

# Capitol Specialty Insurance Corporation

P. O. Box 5900  
Madison, WI 53705-0900

## Technology and Internet E&O Policy

(Claim Expenses Reduce the Policy Limit)

THE TECHNOLOGY AND INTERNET E&O POLICY IS A CLAIMS MADE FORM. COVERAGE APPLIES ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD. THE POLICY DOES NOT COVER CLAIMS ARISING OUT OF ERRONEOUS ACTS THAT OCCUR PRIOR TO THE RETROACTIVE DATE OF THE POLICY OR AFTER THE EXPIRATION DATE OF THE POLICY.

THE LIMIT OF INSURANCE AVAILABLE TO PAY DAMAGES WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF CLAIM EXPENSES.

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered. Words and phrases, other than Titles or Captions, appearing in bold print have special meaning. Refer to **SECTION V - DEFINITIONS**.

### SECTION I - COVERAGES

#### 1. Insuring Agreement

- a. The **Company** will pay on an **Insured's** behalf, those sums in excess of the Deductible and up to the applicable Limit of Insurance specified in the Declarations, that an **Insured** becomes legally obligated to pay as **Damages** or **Claim Expenses** because of **Claims** first made during the **Policy Period** or any Extended Reporting Period and resulting from the following actual or alleged **Erroneous Acts** by an **Insured** or by any person or organization for which an **Insured** is legally liable, and which results from the performance of **Technology and Internet Activities**. **Erroneous Acts** means any of the following:

(1) **Negligence**

Negligent acts, errors or omissions.

(2) **Personal Injury and Privacy**

(a) Libel, trade libel, slander, product disparagement, or any other form of defamation or harm to the character, feelings or reputation of any person or entity;

(b) Infliction of emotional distress, mental anguish, outrage, or outrageous conduct, except when the emotional distress, mental anguish, outrage or outrageous conduct arises out of **Bodily Injury**;

(c) Violation of a person's right to privacy, including false light and breach of confidence;

(d) Infringement of the right of private occupancy including trespass, eavesdropping, intrusion, public disclosure of private facts and wireless signal interception;

(e) False arrest, detention or imprisonment;

(f) Wrongful entry into or eviction of a person from a room, dwelling or premises that the person occupies;

(g) Malicious prosecution; or

(h) Misappropriation of name or likeness.

(3) **Intellectual Property**

(a) Infringement of copyright, false attribution of authorship, passing off, plagiarism, piracy or misappropriation of ideas under implied contract; or

(b) Any of the following, except when alleged in conjunction with advertising about an **Insured** or its goods or services:

(i) Infringement of trademark, trade name, trade dress, service mark, service name, title or slogan; or

(ii) Unfair competition, but only when alleged in conjunction with allegations of infringement of trademark, trade name, trade dress, service mark, service name, title or slogan.

#### (4) Computer and Network Security

- (a) Failure to prevent a person or entity other than an **Insured**, and other than a person who would be an **Insured** if not for that person having acted outside the scope of their duties, from unauthorized access to, use of or tampering with data or systems;
- (b) Failure to prevent the introduction of a virus or other malicious code into data or systems; or
- (c) Failure to provide access to services of an **Insured**.

- b. The **Company** has the right and duty to defend a covered **Claim** against an **Insured**, regardless of whether the allegations of the **Claim** are meritless, false or fraudulent. The **Company** has the right to select defense counsel to defend the **Insured**.
- c. The Limit of Insurance available to pay **Damages** will be reduced and may be exhausted by the payment of **Claim Expenses**.

