



# FailSafe®

T E R A

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## t e c h n o l o g y   l i a b i l i t y

**This is a claims first made and reported in writing policy. Please read it carefully, and contact your agent or broker if you have any questions. Your policy applies only to claims when:**

**the glitch occurs on or after the Retroactive Date and before the end of the policy period, and**

**the claim is first made against any of you and reported in writing to us during the policy period.**

**Covered claim expenses and damages within the Retention amount must be paid by you and do not reduce the Limits of Liability. Covered claim expenses and damages above the Retention amount are payable under this policy and reduce the Limits of Liability.**

**Some provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and what is not covered.**

The words “**we**,” “**us**” and “**our**” refer to the stock insurance company member of THE HARTFORD shown on the Declarations Page of this policy.

The words “**you**” and “**your**” mean any person or entity described under the definition of “**you or your**” in Section II – Definitions.

The words “**glitch**” and “**technology services**” are defined in Section I – Coverage.

Section IV – Nuclear Energy Liability Exclusion (Broad Form) contains definitions specific to that section.

Except for the definitions mentioned above and captions, all other words and phrases that appear in bold type are defined in Section II – Definitions.

In return for payment of the premium, and subject to all of the terms and conditions of this policy, including those changed, added or deleted by endorsements that **we** issue forming a part of this policy, **we** agree with **you** as follows:

### Section I – Coverage

#### A. Insuring Agreement

**We** will pay on **your** behalf money in excess of the Retention that **you** become legally required to pay as **damages** and **claim expenses** because of a **claim** caused by a **glitch** in **your** performance of **technology services**.

❖ **Glitch** means the following when actually or allegedly committed by **you** or on **your** behalf:

1. negligent: act, error or omission;
2. breach of warranties or representations about the fitness, quality, suitability, performance or use of **your technology services**;
3. failure of **your technology services** to perform the function or serve the purpose intended;
4. failure to prevent:
  - a. denial of service;
  - b. disruption of service;
  - c. unauthorized access to, unauthorized use of, repudiation of access to, tampering with or introduction of malicious code into: firmware, data, software, systems or networks; or
  - d. identity theft or disclosure of personally identifiable information stored in an electronic format that results in the wrongful or fraudulent use of such information;
5. infringement or dilution of: title, slogan, trademark, trade name, trade dress, service mark or service name;
6. infringement of copyright: plagiarism; or misappropriation of ideas under implied contract;
7. piracy, but only when it directly relates to infringement of copyright or trademark;
8. misuse of an intellectual property right in **content**, but only when it results in **glitches** described in items 5 through 7 above;
9. any form of defamation or disparagement causing harm to the character, reputation or feelings of any person, entity, product or service, including libel, slander, product or service disparagement, trade libel, infliction of emotional distress, outrage or outrageous conduct but only when caused by **content**;
10. any form of invasion, infringement or interference with rights of publicity or privacy, including false light, public disclosure of private facts, intrusion and commercial appropriation of name or likeness;
11. wrongful entry or eviction, trespass, eavesdropping or other invasion of the right of private occupancy; and
12. malicious prosecution or false: arrest, detention or imprisonment.

All **glitches** committed on or after the Retroactive Date and before the end of the last technology errors and omissions/liability policy issued by an insurance company member of The Hartford in an uninterrupted succession of renewed policies will be considered one **glitch** when they are logically or causally connected by common facts, circumstances, situations, events, transactions and/or decisions. Coverage for each such **glitch** is subject to the Each **Glitch** Limit.

❖ **Technology services** means:

1. the following services performed for others:
  - a. consulting, analysis, design, installation, training, maintenance, support and repair of or on: software, wireless applications, firmware, shareware, networks, systems, hardware, devices or components;
  - b. integration of systems;
  - c. processing of, management of, mining or warehousing of data;
  - d. administration, management, operation or hosting of: another party's systems, technology or computer facilities;
  - e. website development; website hosting;
  - f. internet access services; intranet, extranet or electronic information connectivity services; software application connectivity services;
  - g. manufacture, sale, licensing, distribution, or marketing of: software, wireless applications, firmware, shareware, networks, systems, hardware, devices or components;

- h. design and development of: code, software or programming;
  - i. providing software application: services, rental or leasing; and
  - j. services listed below:
2. web related software and connectivity services performed for others; and
  3. activities on **your** website(s).

