer under any Liability Coverage, give written notice to the Insurer as soon as possible.
2. If, during the **Policy Period**, the **Insureds** first become aware of a specific act or omission which may reasonably give rise to a future **Claim** and during the **Policy Period** give written notice to the Insurer of:
 - a. the names of any potential claimants and a description of the act or omission which forms the basis of the potential **Claim**,
 - b. the identity of the specific **Insureds** allegedly responsible for such specific act or omission,
 - c. the consequences which have resulted or may result from such specific act or omission,
 - d. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific act or omission, and
 - e. the circumstances by which the **Insureds** first became aware of such act or omission,then any **Claim** otherwise covered pursuant to **Liability Coverage** which is subsequently made and which arises out of such act or omission shall be deemed to have been first made against the **Insured** at the time such written notice was received by the Insurer.
3. Except as provided in 2. above, a **Claim** shall be deemed made on the earlier of:
 - a. the date of service upon or other receipt by any **Insured** of a complaint, indictment or similar document against the **Insured** in such proceeding or arbitration;
 - b. the **Insured's** receipt of notice of such written demand.
4. Any notices required to be given to the **Named Insured** shall be provided to the **Named Insured** at the last known address and to its insurance agent or broker. The mailing by certified mail of such notice shall be sufficient.
5. Any notices required to be sent to the Insurer shall be mailed to the Insurer at the address specified in Item 6 of the Declarations, and shall be effective upon receipt.

V. Notice of Occurrence

If an **Occurrence** takes place or is reasonably likely to take place, the **Insured Entity** must do the following:

1. provide notice to the Insurer by telephone as soon as practicable;
2. such notice should include particular details as to the nature of the **Occurrence**; and
3. immediately forward to the Insurer all information the **Insured Entity** possesses or receives in connection with the **Occurrence**.

W. Proof, Valuation and Payment of First Party Loss

The **Named Insured** must submit a written proof of **First Party Loss** providing details relating to the particulars and composition of the amounts claimed in the event of an **Occurrence**. The proof of loss shall be submitted with reasonable promptness, but in no event later than 6 months after the date initial notice of the **Occurrence** was submitted to the Insurer. The amount of **First Party Loss** shall be payable

by the Insurer, to the **Named Insured**, within 60 days after the Insurer's formal agreement to the amounts claimed in the proof of loss.

X. Economic and Trade Sanctions

This policy does not provide coverage for **Insureds**, transactions or that part of **Damages** or **Claim Expenses** that is uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

Y. Arbitration

All disputes or differences between the **Insured** and the Insurer which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of **damages** or **claim expenses**, shall be submitted to the alternative dispute resolution ("**ADR**") process set forth in this Section.

Either the Insurer or an **Insured** may elect the type of **ADR** process discussed below; provided, however, that such **Insured** shall have the right to reject the Insurer's choice of the type of **ADR** process at any time prior to its commencement, in which case such **Insured's** choice of **ADR** process shall control.

The Insurer and each and every **Insured** agree that there shall be two choices of **ADR** process:

1. non-binding mediation administered by the American Arbitration Association, in which the Insurer and any such **Insured** shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing Commercial Mediation Rules; or
2. arbitration submitted to the American Arbitration Association in accordance with its then-prevailing Commercial Arbitration Rules, in which the arbitration panel shall consist of three disinterested individuals.

In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. The mediator or arbitrators shall also give due consideration to the general principles of the law of the state where the **Named Insured** is incorporated in the construction or interpretation of the provisions of this policy. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators' award shall not include attorney's fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least 60 days shall have elapsed from the date of the termination of the mediation. In all events, each party shall share equally the expenses of the **ADR** process.

Either choice of **ADR** process may be commenced in New York or Illinois or in the state indicated in the Declarations as the mailing address for the **Named Insured**.

IX. LIABILITY COVERAGES EXTENDED REPORTING PERIODS

As used herein, **Extended Reporting Period** means the period of time after the end of the **Policy Period** for reporting **Claims** to the Insurer that are made against **Insureds** during the applicable **Extended Reporting Period** by reason of a **Wrongful Act** that happened subsequent to the **Prior Acts Date** and prior to the end of the **policy period** and is otherwise covered by this policy. It is understood and agreed that the **Extended Reporting Period** shall not be construed to be a new policy and any **Claim** submitted during such period shall otherwise be governed by this policy.

