

# InNAVation

## NAVIGATORS SPECIALTY INSURANCE COMPANY

**THIS IS A CLAIMS MADE AND REPORTED POLICY.  
CLAIM EXPENSES ARE WITHIN AND REDUCE THE LIMIT OF LIABILITY.  
PLEASE READ THE ENTIRE POLICY CAREFULLY.**

### **CONVERGENCE<sup>SM</sup> TECHNOLOGY & TELECOMMUNICATIONS ERRORS AND OMISSIONS, DATA PRIVACY & SECURITY AND MEDIA LIABILITY POLICY**

Words and phrases that appear in **bold** print have special meanings that are defined in Section III., **DEFINITIONS**.

#### **I. INSURING AGREEMENTS**

##### **A. Liability Coverage**

The **Company** will pay on behalf of the **Insured** all sums in excess of the deductible that the **Insured** becomes legally obligated to pay as **damages** and **claim expenses** as a result of a **claim** first made against the **Insured** during the **policy period** and reported in writing to the **Company** during the **policy period** (or within 60 days thereafter provided the terms of Section V.A.1 are satisfied), or as a result of a claim first made and reported during an Extended Reporting Period (if applicable), by reason of a **wrongful act, privacy injury, network injury or a media injury** provided that:

1. Such **wrongful act, privacy injury, network injury or media injury** was committed on or subsequent to the **retroactive date** specified in Item 8. in the Declarations; and
2. Prior to the inception date of the first policy issued by the **Company** or any affiliated company to the **Insured** and continuously renewed, no **Insured** had a basis to believe that any such **wrongful act, privacy injury, network injury or media injury, or related wrongful acts, related privacy injuries, related network injuries, or related media injuries**, might reasonably be expected to be the basis of a **claim**.

##### **B. Privacy Event Expense Coverage**

Subject to its prior written consent (that consent not to be unreasonably withheld), the **Company** will reimburse the **Insured** all sums in excess of the deductible that the **Insured** incurs for **privacy event expenses** as the direct result of a **privacy injury** provided that:

1. Such **privacy injury** was committed on or subsequent to the **retroactive date** specified in Item 8. In the Declarations; and
2. Prior to the inception date of the first policy issued by the **Company** or any affiliated company to the **Insured** and continuously renewed, no **Insured** had a basis to believe that any such **privacy injury or related privacy injuries**, might reasonably be expected to be the basis of a **privacy injury claim**.

##### **C. Network Extortion Expense Coverage**

Subject to its prior written consent (that consent not to be unreasonably withheld), the **Company** will reimburse the **Insured** all sums in excess of the deductible that the **Insured** incurs for **network extortion expenses** in order to prevent a threatened **privacy injury or network injury** by an extortionist provided that:

1. Such threat was committed on or subsequent to the **retroactive date** specified in Item 8. in the Declarations; and
2. Prior to the inception date of the first policy issued by the **Company** or any affiliated company to the **Insured** and continuously renewed, no **Insured** had a basis to believe that any such threat or any related threat (meaning any threat that is logically or causally connected to such threat by any common fact, circumstance, situation, transaction, event, advice or decision), might reasonably be expected to made..

## II. DEFENSE AND SETTLEMENT

### A. Defense

The **Company** has the right and duty to defend any **claim** against the **Insured** even if any of the allegations of the **claim** are groundless, false or fraudulent. Defense counsel may be designated by the **Company** or, at the **Company's** option, by the **Insured** with the **Company's** written consent and subject to the **Company's** guidelines.

### B. Settlement

The **Company** will have the right to make, with the consent of the **Named Insured**, any settlement of a **claim** under this policy. If the **Named Insured** refuses to consent to a settlement within the policy's applicable limit of liability that is recommended by the **Company** and acceptable to the claimant, then the **Company's** limit of liability under this policy will be reduced to the sum of the amount of **damages** for which the **claim** could have been settled, plus all **claim expenses** incurred up to the time the **Company** made its recommendation (the "Reduced Limit of Liability"). In addition, if the Reduced Limit of Liability is exhausted, the **Company** will pay fifty percent (50%) of all **claim expenses** and **damages** incurred thereafter, subject at all times to the applicable limit of liability as specified in Section II.A, Limit of Liability – Each Claim and Section II.B., Limit of Liability – Policy Aggregate.

## III. LIMITS OF LIABILITY AND DEDUCTIBLE

### A. Limit of Liability - Each Claim

Subject to paragraphs B and E. below, the **Company's** limit of liability for **damages** and **claim expenses** for each **claim** will not exceed the amount shown in Item 4. in the Declarations for "Each **Claim**."