**B. Defense**

1. For all covered **claims** brought in the United States of America, its territories and possessions, Puerto Rico or Canada, **we** have the right and duty to defend **you**. **We** have the right to appoint counsel. **We** may investigate any **claim** as **we** deem appropriate.
2. For all covered **claims** brought outside the United States of America, Puerto Rico or Canada, **we** have the right but not the duty to defend **you**, appoint counsel and investigate. If **we** choose not to defend, appoint counsel and investigate such a **claim**, the **first named insured** under **our** supervision will arrange for investigation and defense of the **claim** as reasonably appropriate. Subject to the Limits of Liability, **we** will reimburse the **first named insured** for paying **damages** or **claim expenses** for covered **claims**.
3. The following terms apply to all covered **claims**, wherever they are brought:
  - a. **You** will not settle any **claim** without **our** prior written consent, even if the **claim** is less than the amount of the Retention. **We** have the right to settle all **claims**, wherever brought, unless **we** receive a written objection from the **first named insured** before **we** agree to a settlement. The **first named insured** will be notified before **we** agree to a settlement. If the **first named insured** objects to a settlement recommended by **us** and acceptable to the claimant, then **our** duty to pay will be limited to:
    - (1) the amount of **damages** for which the **claim** could have been settled; plus
    - (2) all **claim expenses** incurred and paid or payable by **us** or the **first named insured** at the time **we** made **our** recommendation.

If the total of these amounts falls within **your** Retention, **we** will have no duty to pay **damages** and **claim expenses** on that **claim**.

In no event will **we** be obligated to pay more than the remaining applicable Limit of Liability determined under Section V – Limits of Liability and Retention.

In **claims** where the **first named insured** has objected to a settlement recommended by **us**, **we** have the right to stop defending and paying **claim expenses** upon tendering control of the defense to **you**.
  - b. **We** have the right to exercise all of **your** rights in choosing arbitrators and in conducting all arbitrations.
  - c. **Our** right and duty to defend **claims** and to pay or reimburse for **claim expenses** will end when **we** have used up the applicable Limit of Liability by paying **damages** and/or **claim expenses**.

**C. When We Insure**

This policy applies to a **glitch** only if all the terms in 1 through 3 below are met:

1. the **glitch** was committed on or after the Retroactive Date shown in the Declarations and before the end of the **policy period**;
2. before the Start Date of this policy shown in the Declarations, none of the following:
  - a. any **named insured** including the spouse and/or domestic partner of a **named insured** that is an individual;
  - b. any past or present partner, **executive officer**, or any individual in an equivalent position of a **named insured**, including but not limited to individuals that hold management positions similar to an **executive officer** for any **named insured**

that does not have a charter, constitution, by-laws or any other similar governing document;

- c. any individual responsible for the insurance, legal, or financial matters of the **named insured** including but not limited to General Counsel, Risk Manager, or Insurance Manager of the **named insured**;
- d. any member of the **named insured** that could be afforded coverage under this policy; or
- e. the executors, administrators or legal representatives of a, b, c, or d listed above in the event of a death, incapacitation or bankruptcy of a, b, c or d listed above; but this only applies while performing their duties as such;

knew of or should have reasonably known of:

- i. a **glitch**; or
- ii. any fact(s) or circumstance(s)

which could reasonably be expected to result in a **claim**; and

3. the **claim** because of the **glitch** is:
  - a. first made against any of **you** during the **policy period**; and
  - b. reported to **us** in writing during the **policy period**. But, subject to provisions of Section VII – Conditions, subsection H, **claims** first made against any of **you** during the last ninety (90) days of the expiring **policy period** must be reported to **us** in writing no later than:
    - (1) ninety (90) days after **you** know of such **claim**; or
    - (2) thirty (30) days after the expiring **policy period**,whichever is longer; all such **claims** reported after the expiration of the **policy period** will be deemed to have been reported on the last day of this policy.

All **claims** arising from the same **glitch**, as defined in Section I – Coverage, are considered to be one **claim**.

A **claim** is deemed first made when the earliest of the following occurs:

- any of **you** receive written notice of such **claim**; or
- subject to the Section VII – Conditions, Duties in the Event of Glitch or Claim, **we** receive from **you** or **your** agent written notice of the **glitch**, which later results in a **claim**.

A **claim** is deemed reported to **us** when **we** first receive it in writing.