## 2. Exclusions

- a. The **Company** is not liable for **Damages** or **Claim Expenses** or obligated to defend **Claims** arising out of actual or alleged:
  - (1) **Bodily Injury**, including allegations of emotional distress, mental anguish, outrage or outrageous conduct resulting from **Bodily Injury**;
  - (2) **Property Damage**;
  - (3) Infringement of patent;
  - (4) Restraint of trade, violation of antitrust laws, or unfair competition except unfair competition covered by **SECTION I - COVERAGES 1.a.(3)(b)(ii)**;
  - (5) Misappropriation or theft of trade secrets;
  - (6) Unlawful discrimination or harassment, including that based upon race, creed, color, religion, national origin, age, disability, sex, marital status or sexual orientation;
  - (7) Employment related practices and policies of an **Insured**;
  - (8) Gain, profit or advantage to which an **Insured** is not legally entitled;
  - (9) Intentional removal from or denial of access to services an **Insured** has agreed to provide;
  - (10) Liability assumed under any contract or agreement, but this exclusion does not apply to liability an **Insured** would have in the absence of such contract or agreement;
  - (11) Acts by an **Insured** related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provisions of the Employee Retirement Income Security Act of 1974 (the "Act"), or any amendment, regulation, ruling or order issued pursuant to the Act or any similar provisions of any federal, state or local law;
  - (12) Violation of:
    - (a) The Securities Act of 1933 as amended;
    - (b) The Securities Exchange Act of 1934 as amended;
    - (c) Any state blue sky or securities law;
    - (d) Any similar state or federal law; or
    - (e) Any order, ruling or regulation issued pursuant to the above laws;
  - (13) Bankruptcy, insolvency, receivership, liquidation and/or cessation of operations of an **Insured** or other entity over which an **Insured**, by reason of ownership interest or otherwise, asserts influence or control;
  - (14) Electrical failure, including any electrical power interruption or surge, brownout, blackout, short circuit, over voltage, induction, power fluctuations or satellite failure; regardless whether the electrical failure was caused by another event or condition;
  - (15) Actual or threatened discharge, dispersal or release of any **Pollutant**; or the creation of an injurious condition involving any **Pollutant**; or the existence of any **Pollutant** on any property; or the cleanup, removal, testing, monitoring, containment, treatment, detoxification or neutralization of any **Pollutant**. This exclusion is effective whether or not the pollution was sudden, accidental, gradual, intended, expected or preventable and whether or not an **Insured** caused or contributed to the pollution;
  - (16) Unauthorized access to, use of, or tampering with data or systems by an **Insured** or by a person who would be an **Insured** if that person had not acted outside the scope of their duties;

- (17) Infringement of trademark, trade name, trade dress, service mark, service name, title or slogan when any of these arise in any way out of advertising about an **Insured** or its goods or services;
  - (18) False or misleading advertising about an **Insured** or its goods or services;
  - (19) Criminal, dishonest, fraudulent, malicious or knowingly wrongful acts by any **Insured**. If a **Claim** would invoke the **Company's** duty to defend but for allegations of such acts, then the **Company** will defend the **Claim** until there is a finding by a jury, judge or arbitrator or an admission by an **Insured**, or by a person who would be an **Insured** if that person had not acted outside the scope of their duties, that there were such acts. The **Company** will not pay any settlement or judgment associated with such finding or admission, and the **Company** retains the right to seek reimbursement of **Claim Expenses** paid from the party found to have committed such acts or made such an admission. In no event will the **Company** defend any **Insured** against or in criminal proceedings, regardless of the allegations;
  - (20) Breach of contract; however, this does not exclude **Claims** alleging negligent performance of **Technology and Internet Activities**;
  - (21) Breach of warranty or guarantee; or
  - (22) Misconduct raised in an administrative or regulatory action brought by any governmental agency or entity.
- b. The **Company** is not liable for **Damages** or **Claim Expenses** or obligated to defend **Claims** made by or on behalf of:
- (1) Any entity which is a parent, affiliate, subsidiary, co-venturer or partner of an **Insured** or any other entity over which an **Insured**, by reason of ownership interest or otherwise, asserts influence or control;
  - (2) Any entity directly or indirectly controlled, operated or managed by an entity described in **SECTION I - COVERAGES 2.b.(1)** above;
  - (3) Any provider who has supplied, is supplying or is to supply **Content**, goods or services, if the **Claim** arises out of a dispute over fees for, or title, ownership or exercise of rights in, the **Content**, goods or services provided; or
  - (4) Any **Insured**.