### B. Privacy Regulatory Action Sub-Limit

Subject to paragraphs A above and E. below, the **Company's** limit of liability for **damages** and **claim expenses** for each **claim** for a **privacy regulatory action** will not exceed the amount shown in Item 4. in the Declarations for "**Privacy Regulatory Action Sub-Limit**"

### C. Privacy Event Expense Sub-Limit

Subject to paragraph E. below, the amount the Company will reimburse for all **privacy event expenses** arising out of all **privacy injuries** will not exceed the amount shown in Item 4. in the Declarations for "**Privacy Event Expense Sub-Limit**."

### D. Network Extortion Expense Sub-Limit

Subject to paragraph E. below, the amount the Company will reimburse for all **network extortion expenses** will not exceed the amount shown in Item 4. in the Declarations for "**Network Extortion Expense Sub-Limit**."

#### **E. Limit of Liability - Policy Aggregate**

The **Company's** limit of liability for all **damages, privacy event expenses, network extortion expenses** and **claim expenses** will not exceed the aggregate amount shown in Item 4. in the Declarations as the "Policy Aggregate."

#### **F. Deductible**

The "Each **Claim**" deductible amount shown in Item 5. in the Declarations is the **Insured's** obligation for each **claim** and applies to the payment of **damages** and **claim expenses**. Any amounts paid by the **Insured** in satisfaction of the "Each reimbursement **privacy event expense** or **network extortion expense**" deductible will also erode the Each **Claim** deductible with respect to any **Claim** arising out of **related wrongful acts, related privacy injuries, related network injuries, or related media injuries**.

The deductible will be paid by the **Named Insured**. The limits of liability set forth in the Declarations are in addition to and in excess of the deductible.

The "Each reimbursement - **privacy event expense** or **network extortion expense** " deductible amount shown in Item 5. in the Declarations is the **Insured's** obligation for each **privacy event expense** or **network extortion expense** and applies to the payment of **privacy event expenses** and **network extortion expense**. The deductible will be paid by the **Named Insured**. The limits of liability set forth in the Declarations are in addition to and in excess of the deductible.

#### **G. Early Claim Resolution Incentive**

If a **claim** is resolved by agreement, with the consent of the **Named Insured** and the **Company**, as reflected in a settlement agreement, order, dismissal, or judgment, within one (1) year following the date that the **claim** is reported in writing to the **Company**, the **Named Insured** will be reimbursed or credited 50% of the deductible, but not to exceed a maximum reimbursement of \$25,000 per **policy period** for all such **claims** resolved or concluded in accordance with this paragraph G.

#### **H. Multiple Insureds, Claims and Claimants**

The limits of liability shown in the Declarations is the maximum amount the **Company** will pay under this policy for **damages** and **claim expenses** regardless of the number of **Insureds, claims** made or claimants. All **related claims** will be considered a single **claim** first made when the earliest of the **related claims** was first made and first reported when the earliest of the **related claims** was first reported .

#### **I. Subpoena Expenses**

The **Company** will pay expenses incurred by the **Insured** in responding to a subpoena which the **Insured** first receives and reports in writing to the **Company** during the **policy period** resulting from the performance of **professional services** by the **Insured**. The maximum amount payable regardless of the number of subpoenas or number of **Insureds** shall be \$5,000. The payment of subpoena expenses is not subject to the deductible and is in addition to the limits of liability.

#### **J. Exhaustion of Limits**

The **Company** is not obligated to pay any **damages, privacy event expenses, network extortion expenses** or **claim expenses** or to defend or continue to defend any **claim** after the applicable limit of liability has been exhausted by the payment of **damages, privacy event expenses, network extortion expenses** or **claim expenses** or any combination thereof; or after the **Company** has deposited the remaining available limit of liability into a court of competent jurisdiction or tendered the remaining available limit of liability to the **Named Insured** or, if applicable, to the excess insurer(s) of the **Named Insured**.

#### IV. DEFINITIONS

**Additional Insured** means the entities, if any, scheduled on an **Additional Insured Endorsement**, if such an endorsement is attached to this policy.

**Additional professional services** means any service scheduled on item 7 of the declarations.

**Bodily injury** means physical injury, sickness or disease sustained by any person including death resulting from any of these at any time. **Bodily injury** also means mental illness, mental anguish, or emotional distress, pain or suffering, or shock sustained by that person, except as arising out of an otherwise covered **personal injury, privacy injury or media injury**.