## Section II – Definitions

- ❖ **Claim** means a written demand received by any of **you** for **damages** or injunctive relief. This includes a suit, arbitration or other type of alternative dispute resolution proceeding against any of **you**.
- ❖ **Claim expenses** means reasonable expenses incurred by **us** or by **you** with **our** prior written consent investigating and defending a **claim**.
  1. **Claim expenses** also include:
    - a. the cost of bonds to release attachments, but only for bond amounts within the remaining applicable Limit of Liability. **We** do not have to furnish these bonds;
    - b. costs taxed against **you** in the suit;

- c. interest on the full amount of any judgment that accrues before or after entry of the judgment and before **we** have paid, offered to pay or deposited in court the part of the judgment that is within the remaining applicable Limit of Liability; and
  - d. actual loss of earnings up to \$1,000 per day for each of **you** that **you** personally incur because of time off from work at **our** request to help **us** investigate or defend a **claim**.
- 2. **Claim expenses** do not include salaries and expenses of **your** employees.
- ❖ **Content** means data, code, masked works, text, images, sounds, scents, textures or tastes.
- ❖ **Contract worker agreement** means a signed agreement between the **named insured** and an individual person who is an agent or independent contractor when the agreement provides that:
  - 1. the agent or independent contractor will provide specific **technology services** on behalf of and under the direct and continuing supervision of the **named insured**;
  - 2. the **named insured** will indemnify the agent or independent contractor for those **technology services**; and
  - 3. the agreement is made before any **glitch** that may give rise to a **claim**.
- ❖ **Damages** means a money award, judgment or settlement that **you** become legally required to pay, including punitive, exemplary and multiplied damages where insurable by law.  
**Damages** do not include:
  - 1. any kind of: refund, rebate, redemption coupon, offset, return or credit that has been paid to or by any of **you**, or that is owed to or by any of **you**; examples include but are not limited to any of the following: any licensing fee or other fee, royalty, subscription or access charge, or other charge;
  - 2. disgorgement of profits or any money or credits that represent any gain, profit or advantage to which any of **you** are not legally entitled;
  - 3. **your** cost to comply with any non-money or injunctive relief;
  - 4. cost or expense to recall, upgrade, replace, repair, correct, complete or re-perform **technology services**, in whole or part, by:
    - a. any of **you**; or
    - b. another party if any of **you** had the opportunity to recall, upgrade, replace, repair, correct, complete or re-perform **technology services**;
  - 5. any criminal: fine or penalty;
  - 6. any payment any of **you** make without **our** prior written consent;
  - 7. the purchase or contract price for **your technology services**; or
  - 8. cost or expense related to **your** notification to anyone for the coverage afforded under Section I. item 4 under the definition of **glitch**.
- ❖ **Executive officer** means a director or officer in a position created by **your** charter, constitution, by-laws or any other similar governing document.
- ❖ **First named insured** means the **named insured** first listed in item 1 of the Declarations.
- ❖ **Named insured** means:
  - 1. the persons or entities listed in item 1 of the Declarations; and
  - 2. any **subsidiary**.
- ❖ **Policy period** means the time beginning with the Start Date shown in the Declarations and ending with the earlier of:
  - 1. the date of termination or cancellation; or
  - 2. the End Date shown in the Declarations.

- ❖ **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- ❖ **Subsidiary** means any corporation of which the **first named insured** owns, directly or indirectly, more than fifty percent (50%) of the issued and outstanding voting stock. The stock must be owned by the **first named insured** on the Start Date shown in the Declarations of this policy.
  1. **Subsidiary** also includes any corporation which becomes a **subsidiary** during the **policy period**, provided that as soon as practical, but no later than within ninety (90) days of its becoming a **subsidiary**, **you** have:
    - a. provided **us** with full details of the new **subsidiary** including a completed and signed **subsidiary** application and any other underwriting information **we** may require;
    - b. agreed to and paid any additional premium related to the **subsidiary**; and
    - c. agreed to any change in the terms and conditions of this policy required by **us** relating to the new **subsidiary**.
  2. This policy does not apply to any **claim** arising from or involving a **subsidiary** for any **glitch** that was committed when the **first named insured** did not own directly or indirectly more than fifty percent (50%) of the issued and outstanding voting stock of the **subsidiary**.
- ❖ **Temporary worker** means a person who is provided to **you** by a third party for a specific time period to support or increase **your** work force in special situations. Such situations may include employee absences, temporary skill shortages and seasonal workloads. A temporary worker is not an employee of **yours**.
- ❖ **You** or **your** mean, individually and collectively:
  1. any **named insured**;
  2. any past or present partner, **executive officer**, or any individual in an equivalent position of a **named insured**, including but not limited to individuals that hold management positions similar to an **executive officer** for any **named insured** that does not have a charter, constitution, by-laws or any other similar governing document, but only while performing their duties as such;
  3. any past or present employee of the **named insured** but only while performing their duties as such; employee does not include a **temporary worker**;
  4. any individual person who is an agent or independent contractor but only while acting within the scope of his or her **contract worker agreement** with the **named insured**;
  5. a client that the **named insured** is required, in a written contract to perform **technology services**, to add as an additional insured under this policy. But the client is insured under this policy only if:
    - a. the **glitches** were committed by the **named insured** in the **named insured's** performance of **technology services**;
    - b. the written contract is entered before the **glitch** giving rise to the **claim** is committed; and
    - c. there are no allegations of independent misconduct by the client.
  6. any member or stockholder of the **named insured**; but this only applies with respect to their liability as a member or stockholder; or
  7. the executors, administrators or legal representatives of each of **you** listed in items 1 through 6 above in the event of **your** death, incapacity or bankruptcy; but this only applies while performing their duties as such.