## SECTION II - WHO IS AN INSURED

1. A **Named Insured** is the person(s) or entity(ies) designated in the Declarations.
2. If the **Named Insured** is:
  - a. An individual, the individual's spouse and current and former employees are **Insureds**, but only with respect to the performance of **Technology and Internet Activities**.
  - b. A partnership or joint venture, the partnership or joint venture's current and former members, partners and employees and the **Named Insured's** spouses are **Insureds**, but only with respect to the performance of **Technology and Internet Activities**.
  - c. A limited liability company, its current and former members, managers and employees are **Insureds**, but only with respect to the performance of **Technology and Internet Activities**.
  - d. An organization other than a partnership, joint venture or limited liability company, the organization's current and former officers, directors and employees are **Insureds**, but only with respect to the performance of **Technology and Internet Activities**. The **Named Insured's** stockholders are also **Insureds**, but only with respect to **Claims** arising out of the performance of **Technology and Internet Activities**.
3. Independent Contractors, but only for liability arising from performance of their duties as described by written contract with a **Named Insured** and from performance of **Technology and Internet Activities**.
4. The estate, heirs, assigns or legal representatives of an **Insured**, individually and collectively, in the event of death, bankruptcy or incompetency of an **Insured** under this Policy, but only for **Claims** arising from the **Erroneous Acts** of such deceased, bankrupt or incompetent **Insured**.
5. Any organization newly acquired or formed during the **Policy Period** and over which a **Named Insured** maintains more than 50% ownership interest, will qualify as a **Named Insured** if there is no other similar insurance available to the organization; however, coverage for the newly acquired or formed organization applies only if the following conditions are met:
  - a. Coverage under this provision is afforded only until the 90th day after the acquisition or formation, or the end of the **Policy Period**, whichever is earlier; provided that within this period a **Named Insured**:
    - (1) advises the **Company** of the acquisition (or) formation of the new organization;

- (2) provides information as requested by the **Company** for evaluation; and
  - (3) pays any additional Premium the **Company** assesses as a result of the change.
- b. The **Company** issues an endorsement to include the newly acquired or formed organization.  
Coverage applies only to **Technology and Internet Activities** performed on or after the date of creation, formation or acquisition of the new organization.

### SECTION III - LIMIT OF INSURANCE AND DEDUCTIBLE

#### 1. Limit of Insurance

- a. The Each **Erroneous Act** Limit of Insurance specified in the Declarations is the most the **Company** will pay for **Damages** and **Claim Expenses** combined for the total of all **Claims** made during the **Policy Period** and any Extended Reporting Period arising from each **Erroneous Act** no matter how many:
- (1) **Insureds** this Policy covers;
  - (2) **Claims** are made; or
  - (3) Persons or organizations make **Claims**.
- b. The Aggregate Limit of Insurance specified in the Declarations is the most the **Company** will pay for **Damages** and **Claim Expenses** combined for the total of all **Claims** made during the **Policy Period** and any Extended Reporting Period, no matter how many:
- (1) **Insureds** this Policy covers;
  - (2) **Claims** are made;
  - (3) Persons or organizations make **Claims**; or
  - (4) **Erroneous Acts** are committed.

Each payment the **Company** makes for **Damages** or **Claim Expenses** reduces the Each **Erroneous Act** Limit of Insurance and the Aggregate Limit of Insurance.

The **Company** will not be obligated to pay or reimburse any **Damages** or **Claim Expenses** or defend any **Claim** after the applicable Limit of Insurance is exhausted.

#### 2. Deductible

The Deductible amount is the amount specified in the Declarations for each **Erroneous Act**. The **Company's** obligation to pay **Damages** and **Claim Expenses** applies only to sums in excess of the Deductible. The application of the Deductible will not erode the Each **Erroneous Act** Limit of Insurance or the Aggregate Limit of Insurance.

If the total of **Damages** and **Claim Expenses** for any **Claim** is within the Deductible, the **Company** will have no duty to pay **Damages** or **Claim Expenses** for the **Claim**.

If, at the **Company's** option, the **Company** has paid part or all of any Deductible, the **Insured** will be obligated to reimburse such amounts to the **Company** upon demand.