**Claim** means:

1. a demand received by an **Insured** for money or services, the service of suit against an **Insured**, or the institution of arbitration against an **Insured**.
2. a **Privacy Regulatory Action**

**Claim expenses** means:

1. Fees charged by attorneys designated by the **Company** or designated by the **Insured** with the **Company's** prior written consent;
2. All other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, negotiation, arbitration, mediation, defense or appeal of a **claim**, if incurred by the **Company** or by the **Insured** with the **Company's** prior written consent including forensics and incident response services in excess of any paid as **privacy event expenses** from the same or **related claims**; and
3. Premiums on appeal bonds, attachment bonds or similar bonds however, the **Company** is not obligated to apply for or furnish any such bond.

**Claim expenses** will be paid first and will reduce the limit of liability available to pay **damages**. **Claim expenses** do not include fees, costs or expenses of employees or officers of the **Company**, or salaries, loss of earnings or other remuneration by or to any **Insured**.

**Company** means the insurance company named in the Declarations.

**Content** means:

1. any printed, audio, visual, digital, electronic or informational material;
2. software code created or published by an **Insured**;
3. material posted to third party web sites by an **Insured** in the performance of his or her duties on behalf of the **Named Insured**

**Damages** means any compensatory sum and includes a judgment, award, or settlement, provided any settlement is negotiated with the **Company's** written consent. **Damages** also includes punitive or exemplary amounts, **privacy regulatory fines & penalties** and **regulatory restitution funds** to the extent such amounts are insurable under applicable law.

**Damages** do not include:

1. The return, reduction or restitution of fees, expenses or costs for **professional services** performed or to be performed by the **Insured**;

2. Fines, penalties, forfeitures or sanctions except that this exclusion does not apply to, **privacy regulatory fines & penalties**;
3. The multiplied portion of any multiplied awards; or
4. Injunctive or declaratory relief.

**Information Custodian** means a third party that collects, process or stores **non-public personal information** or **proprietary business information** on behalf of the **Named Insured** and which is required to maintain the confidentiality and integrity of that information by a written contract with the **Named Insured** .

**Information system** means any electronic device, electronic and paper storage media as well as any communications networks owned or operated exclusively for the benefit of a single owner.

**Insured** means the **Named Insured** and any of the persons or entities listed below but only while in the performance of **professional services** on behalf of the **Named Insured** for clients of the **Named Insured**:

1. Any **subsidiary** or **newly acquired subsidiary**;
2. Any present or former partner, member, officer, director or employee of the **Named Insured**, a **subsidiary** or a **newly acquired subsidiary**;
3. Independent contractors but only for **professional services** performed on behalf and at the direction of the **Named Insured** and the **Named Insured** has agreed in writing to provide insurance for the independent contractor's **professional services**;
4. Any leased employee but only while acting under the direct supervision and exclusively on behalf of the **Named Insured**.
5. The estate, heirs, executors, administrators assigns and legal representatives of an **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such Insured would have been provided coverage under this policy.
6. **Additional Insureds**, but only for **professional services** performed by or on behalf of the **Named Insured**.

**Media injury** means any of the following arising out of an **Insured's** obtaining, processing, uttering or disseminating, **content**:

1. any form of defamation or other tort related to disparagement or harm to the character, reputation or feelings of any person or organization, including libel, slander, product disparagement, trade libel, infliction of emotional distress, malicious falsehood, outrage or outrageous conduct;
2. any form of invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion, breach of confidence and commercial appropriation of name or likeness;
3. infringement of title, slogan, trademark, trade name, domain name, trade dress, service mark or service name;
4. infringement of copyright, false attribution of authorship, passing off, plagiarism or misappropriation of ideas under implied contract;

**Named Insured** means the persons or entities specified in Item 1. in the Declarations.

**Network extortion expense** means all reasonable and necessary sums, including the payment of extortion demand, incurred by the **Named Insured** and not recovered or reimbursed from another source.

**Network injury** means:

1. The transmission of malicious computer code to a third party
2. The failure to prevent the use of the **Named Insured's Information System** to harm a third party's **Information System** including the failure to prevent the use of the **Named Insured's Information System** to launch a denial of service attack.
3. The inability of third party to access the **Named Insured's Information System** due to the failure to prevent a denial of service attack, damage from malicious computer code or unauthorized access to the **Named Insured's Information System**.