### Section III – Exclusions

- A. **We** will not pay **damages** or **claim expenses** or defend any of **you** for any **glitch** or **claim** arising out of or in any way related to any actual or alleged:
1. bodily injury, sickness, disease or death sustained by a person; or mental anguish, emotional distress, mental injury, fright or shock when they result in or from bodily injury, sickness, disease or death;
  2. physical damage to or physical loss of tangible property and any resulting loss, corruption or destruction of data or information, including all resulting loss of use of that property, data or information. However, this exclusion will not apply to the loss, corruption or destruction of data or information when the tangible property on which the data or information is or was kept is not physically damaged or physically lost;
  3. obligation which any of **you** may have to pay under any workers' compensation act, employer's liability law, unemployment compensation law, disability benefits law, or any similar law; or any foreign equivalent;
  4. gradual deterioration of, wear and tear of or inherent vice in tangible property;
  5. disruption of, surge in, fluctuation in or loss of: power, connectivity or communications. However, this exclusion will not apply to any of the foregoing when directly caused by a **glitch** committed by any of **you**;
  6. withdrawal or recall of all or part of **technology services** from the marketplace. However, this exclusion will not apply to **claims** by third parties for the loss of use resulting from withdrawal or recall of **technology services** due to a **glitch** committed by any of **you**;
  7. delay in or failure to complete **technology services**. However, this exclusion will not apply if the delay or failure to complete **technology services** is the result of a **glitch** committed by any of **you**;
  8. cost: overruns, guarantees, estimates or estimates being exceeded;
  9. discontinuance or cessation by any of **you** of the provision, support or maintenance of any **technology services**;
  10. false, deceptive, fraudulent, intentionally misleading or misrepresenting statements in advertising;
  11. sweepstakes, lotteries or other games of chance; or contests;
  12. price fixing, or any other violation of: any securities, antitrust, restraint of trade, unfair or deceptive business practices, unfair competition or consumer protection laws, the Racketeer Influenced and Corrupt Organizations Act; any similar law; or any foreign equivalent;
  13. patent infringement or patent misuse;
  14. misuse, misappropriation or theft of trade secrets;
  15. tortious interference with the contractual relationships of others;
  16. bankruptcy or insolvency of any of **you**;
  17. discrimination, harassment or misconduct by any of **you** because of or relating to: race, creed, color, age, gender, sex, sexual preference or orientation, national origin, religion, disability, handicap, health condition, marital status, or any other class protected under federal, state, local or other law; or any similar law in a jurisdiction outside the United States of America;
  18. acts or omissions by any of **you** regarding:
    - a. refusal to employ;
    - b. termination of a person's employment;

- c. employment-related practices, policies, acts or omissions; these include but are not limited to coercion, demotion, evaluation, re-assignment, discipline, defamation, harassment, humiliation or discrimination; or
  - d. breach of fiduciary duty or other responsibility in connection with any employee benefit or pension plan; this includes but is not limited to violation of the duty or responsibility imposed on fiduciaries by the Employee Retirement Income Security Act of 1974 (ERISA) or any changes to that law; any similar law; or any foreign equivalent;
19. or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** or any loss, cost or expense arising out of any:
- a. request, demand, order or statutory or regulatory requirement that any of **you** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of **pollutants**; or
  - b. **claim** or suit by or on behalf of a governmental authority for **damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **pollutants**; or
20. electromagnetic radiation, including but not limited to magnetic energy, waves, fields, or forces.
- B. **We** will not pay **damages** or **claim expenses** or defend any of **you** for any **claim** brought by or on behalf of:
- 1. any of **you**; however, this exclusion will not apply to **claims** brought by any of **you** described in items 3, 4 or 5 of the definition of **you** when the **claim** is brought in their capacity as a client as a result of **technology services** performed by the **named insured** on their behalf;
  - 2. any entity which is a parent, affiliate, **subsidiary**, joint venturer, co-venturer or other entity in which any of **you** owns an interest or is a partner, director, officer, sole proprietor, trustee or employee;
  - 3. any entity affiliated with any of **you** through any common ownership or control;
  - 4. any entity directly or indirectly controlled, operated or managed by any of **you**;
  - 5. any agent or independent contractor supplying **content**, material or services to any of **you** when the **claim** arises from or relates to the ownership or exercise of rights in the **content**, material or services supplied; or
  - 6. any federal, state or local government body, subdivision or agency; any regulatory or licensing agency or bureau; or any foreign equivalent. However, this exclusion will not apply when the **claim** is brought in their capacity as a client as a result of **technology services** performed by the **named insured** on their behalf.