### SECTION IV - CONDITIONS

#### 1. Bankruptcy

The bankruptcy or insolvency of an **Insured** or an **Insured's** estate will not relieve the **Company** of its obligations under this Policy nor deprive the **Company** of its rights or defenses under this Policy.

#### 2. Duties In The Event of a Claim

- a. The **Insured** must notify the **Company**, in writing, as soon as practicable of a **Claim** or a circumstance or incident likely to result in a **Claim**. The **Insured** must notify the **Company** by sending notice to:

Specialty Global Insurance,  
A Division of Capitol Insurance Companies  
Attn: Claims Manager  
800 West 47th Street, Suite 515  
Kansas City, Missouri 64112

The notice must include all of the following information:

- (1) The names of all persons and/or organizations involved in the **Erroneous Act**;
- (2) The specific person or organization likely to make the **Claim**;
- (3) A description of the time, place and nature of the **Erroneous Act**; and
- (4) A description of the potential damages;

- b. The **Insured** must send the **Company** copies of all demands, notices, settlement offers, summonses or legal papers received in connection with the **Claim** or potential **Claim**;
- c. Upon the **Company's** request, the **Insured** must authorize the **Company** to obtain records and other information;
- d. The **Insured** must cooperate with and assist the **Company** in the investigation, settlement and defense of the **Claim**;
- e. The **Insured** must cooperate with and assist the **Company**, upon the **Company's** request, in enforcing any rights of contribution or indemnity against another party who may be liable to an **Insured**;
- f. No **Insured** will, except at the **Insured's** own cost, voluntarily make a payment, assume any obligation, or incur any expense without the **Company's** consent; and
- g. The **Company** has the right to settle all **Claims** subject to the consent of the **Named Insured** first listed in the Declarations. The **Company** will not settle any **Claim** without the consent of such **Named Insured**. However, if such **Named Insured** refuses to consent to any settlement recommended by the **Company**, then the **Company's** liability for the **Claim** will be limited to the amount equal to the amount for which the **Claim** could have been settled, plus **Claim Expenses** incurred up to the date of such **Named Insured's** refusal to consent to settlement minus the amount of the Deductible specified in the Declarations. The **Company** will mail payment of that amount to the **Named Insured** first listed in the Declarations and will have no further obligation with respect to the **Claim**.

The failure of the **Named Insured** first listed in the Declarations to express consent to a settlement recommended by the **Company** will be deemed refusal to consent to the settlement.

### 3. Legal Action Against the Company

No person or organization has a right under this Policy:

- a. To join the **Company** as a party or otherwise bring the **Company** into a suit seeking **Damages** from an **Insured**; or
- b. To sue the **Company**, unless the **Insured** has fully complied with all terms and conditions of this Policy.

### 4. Other Insurance

The insurance afforded by this Policy is excess over any other valid and collectible insurance available to the **Insured**, except insurance specifically arranged by the **Named Insured** first listed in the Declarations to apply in excess of this insurance.

### 5. When Coverage Applies

#### a. Claims First Made

This Policy applies to **Claims** first made against an **Insured** during the **Policy Period**. The **Company** will consider a **Claim** to be first made against an **Insured** when a written **Claim** is first received by an **Insured** during the **Policy Period** or any Extended Reporting Period. All terms and conditions of this Policy in effect on the date the **Claim** is first made will apply to the **Claim**.

#### b. Erroneous Acts

This Policy applies to **Claims** arising from **Erroneous Acts** that occur after the **Retroactive Date** and before the Expiration Date of this Policy. Such **Claims** will be covered:

- (1) Subject to all terms and conditions of the Policy; and
- (2) Unless an **Insured** had actual or constructive knowledge of the circumstance(s) or incident(s) which led to the **Claim** and reason to believe it would result in a **Claim**, prior to the Effective Date of the first Technology and Internet E&O Policy issued to an **Insured** by the **Company** or any affiliate thereof.