A. Automatic Extended Reporting Period

If the **Named Insured** or the Insurer cancels or non-renews any **Liability Coverage**, the Insurer will provide the **Insureds** with an automatic, non-cancelable 60 day **Extended Reporting Period** starting at

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the termination of the **Policy Period** if there is no subsequent policy purchased by the **Named Insured** or for the benefit of the **Named Insured**.

B. Optional Extended Reporting Period

If the **Named Insured** or the Insurer cancels or non-renews any **Liability Coverage**, the **Named Insured** shall have the right to purchase, upon payment of an additional premium, an optional **Extended Reporting Period** to commence on the effective date of such cancellation or non-renewal. The additional premium and effective dates for the optional **Extended Reporting Period** shall be as set forth in the **Extended Reporting Period** Endorsement.

- C. As a condition precedent to the right to purchase the optional **Extended Reporting Period**, the total premium for this Policy must have been paid. The right to purchase the optional **Extended Reporting Period** shall end unless the Insurer receives written notice and full payment of the premium for such period within 30 days after the end of the **Policy Period**.
- D. If the optional **Extended Reporting Period** is purchased, the entire premium shall be deemed fully earned at its commencement without any obligation by the Insurer to return any portion thereof.
- E. There is no separate or additional Limit of insurance for the Automatic or Optional **Extended Reporting Period**.
- F. The first 60 days of the Optional **Extended Reporting Period**, if it becomes effective, shall run concurrently with the Automatic **Extended Reporting Period**.

X. DEFINITIONS

The following defined words shall have the same meaning throughout this **Policy**, whether expressed in the singular or the plural. For purposes of this Policy:

Advertising means **Material** that is broadcast or published on the **Insured Entity's** behalf or for others.

Application means all signed applications for this Policy and for any policy in an uninterrupted series of policies issued by the Insurer or any affiliate of the Insurer of which this Policy is a renewal or replacement. **Application** includes any materials submitted or required to be submitted therewith. An affiliate of the Insurer means an entity controlling, controlled by or under common control with the Insurer.

Bodily Injury means injury to the body, sickness, or disease sustained by a person, and, where resulting from such injuries, loss of consortium, emotional distress, mental anguish, mental injury, shock, humiliation, or death.

Claim means:

- A. a written demand for monetary damages or non-monetary relief (including demands for injunctive or declaratory relief); or
- B. a civil adjudicatory proceeding or arbitration against an **Insured**, including any appeal therefrom alleging a **wrongful act**.

However, a **Claim** does not include any criminal proceeding or investigation or any regulatory proceeding or investigation except if the regulatory proceeding is a **Privacy Regulation Proceeding**

Claim Expenses means:

- A. fees charged by attorneys designated by the Insurer or by the **Insured Entity** with the Insurer's advance written consent; and
- B. all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim** if incurred by the Insurer, including premiums for any appeal bond, attachment bond or similar bond, but without any obligation of the Insurer to apply for or furnish any such bond.

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However, **Claim Expenses** do not include salaries, wages fees, overhead or benefit expenses associated with the **Executives, Employees** or agents of the **Insured Entity** or of the Insurer; **Claim Expenses** will be paid first and such payment will reduce the Limit of insurance available to pay **Damages**.

Commerce Operations means the **Insured Entity's** income producing activities.

Covered Intangible Property means intangible property listed on the CIP schedule.

Computer Virus means unauthorized computer code that is designed and intended to transmit, infect and propagate itself over one or more **Networks**, and cause:

- A. computer code or programs to perform in an unintended manner;
- B. the deletion or corruption of electronic data or software; or
- C. the disruption or suspension of a **Network**.

Confidential Commercial Information means information in a durable and persistent form and that has been provided to the **Insured Entity** by another, or created by the **Insured Entity** for another where such information is subject to the terms of a confidentiality agreement obligating the **Insured Entity** to protect such information on behalf of another.

Content Injury means:

- A. publication or an utterance in violation of an individual's rights of publicity, including commercial appropriation of name, persona or likeness;
- B. any form of defamation or other tort related to an utterance or publication which disparages or harms the character, reputation or feelings of any person or organization, including libel, slander, product disparagement, trade libel, negligent or intentional infliction of emotional distress, outrage or outrageous conduct;
- C. infringement of copyright, title, slogan, logo, trademark, trade name, trade dress, service mark or service name; or
- D. unfair competition or unfair trade practices based solely upon the same facts as, and alleged in conjunction with, subparagraph C.above, including but not limited to dilution, confusion, deceptive or unfair trade practices, civil actions for consumer fraud, false, disruptive or misleading **advertising** or misrepresentation in **advertising**.