**Newly acquired subsidiary** means any entity newly formed or acquired by the **Named Insured** during the **policy period** in which the **Named Insured** has more than 50% of the legal or beneficial interest, but only upon the conditions that:

1. Within 60 days of such formation or acquisition, the **Named Insured** has provided the **Company** with full particulars of such **newly acquired subsidiary** and the **Company** has agreed in writing to insure such **newly acquired subsidiary**, but the **Company** shall not be required to insure such **newly acquired subsidiary**;
2. The **Named Insured** has paid the additional premium, if any, charged by the **Company** and has agreed to any amendment of the provisions of this policy; and
3. The **Company** will only provide coverage with respect to a **claim** arising out of an act or omission in the performance of **professional services** when the act or omission is committed on or after the date such **newly acquired subsidiary** became a **newly acquired subsidiary** and prior to the date such **newly acquired subsidiary** ceased to be a **newly acquired subsidiary**. An entity ceases to be a **newly acquired subsidiary** under this policy on the date during the **policy period** that the **Named Insured's** legal or beneficial interest in such entity becomes less than 50%.

**Non-public personal information** means any of the following information, if not already publicly available, in combination with an individual's name:

1. Social security number, drivers license or state id number
2. Credit, debit, bank, credit union or brokerage account numbers
3. Telephone numbers or telephone records
4. Account histories or balances
5. Medical records
6. Any other non-public information that can be combined with name to identify an individual as specified by a **privacy regulation**.

**Personal injury** means injury other than **bodily injury** arising out of one or more of the following offenses by reason of an act or omission in the performance of **professional services**:

1. False arrest, detention or imprisonment;
2. Malicious prosecution;
3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;

**Policy period** means the period of time from the effective date shown in Item 3. in the Declarations to the earliest of the date of termination, expiration or cancellation of this policy.

**Privacy event expenses** mean any of the following costs arising out of a **privacy injury**:

1. Notifying individuals whose Non-Public Personal Information was comprised including legal fees to determine compliance requirements for all applicable **privacy regulations**:
  - a. as required by a **privacy regulation**;
  - b. as required by a Business Associate agreement under HIPAA or similar contract; or,
  - c. as deemed appropriate by attorneys retained by the **Company**, or retained by the **Insured** with the **Company's** consent.
2. The cost of providing risk mitigation services after notification pursuant to item #1 above such as :
  - a. credit monitoring
  - b. identity restoration services
  - c. medical record restoration services

as deemed appropriate by the **Company** ;

3. the cost to engage a computer forensics or incidence response firm to identify how the records were accessed and which records were accessed ; however, Privacy Event Expenses do not include the Insured's costs to re-configure or upgrade the Named Insured's Information System; or
4. the costs to engage a public relations firm

**Privacy injury** means the actual or potential unauthorized dissemination, disclosure, viewing, copying, alteration or deletion of **non-public personal information** or **proprietary business information** arising out of:

1. An act, error or omission in the provision or failure to provide **professional services** by an **Insured** including any unauthorized access to, or unauthorized use of, a client's **information system**
2. Any of the following involving the **Named Insured's information system**
  - a. Access to the **information system** by any party not authorized to do so
  - b. Use of the **information system** by an authorized user for a purpose not authorized by the **Named Insured**
  - c. Theft or loss of any component of the **information system**
3. The theft or loss of paper records in the care and custody of an **Insured**.
4. The accidental release of information via web postings, mail, email or facsimile
5. An unintentional breach of the **Named Insured's** written privacy policy

**privacy injury** also means:

1. the failure of the **Named Insured** to correct the **non-public personal information** of a third party stored on the **Named Insured's information system** which has been effected by any of the above once notified by the affected individual or their legal representative.

2. the **Named Insured**'s vicarious responsibility for the unauthorized dissemination, viewing, copying, alteration or deletion of **non-public personal information** or **proprietary business information** in the care and custody of an **Information Custodian**.

**Privacy regulation** means any current or future statute or regulation applying to the collection, dissemination or storage of **non-public personal information** promulgated by a **Privacy Regulator** including but not limited to state breach notice laws, HIPAA, the Hi-Tech Act, the FTC Red Flag rules, Gramm-Leach-Bliley, and the EU Data Protection Act.

**Privacy Regulator** means any local, state or federal government of the United States, any provincial or federal government in Canada, the European Union or a member state of the European Union.

**Privacy Regulatory Action** means the institution of an investigation, an administrative hearing or of civil charges by a **Privacy Regulator** under a **privacy regulation** arising out of an actual or alleged **privacy injury**

**Privacy Regulatory Fines & Penalties** means the sums an insured is required to pay as part of the settlement or judgment of a covered **privacy regulatory action**

**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.

**Professional services** means **technology and telecommunications services** and **additional professional services** provided to others for a fee.

**Property damage** means:

1. Physical Injury to tangible property, including all resulting loss of use of that property; or
2. Loss of use of tangible property that is not physically injured except that this exclusion does not apply to the loss of use of tangible property that is not physically injured due to a **network injury**.