#### c. Reported Erroneous Acts

This Policy applies to **Claims** first made against an **Insured** after the end of the **Policy Period**, but only if all of the following conditions are met:

- (1) The **Erroneous Act** is committed after the **Retroactive Date** and before the Expiration Date specified in the Declarations;
- (2) The **Company** receives written notice, including information as required in **SECTION IV - CONDITIONS 2.a.** of this Policy, from an **Insured** during the **Policy Period** of the **Erroneous Act**;

(3) No **Insured** had actual or constructive knowledge, prior to the Effective Date of the first Technology and Internet E&O Policy issued by the **Company** or any affiliate thereof to an **Insured**, of a circumstance or incident that could reasonably have been expected to lead to the **Claim**; and

(4) There is no other valid and collectible insurance for the **Claim**.

A **Claim** first made after the end of the **Policy Period** and meeting all of the above conditions will be deemed to have been made on the last day of the **Policy Period**. All terms and conditions of this Policy in effect on that day will apply to the **Claim**.

#### d. Multiple Claims

All **Claims** arising from the same **Erroneous Act** will be considered to have been made on the earlier of the following times:

- (1) The date the first of those **Claims** is made against an **Insured**; or
- (2) The date the **Company** first receives an **Insured's** written notice of the **Erroneous Act**. Such notice must include information as required in **SECTION IV - CONDITIONS 2.a.** of this Policy.

The terms and conditions of this Policy in effect on that date will apply to all such **Claims**.

#### e. Related Erroneous Acts

All **Erroneous Acts** that:

- (1) are committed after the **Retroactive Date** and before the Expiration Date of the last Technology and Internet E&O Policy issued to an **Insured** by the **Company** or any affiliate thereof; and
- (2) are logically or causally connected by common facts, circumstances, transactions, events and/or decisions; will be:
  - (1) treated under this Policy as one **Erroneous Act**; and
  - (2) deemed to have occurred on the date of the first of the **Erroneous Acts**.

### 6. Representations

By accepting this Policy the **Insured** agrees:

- a. The statements in the Application, along with any and all attachments submitted with the same, or in connection with the application process and furnished to the **Company** are true, accurate and complete;
- b. Those statements furnished to the **Company** are representations the **Named Insured** first listed in the Declarations made on behalf of all **Insureds**;
- c. Those representations are a material inducement to the **Company** to issue this Policy;
- d. The **Company** has issued this Policy in reliance upon those representations; and
- e. If this Policy is part of the renewal of a Policy issued by the **Company**, the **Insured's** representations include the representations made in all previous Applications for previous Policies issued by the **Company**.

The Application, as well as any attachments thereto, furnished to the **Company** as part of the application process will be kept on file by the **Company** and deemed attached to this Policy as if physically attached to it.

### 7. Change in Operations or in Technology and Internet Activities

This Policy applies only to **Technology and Internet Activities** as defined in this Policy or added by endorsement. The **Named Insured** first listed in the Declarations agrees to notify the **Company** of any material changes to any **Insured's** operations or activities. If the **Company** determines that these changes in operations or activities result in a change to an **Insured's** exposure, the **Company** has the right to modify the coverage provided or make adjustments to the Premium or rates charged for any coverage provided.

### 8. Transfer of Rights of Recovery Against Others

If the **Insured** has rights to recover all or part of any payment the **Company** has made under this Policy, those rights are transferred to the **Company**. The **Insured** must do nothing to impair those rights and at the **Company's** request, the **Insured** will transfer those rights to the **Company** and help the **Company** enforce them.

### 9. No Obligation to Renew

The **Company** will not be obligated or required to renew this Policy. Any offer of renewal terms involving a change of Deductible, Premium, Limit of Insurance, or other terms and conditions will not constitute, nor be construed as, a refusal by the **Company** to renew the Policy. The **Company** may elect to non-renew this Policy by mailing to the **Named Insured** first listed in the Declarations at least thirty (30) days advance written notice or notice as otherwise specified by state law. If notice is mailed, proof of mailing will be sufficient proof of notice.

## 10. Territory and Currency

The territory applicable to the Policy is universal. If **Damages** or **Claim Expenses** are paid in currency other than United States of America dollars, then the payment under this Policy will be considered to have been made in the United States of America dollars at the conversion rate as published in *The Wall Street Journal* on the date of payment.