Content Injury Claim means a **Claim** arising out of **Content Injury**.

Damages means civil awards, settlements and judgments (including any award of pre-judgment or post-judgment interest) which the **Insureds** are legally obligated to pay as a result of a covered **Claim**. **Damages** shall not include:

- A. the return or restitution of the **Insured Entity's** profits, royalties, fees, expenses, taxes or costs;
- B. criminal, civil, administrative or regulatory relief, fines or penalties;
- C. any amounts for which there is no legal recourse against the **Insureds**, including those which the **Insureds** are not legally obligated to pay;
- D. injunctive or declaratory relief;
- E. matters which are uninsurable as a matter of law; or
- F. plaintiff's attorney fees or expenses associated with items A. through E. above.

Notwithstanding the foregoing paragraph, **Damages** shall include (subject to this Policy's other terms, conditions and limitations, including but not limited to exclusions relating to profit or advantage, deliberate fraud or deliberate criminal acts), punitive, exemplary and multiplied damages. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages. As used herein, "applicable law" means the law of any of the following jurisdictions:

- 1. where the **Claim** seeking such **Damages** is brought or where such **Damages** are awarded or imposed;
- 2. where the **Wrongful Act** giving rise to the **Claim** occurred;
- 3. where the **Insureds** subject to such **Damages** are incorporated, have their principal place of business or reside; or
- 4. where the Insurer is incorporated or has its principal place of business.

Denial of Electronic Access means the unscheduled and unplanned inability of an authorized third party user:

1. to gain access to an **Insured Entity's Network** to communicate with the **Insured Entity**; or
2. to use the **Insured Entity's Network** to communicate with other computers or computer networks;

However, **Denial of Electronic Access** does not include any Internet Service Provider interruptions, whether scheduled or not.

Denial of Service Attack means an attack executed over one or more **Networks** or the internet, which attack is specifically designed and intended to disrupt the operation of one or more **Networks** and render the **Networks** inaccessible to authorized users.

Domestic Partner means any spouse and any person qualifying as a **Domestic Partner** under any federal, state or local laws or under the **Insured Entity's** employee benefit plans.

E-Commerce Activity means the following activities performed by the **Insured Entity**:

- A. design, maintenance, and hosting of the **Insured Entity's** web sites;
- B. the provision of electronic information or services through the **Insured Entity's** web sites;
- C. the sale of products through the **Insured Entity's** web sites;
- D. receiving electronic information from users who are not **Insureds** through an **Insured Entity's** web site, including through subscriptions or registrations to use an **Insured Entity's** web site, chat rooms, e-mail services, or electronic bulletin boards.

Electronic Infection means the transmission of a **Computer Virus** into a **Network**.

Electronic Information Damage means:

- A. the unauthorized copying, destruction, addition, deletion, alteration or theft of any information (other than software) resident on the **Network** of an **Insured Entity** or any third party; or
- B. the unauthorized use, alteration or destruction of any software resident on the **Network** of an **Insured** or any third party.

Electronic Material means text, pictures, graphics, sound or other expression that exist solely in a format that can be stored and transmitted by computing devices. **Electronic Material** does not include any text, pictures, graphics, sound or other expression that exist in a printout or other tangible format or display, or that are transmitted via television, radio, or other media, whether broadcast, cable, via satellite or otherwise.

Electronic Media Activity means the following activities performed by an **Insured**:

- A. gathering, acquiring, obtaining, researching, developing, and preparing **Electronic Material** for publication in any computer readable form including over the internet or a **Network** on CD ROM, Magnetic disk, tape or other form suitable for processing by computer or a **Network**;
- B. the dissemination or utterance of **Electronic Material** in any computer readable form including over the internet or a **Network**, on CD ROM, Magnetic disk, tape or other form suitable for processing by computer or a **Network**;
- C. the storage of information in the **Insured's Network** but solely to the extent such storage of information is alleged to be a violation of the rights of privacy of an individual.

Electronic Theft means:

A. Under the First Party Coverage, Basic Electronic Theft Coverage:

1. a disbursement or transfer of the **Insured Entity's Money** or **Securities** to a person or entity that is not authorized to receive them;
2. delivery of the **Insured Entity's Goods** to a person or entity that is not authorized to receive them.