For the purposes of exclusions B.2 through 4 above, the words "owns," "ownership or control" and "controlled" mean ten percent (10%) or more ownership of a publicly-held corporation or thirty percent (30%) or more ownership of a privately-held corporation, or ten percent (10%) or more of any other type of entity.

- C. **We** will not pay **damages** or **claim expenses** for any **glitch** or **claim** arising out of or in any way related to any:
- 1. dishonest, fraudulent, criminal or intentional wrongful act or omission by any of **you**; or
  - 2. material defect or bug known by any of **you** that could reasonably be expected to cause harm;

when such act or knowledge is established by **your** admission or final adjudication by a jury, court or arbitrator.

However, exclusions C.1 and 2 above do not apply to any of **you** who did not commit, acquiesce in, or remain passive after learning of the actions giving rise to the **claim**. For purposes of this exclusion, the knowledge, action or inaction of any **executive officer**,



partner, or any individual in an equivalent position of a **named insured**, including any individual that holds a management position similar to an **executive officer** for **named insureds** that do not have a charter, constitution, by-laws or any other similar governing document, will be imputed to the applicable **named insured**.

- D. **We will not pay damages or claim expenses** or defend any of **you** for any **claim** arising out of or in any way related to any actual or alleged **glitch** or **claim** that has been reported under any other policy, issued by any entity, when the inception date of that other policy preceded the Start Date of this policy.

#### **Section IV – Nuclear Energy Liability Exclusion (Broad Form)**

- A. This policy does not apply:

1. To any injury or damage:

- a. With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- b. Resulting from the “hazardous properties” of “nuclear material” and with respect to which
  1. any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or
  2. the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

2. To any injury or damage resulting from the “hazardous properties” of “nuclear material,” if:

- a. The “nuclear material”
  1. is at any “nuclear facility” owned by, or operated by or on behalf of, an insured or
  2. has been discharged or dispersed therefrom;
- b. The “nuclear material” is contained in “spent fuel” or “waste” at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
- c. The injury or damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operations or use of any “nuclear facility.”

- B. As used in this exclusion:

“Hazardous properties” include radioactive, toxic or explosive properties;

“Nuclear material” means “source material,” “special nuclear material” or “by-product material;”

“Source material,” “special nuclear material,” and “by-product material” have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

“Spent fuel” means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a “nuclear reactor;”

“Waste” means any waste material (a) containing “by-product material” other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its “source material” content, and (b) resulting from the operation by

any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility."

"Nuclear facility" means:

1. Any "nuclear reactor;"
2. Any equipment or device designed or used for
  - a. separating the isotopes of uranium or plutonium,
  - b. processing or utilizing "spent fuel," or
  - c. handling, processing or packaging "waste;"
3. Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
4. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste;"

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

Injury or damage includes all forms of radioactive contamination of property.

## Section V – Limits Of Liability And Retention

### A. **Limits of Liability**

#### 1. Each **Glitch** Limit

Subject to A.2 below, the Each **Glitch** Limit stated in item 4 of the Declarations is the most **we** will pay for any combination of **claim expenses** and **damages** for the total of all **claims** made during the **policy period**, including any applicable Extended Reporting Period, arising from one **glitch**, regardless of the number of:

- a. **you** this policy covers;
- b. **claims** that are made; or
- c. persons or entities making **claims**.

#### 2. Aggregate Limit

The Aggregate Limit stated in item 4 of the Declarations is the most **we** will pay for any combination of **claim expenses** and **damages** for the total of all **claims** made during the **policy period**, including any applicable Extended Reporting Period, regardless of the number of:

- a. **you** this policy covers;
- b. **claims** that are made;
- c. persons or entities making **claims**; or
- d. **glitches** that are committed.

### B. **Retention for Each Glitch**

The Retention stated in item 5 of the Declarations is the amount of money **you** must pay for covered **damages** and/or **claim expenses** for each **glitch** before this policy will begin to pay. **You** may not insure the Retention. The Retention will not be reduced by the payment of any deductible amount or any amount retained by any of **you** under any other policy of insurance;

and the Retention will not be reduced by any payment made on **your** behalf by another person or entity. The Retention will not reduce the Limits of Liability.