## 11. Extended Reporting Period

a. In the event of cancellation or non-renewal of this Policy by the **Company**, for reasons other than non-payment of Premium and/or Deductible or non-compliance with the terms and conditions of this Policy, the **Named Insured** first listed in the Declarations will have the right to purchase an Extended Reporting Period as follows:

- (1) The right to purchase the Extended Reporting Period will terminate unless written notice by the **Named Insured** first listed in the Declarations of the intention to purchase it, together with payment of the additional Premium due, is received by the **Company** within thirty (30) days after the effective date of the cancellation or non-renewal;
- (2) An additional Premium, based upon the length of the Extended Reporting Period will apply. The additional Premium will be calculated as a percentage of the annual Premium as listed below:

One Year	75%
Two Years	125%
Three Years	150%
Four Years	175%
Five Years	200%

The additional Premium for the Extended Reporting Period will be fully earned upon inception of the Extended Reporting Period. Once purchased, the Extended Reporting Period may not be cancelled;

- (3) A **Claim** made during the Extended Reporting Period will be deemed to have been made on the last day of the **Policy Period**. All terms and conditions of this Policy in effect on that day will apply to the **Claim**; and
- (4) The Extended Reporting Period does not extend the **Policy Period** or change the scope of coverage provided nor does it provide an additional or renewed Aggregate Limit of Insurance. It applies only to **Claims** made against an **Insured** during the Extended Reporting Period for **Erroneous Acts** that occur after the **Retroactive Date** and before the Expiration Date of the Policy.

b. In the event the **Named Insured** first listed in the Declarations elects to cancel or non-renew this Policy, the **Company** may offer an Extended Reporting Period at its discretion.

## 12. Premiums and Deductibles

The **Named Insured** first listed in the Declarations:

- a. Is responsible for the payment of all Premiums and Deductibles; and
- b. Will be the payee for any return Premiums the **Company** pays.

## 13. Cancellation

a. The **Named Insured** first listed in the Declarations may cancel this Policy by mailing or delivering to the **Company** advance written notice of cancellation.

b. The **Company** may cancel this Policy by mailing or delivering to the **Named Insured** first listed in the Declarations written notice of cancellation at least:

- (1) Ten (10) days before the effective date of cancellation if the **Company** cancels for nonpayment of Premium; or
- (2) Thirty (30) days before the effective date of cancellation if the **Company** cancels for any other reason.

c. The **Company** will mail or deliver notice to the last known mailing address of the **Named Insured** first listed in the Declarations.

d. Notice of cancellation will state the effective date of cancellation. The **Policy Period** will end on that date.

e. If this Policy is cancelled, the **Company** will send any Premium refund due to the **Named Insured** first listed in the Declarations. If the **Company** cancels, the refund will be pro rata. If the **Named Insured** first listed in the Declarations cancels, the refund will be calculated as 90% of the pro-rated return Premium. The cancellation will be effective even if the **Company** has not made or offered a refund.

f. If notice is mailed, proof of mailing will be sufficient proof of notice.

#### 14. Changes

This Policy contains all the agreements between the **Company** and the **Insured** concerning the insurance afforded. The **Named Insured** first listed in the Declarations is authorized to make changes in the terms of this Policy with the **Company's** consent. The Policy's terms can be amended or waived only by endorsement issued by the **Company** and made a part of this Policy.

#### 15. Transfer of Rights and Duties Under This Policy

An **Insured's** rights and duties under this Policy may not be transferred without the **Company's** prior written consent except in the case of death of an individual **Named Insured**.

If the **Insured** dies, the **Insured's** rights and duties will be transferred to the **Insured's** legal representative but only while acting within the scope of duties as the **Insured's** legal representative.

### SECTION V - DEFINITIONS

Some bold-faced words may be defined in other parts of the Policy.