B. Under First Party Coverage, Electronic Theft of Services

delivery of the **Insured Entity Services** to a person or entity that is not authorized to receive them;

C. Under First Party Coverage, Electronic Theft of Intangible Property:

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1. the conveyance or transfer of the **Insured Entity's Covered Intangible Property** to a person or entity that is not authorized to receive it,
2. the duplication and retention of copies of the **Insured Entity's Covered Intangible Property** by a person or entity that is not authorized to duplicate or retain copies of it;

including all continuations or repetitions of such events, caused solely and directly by the transmission of information through or to the **Insured Entity's Network** and which is created or caused by an **External Source**.

Electronic Transfer means the transmission of information between computing devices, by wires or by wireless means.

Employee means a person (other than an **Executive**) whose work or service is controlled and directed by an **Insured Entity**. **Employee** includes a person leased to the **Insured Entity** by an employment leasing agency. **Employee** does not include independent contractors.

ERISA or any Similar Act means the Employee Retirement Income Security Act of 1974, as amended, or any similar common, statutory or other law of the United States, Canada or their states, territories or provinces or any other jurisdiction anywhere in the world.

Executive means any of an **Insured Entity's** duly elected or appointed directors, officers, managing partners, general partners or trustees.

Exploit means **Unauthorized Access**, **Electronic Infection** or a **Denial of Service Attack** that results in **Network Impairment**.

External Source means a person or persons who are not the **Insured Entity's Employees, Executives**, or independent contractors at the time of an **Exploit** or **Electronic Theft**. The **Insured Entity's** former **Employees, Executives**, or independent contractors shall be deemed to be an **External Source** only with respect to acts they commit after they have been separated by more than 60 days.

Extra Expense means any reasonable and necessary expenses, in excess of the **Insured Entity's** normal operating expenses, that the **Insured Entity** incurs during the **Period of Restoration** associated with restoring and/or resuming **Commerce Operations**, including;

- A. reasonable expense incurred to minimize the interruption of **Commerce Operations** not covered elsewhere in this Policy; and,
- B. reasonable expense incurred to resume **Commerce Operations** on a temporary basis, including those associated with securing temporary third party Internet Service Provider services, temporary website and/or e-mail hosting services, rental of temporary **Networks**, other temporary equipment or service contracts;

to the extent it reduces the amount of loss that otherwise would have been payable under the First Party Coverages.

Failure of Third Party System means disruption or degradation of another's **Network**.

First Party Loss means all amounts which the Insurer is obligated to pay as set forth in each First Party Insuring Agreement.

Goods means tangible physical property that:

- A. has economic value;
- B. is held by the **Insured Entity** in its inventory for sale;
- C. is shipped by the **Insured Entity** to its customers via land, sea or air; and,
- D. is sold or exchanged by the **Insured Entity** in trade or commerce.

However, **Goods** do not include **Money** or **Securities**.

Insured means the **Named Insured**, its **Subsidiaries** and **Insured Persons**.

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Insured Entity means the **Named Insured** and its **Subsidiaries**.

Insured Persons means:

- A. any person who is or becomes an **Executive** or **Employee** of the **Insured Entity** but solely for a **Wrongful Act** performed while such person was acting on behalf of the **Insured Entity**; and
- B. any person who was affiliated with the **Insured Entity** as an **Executive** or **Employee**, but solely for a **Wrongful Act** performed during the time of such affiliation while acting on behalf of the **Insured Entity**.

Intangible Property means that property which is identified as **Intangible Property** in the **Electronic Theft of Intangible Property** Endorsement to the Policy.

Interrelated Wrongful Acts means all **Wrongful Acts** that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.

Liability Loss means sum of all **Damages** and all **Claim Expenses**.

Loss means **Liability Loss** and **First Party Loss**.

Material means text, pictures, graphics, sound or other expression in any format, whether electronic otherwise.

Material Change means:

- A. an **Insured Entity's** entry into a business or a change in the nature of an **Insured Entity's** existing business that is substantially different from such **Insured Entity's** business at the time this Policy was underwritten; or
- B. a change in any of the items for which "Material Change" is checked, in the Minimum Required Practices Endorsements

Media Activity means gathering, acquiring, obtaining, researching, developing, preparing, filming, videotaping and recording of **Material** or the dissemination or utterance of **Material** through any medium except that **Media Activity** does not include **Electronic Media Activity**.