**You** will pay the full amount of the Retention for each **glitch** to appropriate parties as directed by **us**. If **we** advance any such payments, **you** will reimburse **us** within thirty (30) days of **our** written demand. If **you** fail to make direct payments or to reimburse **us** as described above, all of **you** against whom the **claim** has been made and the **named insured** are individually and collectively responsible for paying **us** back for any advance payments **we** have made and for interest, attorney's fees and costs associated with **our** collection of the money.

## Section VI – Extended Reporting Periods

### A. **Terms Applicable to Both Types of Extended Reporting Period**

An Extended Reporting Period changes only the time within which a covered **claim** may be made by a claimant and reported to **us**. All other policy terms and conditions remain the same.

This policy has two types of Extended Reporting Periods. Both the Basic Extended Reporting Period and the Optional Extended Reporting Period:

1. provide coverage for **claims** that are both first made and reported in writing to **us** during the applicable Extended Reporting Period. But this applies only if all of the following conditions are also met:
  - a. the **glitch** is committed on or after the Retroactive Date and before the end of the **policy period**;
  - b. before the Start Date of this policy shown in the Declarations, none of the following:
    1. any **named insured** including the spouse and/or domestic partner of a **named insured** that is an individual;
    2. any past or present partner, **executive officer**, or any individual in an equivalent position of a **named insured**, including but not limited to individuals that hold management positions similar to an **executive officer** for any **named insured** that does not have a charter, constitution, by-laws or any other similar governing document;
    3. any individual responsible for the insurance, legal, or financial matters of the **named insured** including but not limited to General Counsel, Risk Manager, or Insurance Manager of the **named insured**;
    4. any member of the **named insured** that could be afforded coverage under this policy; or
    5. the executors, administrators or legal representatives of 1, 2, 3, or 4 listed above in the event of a death, incapacitation or bankruptcy of 1, 2, 3 or 4 listed above; but this only applies while performing their duties as such;knew of or should have reasonably known of:
    - i. a **glitch**; or
    - ii. any fact(s) or circumstance(s) which could reasonably be expected to result in a **claim**; and
  - c. there is no other insurance for the **claim**;
2. do not extend the **policy period** or change the scope of coverage provided;
3. do not reinstate or increase the Limits of Liability. The Limits of Liability for any Extended Reporting Period will be a part of, and not in addition to, the Limits of Liability listed in the Declarations;

4. run concurrently if the Optional Extended Reporting Period is purchased; and
5. are not renewable.

**B. Basic Extended Reporting Period**

**We** will automatically provide a Basic Extended Reporting Period if this policy is:

1. cancelled;
2. non-renewed; or
3. renewed by **us** with insurance that does not apply on a claims made or claims made and reported basis.

The Basic Extended Reporting Period begins with the end of the **policy period** and lasts for ninety (90) days.

Under this provision, **you** have ninety (90) days after the end of the **policy period** to report to **us** in writing **claims** first made against any of **you** during the Basic Extended Reporting Period. All such **claims** reported will be deemed to have been made and reported on the last day of the **policy period**.

**Claims** reported to **us** after that ninety (90) day period will not be covered unless the **first named insured** purchases an Optional Extended Reporting Period described in item C below.

**C. Optional Extended Reporting Period**

1. For an additional premium, **we** will offer an Optional Extended Reporting Period endorsement, unless this policy is cancelled for non-payment of premium or Retention or for **your** failure to comply with policy provisions.
2. If the Optional Extended Reporting Period endorsement is purchased, **you** have the period of time, stated in the endorsement, after the end of the **policy period** to report **claims** first made against any of **you** during the Optional Extended Reporting Period. All such claims reported will be deemed to have been made and reported on the last day of the **policy period**. The Optional Extended Reporting Period begins with the end of the **policy period** and lasts for the period of time stated in the endorsement.
3. Optional Extended Reporting Period coverage is available only if:
  - a. the **first named insured** has paid all premiums and Retentions due for this policy at the time the **first named insured** requests an Optional Extended Reporting Period endorsement;
  - b. **we** receive the **first named insured's** written request for it within thirty (30) days after the end of the **policy period**;
  - c. the **first named insured** gives **us** written acceptance of **our** offer within fifteen (15) days of the day that **we** make **our** offer; and
  - d. **we** receive payment in full for the Optional Extended Reporting Period within thirty (30) days of the **first named insured's** acceptance of **our** offer.
4. Once in effect, the Optional Extended Reporting Period cannot be cancelled. **We** need not return any part of the premium paid for any reason whatsoever.
5. Premium for the Optional Extended Reporting Period will be determined by taking into account the following:
  - a. the exposures insured;
  - b. previous types and amounts of insurance;
  - c. Limits of Liability available under this policy for future payment of **glitches** and **claim expenses**; and
  - d. other related factors.