For purposes of this definition, electronic data is not considered to be tangible property.

**Proprietary business information** means business records, customer lists, trade secrets or any other non-public information entrusted to an **Insured** under a written contract to protect its confidentiality.

**Regulatory restitution fund** means any sums deposited into a fund and used to provide compensation to individuals effected by a **privacy injury** as part of the settlement or judgment of a **privacy regulatory action claim**.

**Related claims** means all **claims** arising out of the same **wrongful act, privacy injury, network injury, or media injury, or related wrongful acts, related privacy injuries, related network injuries, or related media injuries**.

**Related media injuries** means all **media injuries** arising out of acts, errors or omissions that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision

**Related network injuries** means all **network injuries** arising out of circumstances, acts, errors or omissions that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision

**Related privacy injuries** means all **privacy injuries** arising out of circumstances, acts, errors or omissions that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision



**Related wrongful acts** means all acts, errors or omissions in the rendering of professional services that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision

**Retroactive date** means the date shown in Item 8. in the Declarations.

**Subsidiary** means any entity of which the **Named Insured** owns, either legally or beneficially, more than a 50% interest in such entity. On the date during the **policy period** that the **Named Insured's** legal or beneficial ownership interest in such entity becomes less than 50%, such entity will cease to be a **subsidiary** under this policy. In such event, coverage will be provided under this policy, but only with respect to acts or omissions committed prior to such date in accordance with all other terms and conditions of this policy. No coverage will be afforded under this policy with respect to **claims** made against an **Insured** based in whole or in part on any act or omission that was committed on or subsequent to such date.

**Technology and telecommunications services** means:

1. information technology consulting
2. information technology systems analysis, design, integration, customer support and training
3. information technology outsourcing
4. electronic data conversion, storage and back-up
5. development, provision, training and support of software including software as a service and ASP services,
6. communications systems analysis, design, integration, customer support and training
7. services as an internet access provider, internet service provider or telecommunications
8. provider including provision of email, chat and bulletin board services
9. design and manufacturing of computer, digitization, digital storage or telecommunications products
10. design and manufacturing of programmable or programmed logic components for end products not designed or manufactured by any **Insured** other than an **Additional Insured**.
11. web services including e-commerce transactions, web site design, web hosting, domain name registrar, public key infrastructure, internet media & web portal
12. Network security consulting and managed network security services

**Wrongful act** means any act, error or omission, including **personal injury**, in the performance of **professional services** by an **Insured** or by someone for whom the **Insured** is legally responsible.

## V. EXCLUSIONS

This policy does not apply to any **claim**:

- A. Based on or arising out of any dishonest, intentionally wrongful, fraudulent, criminal or malicious act or omission by an **Insured**. However:
  1. This exclusion shall not apply to the vicarious liability of an **Insured** for any dishonest, intentionally wrongful, fraudulent, criminal or malicious act or omission by an employee, leased employee or independent contractor committed without the knowledge, consent or acquiescence of any member, partner, director or officer of the **Named Insured**, a **subsidiary** or newly **acquired subsidiary**,

2. The **Company** will provide the **Insured** with a defense of such **claim** unless and until such dishonest, intentionally wrongful, fraudulent, criminal or malicious act or omission has been determined by any final adjudication, finding of fact or admission by the **Insured**. Such defense will not waive any of the **Company's** rights under this policy. Upon establishment that the dishonest, intentionally wrongful, fraudulent, criminal or malicious act or omission by an **Insured** was committed, the **Company** will have the right to seek recovery of the defense costs incurred from the **Insured** found to have committed the acts or omissions.

- B.** Based on or arising out of **bodily injury** or **property damage**;
- C.** Based on or arising out of discrimination, humiliation, harassment, or misconduct including but not limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual preference. The **Company** will provide the **Insured** with a defense of such **claim** and pay **claim expenses** for any suit which is brought alleging such discrimination as a single allegation in a multiple allegation suit, provided any one allegation is covered under this policy;
- D.** Based on or arising out of **professional services** performed for or by any business enterprise not named in Item 1. in the Declarations if on or after the date or time of the act or omission giving rise to such **claim**:
1. Any **Insured** controlled, owned, operated or managed such entity; or
  2. Any **Insured** was an owner, partner, member, director, officer or employee of such entity.