Merchandising Activities means manufacture, production advertising, promotion, sale or distribution of tangible physical items which contain or display others' intellectual property without the expressed authorization of the owner of such intellectual property.

Money means the following, but only to the extent that they exist solely in a digital or electronic format:

- A. cash, currency, bank notes, or other negotiable instruments in current use and having face value;
- B. travelers checks, registered checks and money orders held for sale to the public;
- C. a record of credit in the **Insured Entity's** account held by another; and
- D. a record of an amount owed to the **Insured Entity** by another.

However, **Money** does not include **Securities** or **Intangible Property** or any item identified in subsections **A.** through **C.** above which do not exist solely in a digital or electronic format.

Named Insured means the entity specified in Item 1 of the Declarations.

Network means a party's local or wide area network owned or operated by or on behalf of or for the benefit of that party, provided, however, **Network** shall not include the internet, telephone company networks, or other public infrastructure network.

Network Activity means:

- A. use of the **Insured Entity's Network** to:
 - 1. send and receive e-mail;
 - 2. send and receive digital documents and/or data;
 - 3. host and/or publish the **Insured Entity's** websites; or

4. browse the World Wide Web;

B. the Insured Entity's:

1. publishing, editing, maintaining, or interacting with its website,
2. use of its internal computer network or provision of access to its **Network**,
3. retrieval, storage, saving, processing and/or distributing its data and software; or,
4. reliance on the accuracy, validity, source authenticity or integrity of its data and software.

However, **Network Activity** does not include the **Insured's** use of telephone systems to communicate person-to-person by voice or to communicate from facsimile machine to facsimile machine, unless such systems are directly and permanently integrated into the same **Network** being used for **A.** and **B.** above.

Network Extortion means an incident, or series of related incidents occurring during the **Policy Period** where an **Insured Entity** has been credibly threatened or has received an extortion demand, and believes there is imminent and probable danger of:

- A.** loss of or damage to its **Network** or
- B.** loss of its **Money, Securities or Intangible Property**
- C.** loss of an **Insured Entity's** confidential information or the confidential information of others in its care or
- D.** defacement of the **Insured Entity's** website.

Network Extortion Expense means all reasonable and necessary expenses incurred by the **Insured Entity**:

- A.** in order to protect **Insured Entity's Money or Securities or Intangible Property** from loss, including payment of monies demanded by an extortionist;
- B.** in order to avoid loss of or damage to **Insured Entity's Network** in response to a **Network Extortion** including payment of monies demanded by an extortionist,

Provided, however that **Network Extortion Expense** shall not include any **Loss** based upon, directly or indirectly arising out of, or in any way involving any demands by an extortionist other than demands for money in exchange for:

1. the restoration or return of **Insured Entity's Money, Securities, Goods, Services, or Intangible Property**; or
2. the restoration of **Insured Entity's Network**; or
3. the restoration of any defaced portions of the **Insured Entity's** web site; or
4. not carrying out illegal threats made directly or indirectly, to impair or destroy **Insured Entity's Network** by an **Exploit** perpetrated by means of an **Electronic Transfer** or ;
5. not publicizing that **Insured Entity's Network** will be or has been impaired or destroyed by an **Exploit** perpetrated by means of an **Electronic Transfer**; or
6. not disclosing the **Insured Entity's** confidential information to unauthorized recipients.

Network Impairment means disruption or damage to the **Insured's Network** causing that network to be impaired to such an extent that the **Insured** is substantially unable to conduct one or more activities defined as **Network Activity**.

Network Security Claim means any **Claim** arising out of :

- A. Denial of Electronic Access;**
- B. Failure of Third Party System;** or
- C. Electronic Information Damage.**

Nonpublic Personal Information means information not available to the general public from which an individual may be identified, including without limitation, an individual's name, address, telephone number, social security number, account relationships, account numbers, account balances, and account histories.

Occurrence means:

- A.** a **Network Extortion** under the **FIRST PARTY INSURING AGREEMENTS A, Network Extortion**;
- B.** an **Exploit** under the **FIRST PARTY INSURING AGREEMENTS B, Loss of or Damage to Insured Entity's Network**;
- C.** a **Network Impairment** resulting from an **Exploit** under the **FIRST PARTY INSURING AGREEMENTS C, Business Interruption and Extra Expense**;

- D. an **Exploit** under the **FIRST PARTY INSURING AGREEMENTS D, Emergency Response Fund**;
- E. an **Electronic Theft** under THE **FIRST PARTY INSURING AGREEMENTS E, F and G, Basic Electronic Theft, Electronic Theft of Services and Electronic Theft of Intangible Property**.