**Section VII – Conditions**

**A. Territory**

This policy applies to **glitches** committed anywhere in the universe; except this policy does not apply when the **claim** is made in a country against which the United States government has imposed trade sanctions, embargoes, or any similar regulations that prohibit the transaction of business with or within such countries at the time the **claim** is made.

**B. Currency**

The currency of this policy is United States of America dollars. If **damages** or **claim expenses** are paid in a currency other than United States dollars, payment will be considered to have been made in United States dollars at the rate of exchange that was used for the payment. If no actual currency exchange was made, then the rate of exchange will be the rate published in The Wall Street Journal on the day following the date that payment was made.

**C. Bankruptcy**

Bankruptcy or insolvency of **you** or of **your** estate will not relieve **us** of **our** obligations under this policy.

**D. Cancellation**

1. The **first named insured** may cancel this policy by mailing or delivering to **us** advance written notice of cancellation.
2. **We** may cancel this policy by mailing to the **first named insured** written notice of cancellation at least:
  - a. ten (10) days before the cancellation is effective, if **we** cancel for non-payment of any premium when due; or
  - b. sixty (60) days before the cancellation is effective, if **we** cancel for any other reason.
3. **We** will mail our notice to the address shown in the Declarations for the **named insured**.
4. Notice of cancellation by **us** will state when the cancellation is effective. The **policy period** will end on that date.
5. If this policy is cancelled, **we** will send the **first named insured** any premium refund due. If **we** cancel, the refund will be the pro-rata unearned premium. If the **first named insured** cancels, **we** will compute the return premium at ninety percent (90%) of the pro-rata unearned premium.
6. Proof of mailing will be sufficient proof of notice.
7. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective. But payment or tender of unearned premium is not a condition of cancellation.

**E. When We Do Not Renew**

1. If **we** decide not to renew this policy, **we** will mail written notice of non-renewal to the **first named insured**. **We** will mail the notice at least sixty (60) days before the **policy period** ends.
2. **We** will mail it to the address shown in the Declarations for the **named insured**. Proof of mailing will be sufficient proof of notice.
3. If **we** offer to renew this policy on the same or different terms and the **first named insured** does not accept our offer during the current **policy period**, this policy will expire at the end of the **policy period**.

**F. Entire Agreement**

This policy contains all the agreements between **you** and **us** concerning this insurance.

**G. Changes**

The **first named insured** is authorized by **you** to agree with **us** on all changes in the terms and conditions of this policy. This policy can only be changed by an endorsement that is issued by **us**.

#### H. Duties in the Event of Glitch or Claim

1. The **named insured** must notify **us** in writing as soon as practicable of a **glitch** or circumstance that may result in a **claim** under this policy. This requirement applies only when the **glitch** is known to:
  - a. any person who is a **named insured**;
  - b. any partner, **executive officer**, or any individual in an equivalent position of a **named insured**, including but not limited to individuals that hold management positions similar to an **executive officer** for any **named insured** that does not have a charter, constitution, by-laws or any other similar governing document; or
  - c. any individual responsible for the insurance, legal, or financial matters of the **named insured** including but not limited to General Counsel, Risk Manager, or Insurance Manager of the **named insured**.
2. If during the **policy period** any of **you** first become aware of a **glitch** to which this policy applies which may result in a **claim** under this policy and give **us** written notice within the **policy period** of:
  - a. the specific **glitch**, the date of the **glitch** and the name of the potential claimant;
  - b. the **damages** which have or may result from the **glitch**; and
  - c. the circumstances by which **you** first became aware of the **glitch**;then any **claim** first made arising out of the **glitch** will be deemed to have been made on the date **we** received written notice.

All notices or correspondence regarding **glitches** or **claims** must be sent to the following address:

Attn: The Hartford  
Hartford Financial Products Claims Department  
2 Park Avenue, 5<sup>th</sup> Floor  
New York, NY 10016

3. If a **claim** is made against any of **you**, **you** must:
  - a. immediately record the specifics of the **claim** and the date received;
  - b. immediately send **us** copies of all demands, notices, summonses and legal papers received in connection with the **claim**;
  - c. authorize **us** to obtain records and other information;
  - d. cooperate with **us** in the investigation, settlement, and defense of the **claim**; and
  - e. assist **us**, upon **our** request, in enforcing any right against any person or entity that may be liable to **you** or the claimant because of **damages** to which this policy may also apply.
4. None of **you** will, except at your own cost, make a payment, assume any obligation, or incur any cost without **our** prior written consent.