1. **Bodily Injury** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
2. **Claim** means a suit, a written demand or a written assertion of a legal right, any of which seek **Damages** against an **Insured**, or a suit for injunctive relief.
3. **Claim Expenses** means the following expenses incurred by the **Company** in the investigation, adjustment, negotiation, arbitration, mediation, settlement and defense of **Claims**:
  - a. Expenses the **Company** incurs, other than salary, wages or expenses of the **Company's** regular employees;
  - b. Reasonable fees charged by attorneys selected or pre-approved by the **Company** to defend an **Insured**;
  - c. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable Limit of Insurance. The **Company** will not apply for or furnish these bonds; and
  - d. Reasonable expenses incurred by an **Insured** at the **Company's** request.**Claim Expenses** do not include:
  - a. Loss of earnings or profit by any **Insured**; or
  - b. Salaries, wages, fees, or other compensation payable to any **Insured**.
4. **Company** refers to the Insurer named in the Declarations.
5. **Content** means informational data including words, pictures, graphics, artwork and code, however transmitted and however received. **Content** does not include advertising about an **Insured** or its goods or services; or messages sent on an individual basis or other one-to-one communications.
6. **Damages** means:
  - a. Amounts which an **Insured** is legally obligated to pay as a result of a covered judgment, award or settlement;
  - b. Costs assessed against an **Insured** in any suit or proceeding defended by the **Company** unless such costs are assessed as a sanction for an **Insured's** delay or misconduct in the litigation process;
  - c. Pre-judgment interest and post-judgment interest assessed before the **Company** has paid, offered to pay or deposited in court the part of the judgment that is covered by this Policy and that is within the applicable Limit of Insurance; and
  - d. Punitive, exemplary or multiple damages, where insurable by law.**Damages** does not include:
  - a. Taxes, criminal or civil fines or penalties imposed by law;
  - b. Production costs, or the cost of reprinting, recalling, recovering, shipping, correcting, reprocessing, restoring, repairing, replacing, reproducing or reperforming **Technology and Internet Activities**; or
  - c. Royalties or restitution paid or payable by an **Insured**; fines, fees or penalties charged by a licensing organization; disgorgement of an **Insured's** profits; costs of complying with an order granting injunctive relief; or disputed: fees, charges, or commissions for goods or services.
7. **Policy Period** means the period of insurance specified in the Declarations or a shorter period resulting from cancellation of the Policy.



8. **Pollutant** means any solid, liquid, gaseous or thermal irritant or contaminant, including:
- a. Smoke vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed; or
  - b. Hazardous, toxic or radioactive matter or nuclear radiation.
9. **Property Damage** means physical injury to tangible property, including all resulting loss of use of that property. For the purposes of this Policy, electronic data is not tangible property.
10. **Retroactive Date** means the date specified in the Declarations.
11. **Technology and Internet Activities**
- a. **Technology and Internet Activities** means the following services performed for others:
    - (1) design, development, programming, licensing or distribution of software, regardless of the method of distribution;
    - (2) distribution, resale, installation, maintenance and support of hardware, cable or components;
    - (3) consulting regarding technology and Internet systems, networks, hardware or software, including systems or network security, analysis, integration, migration or installation;
    - (4) data or data base processing, management, integration, migration or mining;
    - (5) technology services outsourcing;
    - (6) provision of systems backup services or of co-location facilities;
    - (7) design, maintenance or hosting of websites;
    - (8) provision of search engine services;
    - (9) acting as an Internet service provider;
    - (10) providing technology staff placement and augmentation services;
    - (11) technology or Internet-related training, support and help desk services;
    - (12) drafting, editing, publishing or distribution of technology and Internet-related technical materials, manuals or documentation;
    - (13) services provided via any website scheduled in the Declarations;
    - (14) creation, dissemination or distribution of advertising;
    - (15) graphic, digital or computer aided design;
    - (16) telecommunication services consisting of teleconferencing or video conferencing services, communication assistive device services, call centers, paging and two way device services; and
    - (17) other **Technology and Internet Activities** as specified in the Declarations.
  - b. **Technology and Internet Activities** also means the creation, dissemination or distribution of **Content** as follows:
    - (1) dissemination of **Content** via any website scheduled in the Declarations; and
    - (2) **Content** created, disseminated or distributed in the normal course of performing other covered **Technology and Internet Activities** as described in **SECTION V - DEFINITIONS 11.a.** above.

**Capitol Specialty Insurance Corporation**

SPECIMEN

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

Secretary

President

*Alan L. Gebni*

*David Paul*