Over-redemption means price discounts, prizes, awards, coupons or any other valuable consideration given in excess of the total contracted or expected amount.

Period of Restoration means the period of time that:

- A. Begins with the date and time that **Commerce Operations** have first been interrupted by a **Network Impairment** and after application of the Business Interruption Waiting Period Deductible, as specified in the Declarations; and
- B. Ends with the earlier of:
 - 1. the date and time **Commerce Operations** have been restored to substantially the level of operation that had existed prior to the **Network Impairment**; or
 - 2. one hundred and twenty hours from the time that **Commerce Operations** were first interrupted by such **Network Impairment**.

The Business Interruption Waiting Period Deductible specified above represents the number of hours the **Insured Entity's Commerce Operations** are interrupted before the Insurer is first obligated to pay for loss (other than **Extra Expense**) covered by **FIRST PARTY INSURING AGREEMENTS C, Business Interruption and Extra Expense**. This Business Interruption Waiting Period Deductible incepts immediately following the interruption of the **Insured Entity's Commerce Operations**.

Privacy Event means any situation which in the reasonable opinion of an **Executive** did cause or is reasonably likely to result in the disclosure of **Nonpublic Personal Information**.

Privacy Injury means:

- A. any act or omission with respect to **Nonpublic Personal Information**:
 - 1. in violation of an individual's right of privacy, including violation of: any federal, state, foreign or other law, statute or regulation governing the confidentiality, integrity or accessibility of **Nonpublic Personal Information** such as the Health Insurance Portability and Accountability Act of 1996, Gramm-Leach-Bliley Act, Children's Online Privacy Protection Act, or the EU Data Protection Act; or
 - 2. in violation of any federal, state or other law or regulation, whether domestic or foreign, prohibiting unfair methods of competition, unfair or deceptive trade practices, or consumer fraud.
- B. failure of the **Insured Entity** to prevent **Unauthorized Access** resulting in:
 - 1. distribution of unsolicited content including using "pop-ups" or other ad-ware without written permission of the recipient of such content;
 - 2. interfering with the use of a **Network** by detaining or directing an individual at an undesired or unintended internet site by hijacking communications, redirecting internet navigation to unintended web sites, or other similar techniques; or
 - 3. distributing or installing software or other executable files on others' computers or **Networks** without written permission;.
- C. failure of **Insured Entity** to prevent unauthorized access to, unauthorized disclosure of, or unauthorized use of **Confidential Commercial Information**;
- D. failure of **Insured Entity** to provide notice of potential disclosure of **Nonpublic Personal Information** or **Confidential Commercial Information** in violation of a **Security Breach Notice Law**.

Provided however, that **A.** through **D.** above shall specifically exclude information in spoken form or conveyed via telephone or other means in which no record of the information, its transmission or its source or recipient remains after it is conveyed.

Privacy Injury Claim means any **Claim** (other than a **Privacy Regulation Proceeding**) arising out of **Privacy Injury**.

Privacy Regulation Proceeding means a civil, administrative or regulatory proceeding against an **Insured** by a federal, state or foreign governmental authority alleging violation of any law referenced under the definition of **Privacy Injury** or a violation of a **Security Breach Notice Law**.

Property Damage means:

- A. physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- B. loss of use of tangible property that is not physically damaged which is caused by an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Tangible property does not include electronic data. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

Prior Acts Date means the date specified as such in Item 3 of the Declarations, on or after which a **Wrongful Act** must have been committed.

Policy Period means the period of time from the inception date to the expiration date specified in Item 2 of the Declarations, or any earlier cancellation date.

Pollutants means any substance exhibiting hazardous characteristics as is or may be defined or identified on any list of hazardous substances issued by the United States Environmental Protection Agency or any state, local or foreign counterpart. **Pollutants** also means, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed), as well as any air emission, odor, waste water, oil, oil products, infectious or medical waste, asbestos, asbestos products or any noise.

Professional Services means those services specified in the attached "Professional Services Endorsements".