Control of or ownership in a business enterprise is presumed if any **Insured** owned or held, directly or indirectly, legally or beneficially, 10% or more of the equity and/or debt instruments of such enterprise;

- E.** By or on behalf of an **Insured** under this policy against any other **Insured** hereunder; except that this exclusion shall not apply to claims arising out of a **privacy injury** involving an employee of the **Named Insured** whose **non-public personal information** was alleged to have been comprised in the care and custody of the **Named Insured** or an **Information Custodian**;
- F.** Based on or arising out of actual or alleged violation of:
1. The Employee Retirement Income Security Act of 1974;
  2. The Securities Act of 1933;
  3. The Securities Exchange Act of 1934;
  4. Any state Blue Sky or Securities law;

or any rules, regulations or amendments issued in relation to such acts, or any similar state or federal statutes or regulations, including any **claim** based upon common law principles of liability;

- G.** Based on or arising out of, whether suddenly or over a long period of time:
1. The actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of **pollutants**; or
  2. Any injury, damage, payments, costs or expense incurred as a result of any testing for, monitoring, removal, containment, treatment, detoxification, neutralization or cleanup of **pollutants**.
- H.** Based on or arising out of liability of others assumed by the **Insured** under any contract or agreement, unless such liability would have attached to the **Insured** even in the absence of such contract or agreement; also, this exclusion does not apply to the payment of **privacy event expenses** required by a Business Associate Agreement under HIPAA or other similar contract.

- I. Based on or arising out of the gaining of any personal profit or advantage to which the **Insured** is not legally entitled;
- J. Based on or arising out of any actual or alleged anti-trust law violation or any agreement or conspiracy to restrain trade;
- K. Based on or arising out of or related to actual or alleged misappropriation of trade secret or infringement of patent,; however, this exclusion does not apply to claims arising the failure to protect a trade secret belonging to a third party arising out of a **privacy injury** or **network injury**;
- L. Based upon or arising out of the seizure of, access to or blockage of any **Information System** by any national, state or local governmental authority.
- M. Based upon or arising out:
  - 1. the failure of any third party to provide electric power, gas, internet, wireless or wireline communications services to an **Insured** including but not limited to blackouts, brown outs, power surges, power fluctuations.
  - 2. the failure of any satellite
- N. Based upon or arising out of the actual or alleged violation of any federal, state or local regulations prohibiting unsolicited communications including but not limited to CAN-SPAM Act and the Telephone Consumer Protection Act.
- O. Based upon or arising out of the actual or alleged infringement of copyright, trade mark, trade dress, service mark or service dress of any tangible product other than **content**.
- P. Based upon or arising out of contractual, ownership, licensing and royalty disputes brought by, in the name of or on behalf of:
  - 1. any client, sub-contractor, independent contractor, current or former employee, joint venture partner, licensee or sub-licensee involving an **Insured's content**
  - 2. any performance rights organization, including but not limited to ASCAP, BMI, SESAC, SOCAN or SoundExchange
- Q. Based upon or arising out of any express warranties, guarantees, or cost estimates;
- R. Based up on or arising out of the **Insured's** discontinuance of or withdrawal of support of any **technology service**.
- S. Based on or arising out of costs, expenses or damages for the withdrawal or recall of any **Insured's** electronic products or systems or work compiled by or on behalf of any **Insured**, or any property of which such products or work form a part; however, this exclusion shall not apply to claims arising out of a third party's loss if use of property not physically damaged..
- T. Based on or arising out of any regulatory authority, or any federal, state or local governmental agency; except this Exclusion does not apply to:
  - 1. a **claim** brought by any of these entities, if such entity is also a client, and if the **claim** arises from actual or alleged **wrongful acts** in performing **professional services**; or
  - 2. a **privacy regulatory action claim**

## VI. CONDITIONS

### A. Reporting of Claims, Potential Claims, and Privacy Injuries:

1. The **Insured**, as a condition precedent to the obligations of the **Company** under this policy, will give written notice to the **Company** as soon as reasonably possible during the **policy period** of any **claim** made against the **Insured**; provided, however, that the **Insured** may have up to, but not to exceed, 60 days after the end of the **policy period** in which to report in writing to the **Company** a **claim** first made against the **Insured** during the **policy period**, if the reporting of such **claim** is as soon as reasonably possible.
2. If during the **policy period**, the **Insured** becomes aware of any act or omission which may reasonably be expected to be the basis of a **claim** against the **Insured**, including but not limited to any notice, advice or threat, whether written or verbal, that any person or entity intends to hold the **Insured** responsible for any alleged act or omission, and gives written notice to the **Company** with all available particulars, including:
  - a. The specific act or omission;
  - b. The dates and persons involved;
  - c. The identity of anticipated or possible claimants;
  - d. The circumstances by which the **Insured** first became aware of the possible **claim**; and
  - e. Potential damages or injury.

then any **claim** that is subsequently made against the **Insured** arising out of such act or omission will be deemed to have been made on the date such written notice was received by the **Company**.