#### I. Legal Action Against Us

No person or entity has a right under this policy:

1. to join **us** as a party or bring **us** into a suit asking for **damages** from **you**; or
2. to sue **us** under this policy

unless all of its terms and conditions have been fully complied with.

A person or entity may sue **us** to recover on an agreed settlement or on a final judgment against **you** obtained after an actual trial or other binding adjudication. But **we** will not be

liable for **claim expenses** or **damages** that are not payable under the terms and conditions of this policy or that are more than the applicable Limit of Liability.

An agreed settlement means a settlement that **we** agree to in writing.

**J. Mergers, Consolidations or Acquisitions**

1. If, after the Start Date of this policy shown in the Declarations, the **named insured**:
  - a. merges or consolidates with another entity; or
  - b. acquires more than fifty percent (50%) of the assets of another entity,and the **named insured** is the surviving entity, the entity merged with, consolidated or acquired by the **named insured** will be afforded coverage under this policy as a **named insured** for a period of ninety (90) days or until the expiration of this policy, whichever is less.
2. **We** may endorse this policy to provide coverage beyond the period of time indicated in item 1. above if, within ninety (90) days of the merger, consolidation or acquisition transaction, **you** have:
  - a. provided **us** with full details of the transaction and any other additional underwriting information that **we** may require;
  - b. agreed to any amendment of the terms and conditions of this policy by endorsement issued by **us** relating to such transaction; and
  - c. agreed to and paid any additional premium for the endorsement related to such transaction.
3. This policy does not apply to any **claim** arising from or involving an entity that is merged with, consolidated or acquired by the **named insured** for any **glitch** that was committed when the **first named insured** did not own directly or indirectly more than fifty percent (50%) of the issued and outstanding voting stock of the entity.
4. The retroactive date for an entity that was merged with, consolidated or acquired by the **named insured** will be the date of the merger, consolidation or acquisition by the **named insured**. **We** may endorse this policy to provide a different retroactive date for the merged with, consolidated or acquired entity, if applicable information is provided to demonstrate similar coverage has been continuously maintained by the entity.

**K. Other Insurance and Payments Available to You**

Coverage under this policy will apply only in excess of all other:

1. insurance, except for other insurance that is written specifically to apply in excess over this policy;
  2. bonds, self-insured retentions, deductibles, indemnifications; or
  3. similar agreements or payment options available to **you**
- whether they are stated to be primary, pro rata, contributory, contingent or otherwise.

**L. Payment of Premiums and Retention**

The **first named insured** must pay all premiums and Retentions when due. **We** will pay any return premiums to the **first named insured**.

**M. Transfer of Rights of Recovery Against Others to Us**

**You** must do nothing to impair **your** rights to recover all or any part of any payment **we** have made under this policy, and those rights are transferred to **us**. At **our** request **you** will bring suit or transfer those rights to **us** and help **us** enforce them. Any recoveries will be paid first to reimburse the person or entity that paid the subrogation costs, then to **us** for the amount **we** have paid for **claim expenses** and **damages**. Any amount that may remain will be paid to the **first named insured**.

**N. Transfer of Your Rights and Duties Under This Policy**

**Your** rights and duties under this policy may not be transferred without **our** written consent except in the case of death or bankruptcy.

If **you** die or become bankrupt, **your** rights and duties will be transferred to **your** legal representative but only while acting within the scope of duties as **your** legal representative.

Until **your** legal representative is appointed, anyone having proper temporary custody of **your** property will have **your** rights and duties but only with respect to that property.

**O. Representations and Statements**

By accepting this policy, **you** agree to all of the following:

1. the representations and statements contained in the application for coverage and other information submitted to **us** in applying for this policy are accurate and complete; they were made to induce **our** reliance upon them;
2. the representations and statements made to **us** in the application and other information submitted to **us** were made by the **named insured** on behalf of all of **you**; they are material to **our** decision to provide coverage; they are considered as incorporated in and constituting part of this policy;
3. **we** have issued this policy in reliance upon those representations and statements;
4. in the event the application or other information submitted to **us** contains misrepresentations or fails to state facts which affect **our** acceptance of the risk, the hazard assumed by **us**, the terms or conditions of the policy **we** offered or the premium **we** charged for this policy, **we** will not pay for any **claim expenses** or **damages** relating to a **glitch** or **claim** under this policy; and
5. if **you** report any **glitch** or **claim** knowing it, or any of the representations and statements regarding the **glitch** or **claim**, to be false or fraudulent, this insurance will not make payments for the **glitch** or **claim**.