Professional Services Claim means any **Claim** arising out of a **Wrongful Act** in the performance of **Professional Services**.

Public Relations Event means any situation which in the reasonable opinion of an **Executive** did cause or is reasonably likely to cause economic injury to the **Insured Entity**. **Public Relations Event** includes a **Privacy Event**.

Public Relations Event Expenses means all reasonable and necessary fees, costs and expenses incurred by the **Insured Entity** with the Insurer's prior written consent, in connection with such **Public Relations Event**.

Related Claims means all **Claims** arising out of a single **Wrongful Act** or **Interrelated Wrongful Acts**.

Securities means negotiable and non-negotiable instruments or contracts, including tokens, tickets, revenue and other stamps in current use, notes, stock certificates, bonds, debentures, warrants, letters of credit, warehouse receipts, negotiable bills of lading, motor vehicle title as well as evidences of debt issued in connection with credit or charge cards which are not issued by the **Insured Entity**, including the digital or electronic equivalents of all of the above.

Security Breach Notice Law means any statute or regulation that requires an entity storing **Nonpublic Personal Information** on its **Network** to provide notice to specified individuals of any actual or potential **unauthorized access** with respect to such **Nonpublic Personal Information**, including Sections 1789.29 and 1798.82 – 1798.84 of the California Civil Code (formerly S.B. 1386).

Services means those services of the **Insured Entity** as listed in the **Electronic Theft Insured Entity Services** Endorsement.

Subsidiary means any entity in which and so long as more than 50% of the voting stock is owned by the **Named Insured**, either directly or indirectly:

- A. on or before the effective date of this Policy; or

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- B. after the Effective Date of this Policy by reason of being created or acquired by the **Named Insured** after such date, if and to the extent coverage with respect to the entity is afforded pursuant to Section VIII J; including any such entity as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.

Takeover means:

- A. the acquisition by another entity or person, or group of entities or persons acting in concert, of (i) the ownership or control of voting stock of the **Named Insured** resulting in the ownership or control of more than 50% of the voting stock of the **Named Insured** or (ii) assets of the **Named Insured** resulting in the ownership of more than 50% of the total consolidated assets of the **Named Insured** as of the date of the **Named Insured's** most recent audited consolidated financial statement prior to such acquisition;
- B. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity; or
- C. the consolidation of the **Named Insured** with another entity.

Telecommunications Services Provider means a party's telephone company, Internet Service Provider or equivalent telecommunications service provider.

Third Party Custodian means any third party to whom the **Insured Entity** entrusts **non-public personal information** and with whom the **Insured Entity** has a Business Associate Agreement, as required under the Health Insurance Portability Accessibility Act or a substantially equivalent agreement required by any other similar privacy law

Unauthorized Access means any accessing of the **Insured Entity's Network** or information residing on the **Insured Entity's Network** by unauthorized persons or by authorized persons accessing or using **Insured Entity's Network** or information thereupon in an unauthorized manner. **Unauthorized Access** also includes theft from an **Insured Entity** of any information storage device used by **Insured Entity** to:

- A. store and retrieve information on its **Network**; or
- B. transport **Insured Entity's** information between **Insured Entity** and authorized recipients.

Wrongful Act means:

- A. With respect to insuring agreement 1, any **Content Injury** actually or allegedly committed by any **Insured** in the performance of **Electronic Media Activity**.
- B. With respect to insuring agreement 2,
 - 1. any **Privacy Injury** committed by an **Insured**, and
 - 2. any **Privacy Injury** committed by a **Third Party Custodian**, provided however that **Privacy Injury Claims** related to this item 2. shall be subject to the **Third Party Custodian Privacy Injury** sub limit in the amount and as specified in the declarations. This amount is part of and not in addition to the **Privacy Injury Limit**;
- C. With respect to insuring agreement 3, any actual or alleged act, error, omission, neglect or breach of duty committed by an **Insured** in the performance of the **Professional Services** as set forth in the Professional Services Endorsement attached to this Policy.
- D. With respect to insuring agreement 4, any actual or alleged act, error, omission, neglect or breach of duty committed by any **Insured**, that results in **unauthorized access**.

IN WITNESS WHEREOF, the Insurer has caused this Policy to be executed by the Insurer's Chairperson and Secretary, but this Policy shall not be binding upon the Insurer unless completed by the attachment of the declarations and executed by the Insurer's duly authorized representative.



Chairman



Secretary