3. The **Insured**, as a condition precedent to the obligations of the **Company** under this policy, will give written notice to the **Company** as soon as reasonably possible during the **policy period** of any **privacy injury** of which it becomes aware, whether or not there has been a **claim**; provided, however, that the **Insured** may have up to, but not to exceed, 60 days after the end of the **policy period** in which to report in writing to the **Company** a **privacy injury** first discovered by the **Insured** during the **policy period**, if the reporting of such privacy injury is as soon as reasonably possible.
4. All notices of claims, potential claims, and privacy injuries must be mailed or emailed to the **Company** at the mailing address or email address below:

Navigators Pro – Claims Department  
One Penn Plaza, 32<sup>nd</sup> Floor  
New York, NY 10119  
navproclaims@navg.com

The date of such notice will be deemed to be the date that is received by the **Company**..

### B. Assistance and Cooperation

1. The **Insured** will cooperate with the **Company** and upon the **Company's** request, attend hearings, depositions and trials and assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits and proceedings in connection with a **claim**.
2. The **Insured** will assist in the enforcement of any right of contribution or indemnity against any person or organization who or which may be liable to any **Insured** in connection with a **claim**.
3. The **Insured** will not, except at the **Insured's** own cost, voluntarily make any payment, assume or admit any liability or incur any expense without the prior written consent of the **Company**.

4. The **Insured** will take all prudent and necessary steps to ensure that any unused portion of regulatory **restitution fund** payments are recovered and promptly returned to the **Company**.

### C. Action against the Company

1. No action may be brought against the **Company** unless, as a condition precedent thereto:
  - a. The **Insured** has fully complied with all the terms of this policy; and
  - b. Until the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after actual trial and appeal or by written agreement of the **Insured**, the claimant and the **Company**.
2. Nothing contained in this policy will give any person or organization the right to join the **Company** as a defendant or co-defendant or other party in any action against the **Insured** to determine the **Insured's** liability.

### D. Bankruptcy

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

### E. Other Insurance

Such insurance as is provided by this policy shall be excess of any other valid and collectible insurance.

### F. Subrogation

In the event of any payment for any **claim** under this policy, the **Company** will be subrogated in the amount of such payment to all the **Insured's** rights of recovery against any person or organization. The **Insured** will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** will do nothing to prejudice such rights.

### G. Changes

Notice to any agent of the **Company** or knowledge possessed by any such agent or by any other person will not effect a waiver or a change in any part of this policy, and will not prevent or preclude the **Company** from asserting or invoking any right or provision of this policy. None of the provisions of this policy will be waived, changed or modified except by a written endorsement issued by the **Company** to form a part of this policy.

### H. Cancellation/Nonrenewal

1. This policy may be cancelled by the **Named Insured** by returning it to the **Company**. The **Named Insured** may also cancel this policy by giving written notice to the **Company** stating at what future date cancellation is to be effective.
2. The **Company** may cancel or nonrenew this policy by sending written notice to the **Named Insured** at the address last known to the **Company**. The **Company** will provide written notice at least 60 days before cancellation or nonrenewal is to be effective. However, if the **Company** cancels this policy because the **Insured** has failed to pay a premium when due, this policy may be canceled by the **Company** by mailing to the **Named Insured** written notice stating when, not less than 10 days thereafter, such cancellation will be effective. The time of surrender of the policy or the effective date and hour of cancellation stated in the notice will become the end of the **policy period**. Delivery of such written notice either by the **Named Insured** or by the **Company** will be equivalent to mailing.
3. If the **Company** cancels this policy, the earned premium will be computed pro rata. If the **Named Insured** cancels this policy, the **Company** will retain the customary short rate proportion of the

premium. 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.

4. The offering of terms and conditions different from the expiring terms and conditions, including limits of liability, deductible or premium, shall not constitute a refusal to renew or a cancellation of this policy.

#### **I. Territory**

This policy applies to an act or omission taking place anywhere in the world. However, this policy shall not apply to any risk which would be in violation of the laws of the United States including, but not limited to, U.S. economic or trade sanction laws or export control laws administered by the U.S. Treasury, State, and Commerce Department.

#### **J. Named Insured Sole Agent**

The **Named Insured** will be the sole agent and will act on behalf of all **Insureds** for the purpose of giving or receiving any notices, any amendments to or cancellation of this policy, for the completing of any applications and the making of any statements, representations and warranties, for the payment of any premium and the receipt of any return premium that may become due under this policy, for the payment of the deductible and the exercising or declining to exercise any right under this policy including the purchase of an **extended reporting period**.

#### **K. Entire Contract**

By acceptance of this policy the **Insured** warrants that:

1. All of the information and statements provided to the **Company** by the **Insured**, including but not limited to, the application and any supplemental information, are true, accurate and complete and will be deemed to constitute material representations made by the **Insured**;
2. This policy is issued in reliance upon the **Insured's** representations;
3. This policy, endorsements thereto, together with the completed and signed application and any and all supplementary information and statements provided by the **Insured** to the **Company** (all of which are attached hereto and deemed to be incorporated herein) embody all of the agreements existing between the **Insured** and the **Company** and shall constitute the entire contract between the **Insured** and the **Company**; and
4. Any material misrepresentation or concealment by the **Insured** or the **Insured's** agent will render the policy null and void and relieve the **Company** from all liability herein.

#### **L. Notices**

Except for notices of claims and potential claims, which shall be given in accordance with Section VI.A.3, any notices required to be given by the **Insured** will be submitted in writing to the **Company** or its authorized representative at:

President  
Navigators Specialty Insurance Company  
One Penn Plaza, 32nd Floor, New York, NY 10119

If mailed, the date of mailing of such notice will be deemed to be the date such notice was given and proof of mailing will be sufficient proof of notice.

## M. Assignment

No assignment of interest of the **Insured** under this policy is valid, unless the **Company's** written consent is endorsed hereon.

## VII. EXTENDED REPORTING PERIODS

**Extended reporting period** means the period of time after the end of the **policy period** for reporting **claims** to the **Company** that are made against the **Insured** during the applicable **extended reporting period** by reason of an act or omission, which was committed prior to the end of the **policy period** and on or subsequent to the **retroactive date**, and is otherwise covered by this policy.

### A. Automatic Extended Reporting Period

If this policy is cancelled or nonrenewed by either the **Company** or by the **Named Insured**, the **Company** will provide to the **Named Insured** an automatic, noncancelable **extended reporting period** starting at the termination of the **policy period** if the **Named Insured** has not obtained another policy of errors and omissions insurance within sixty (60) days of the termination of the **policy period**. This automatic **extended reporting period** will terminate after sixty (60) days.

### B. Optional Extended Reporting Period

1. If this policy is cancelled or nonrenewed by either the **Company** or by the **Named Insured**, then the **Named Insured** will have the right to purchase an optional **extended reporting period** of one to three years. Such right must be exercised by the **Named Insured** within sixty (60) days of the termination of the **policy period** by providing:
  - a. Written notice to the **Company**; and
  - b. With the written notice, the amount of additional premium described below.
2. The additional premium for the optional **extended reporting period** will be the amount shown on the binder.
3. The first sixty (60) days of the optional **extended reporting period**, if it is purchased, shall run concurrently with the automatic **extended reporting period**.

### C. Extended Reporting Period Limits of Liability

The limit of liability of the **Company** for all **claims** reported during the automatic and optional **extended reporting periods** will be part of and not in addition to the limits of liability for the **policy period** set forth in Item 4. in the Declarations.

### D. Elimination of Right to Any Extended Reporting Period

There is no right to any **extended reporting period** if the **Company** cancels or refuses to renew this policy due to:

1. Nonpayment of amounts due under this policy;
2. Noncompliance by the **Insured** with any of the terms and conditions of this policy;
3. Any material misrepresentation or omission in the application or the supplementary information and statements provided by the **Insured** for this policy.

#### **E. Extended Reporting Period - Not a New Policy**

The **extended reporting period** will not be construed to be a new policy and any **claim** submitted during such period will otherwise be governed by this policy.

#### **IX. SERVICE OF SUIT**

If the **Company** fails to pay any amount claimed to be due hereunder, the **Company**, at the request of the **Insured**, will submit to the jurisdiction of any court of competent jurisdiction within the United States of America. The foregoing shall not constitute a waiver of the right of the **Company** to seek to remove, remand or transfer such suit to any other court in accordance with applicable law.

Service of process in any such suit may be made upon the **Company** through the Superintendent, Commissioner, or Director of Insurance or other person specified for that purpose in an applicable state statute.

The **Company** hereby designates the President of Navigators Specialty Insurance Company, One Penn Plaza, 32nd Floor, New York, NY 10119, as the person to whom the Superintendent, Commissioner, or Director of Insurance is authorized to mail such process or a true copy thereof, in compliance with the applicable statutes governing service of process.