

# CYBERFIRST GENERAL PROVISIONS FORM

**THIS FORM APPLIES TO EACH OF YOUR CYBERFIRST COVERAGE FORMS THAT ARE PART OF YOUR POLICY. EACH OF THOSE COVERAGE FORMS THAT PROVIDES LIABILITY COVERAGE APPLIES ON A CLAIMS-MADE BASIS. DEFENSE EXPENSES ARE PAYABLE WITHIN, AND ARE NOT IN ADDITION TO, THE LIMITS OF INSURANCE. PAYMENT OF DEFENSE EXPENSES WILL REDUCE THE LIMITS OF INSURANCE.**

**PLEASE READ THE ENTIRE FORM CAREFULLY.**

This form contains provisions that apply to each of "your CyberFirst coverage forms". Various provisions in this form and "your CyberFirst coverage forms" restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the CyberFirst Declarations, and any other person or organization qualifying as a Named Insured under this insurance. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section VII - Definitions. Some words and phrases that appear in quotation marks in this form are defined in Section II - Definitions of "your CyberFirst coverage forms". Each term with a defined meaning shown in "your CyberFirst coverage forms", when used in this form, will have the defined meaning shown for that term in "your CyberFirst coverage forms".

## SECTION I - COVERAGE

### 1. Defense Of Claims Or Suits - Liability Coverages

- a. We will have the right and duty to defend the insured against any "claim" or "suit" seeking "damages" for loss to which the insurance provided under one or more of "your CyberFirst coverage forms" applies, if no provider of other insurance has a duty to defend the insured against that "claim" or "suit". However, we will have no duty to defend the insured against any "claim" or "suit" seeking "damages" for loss to which the insurance provided under "your CyberFirst coverage forms" does not apply.

We will also have the right and duty to defend the insured against any "suit" seeking injunctive relief for loss to which the insurance provided under one or more of "your CyberFirst coverage forms" applies, if no provider of other insurance has a duty to defend that "suit". However, we will have no duty to defend the insured against any "suit" seeking injunctive relief for loss to which the insurance provided under "your CyberFirst coverage forms" does not apply. For the purposes of our right and duty to defend an insured under this paragraph, a "suit" seeking injunctive relief for loss to which the insurance provided under one or more of "your CyberFirst coverage forms" applies will be deemed to be a "suit" seeking "damages" because of such loss.

When we defend a "claim" or "suit" against an insured, we will pay reasonable "defense expenses". Payment of such "defense expenses" will reduce the Limits of Insurance.

We may, at our discretion, investigate any "wrongful act" or "claim". We may settle any "claim" or "suit" with your consent. But our right and duty to defend ends when we have used up:

- (1) The Aggregate Limit in the payment of:
- (a) Judgments, settlements or "defense expenses"; and
  - (b) "Your cyber first-party loss"; or
- (2) The Each Wrongful Act Limit in the payment of judgments, settlements or "defense expenses".
- b. If we notify you that we are willing to pay the amount of a proposed settlement of a "claim" or "suit" and you do not consent to that proposed settlement, in the event of any later settlement or judgment in which the

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insured incurs "damages" for such "claim" or "suit", the most we will pay for such "claim" or "suit" after the date you refused to give us your consent will be the combined total of:

- (1) The amount we were willing to pay for the proposed settlement;
  - (2) 50% of the "defense expenses" incurred for such "claim" or "suit" after the date you refused to give us such consent; and
  - (3) 50% of the amount of "damages" in any judgment or settlement that is greater than the amount we were willing to pay for the proposed settlement.
- c. When we have a duty to defend an insured against a "claim" or "suit", we will work with you to select defense counsel that is acceptable to both you and us. However, if we are unable to agree with you on the selection of such counsel, we retain the sole right to appoint such counsel, subject to applicable law.
- d. We will have the right, but not the duty, to defend your indemnitee as if it were an insured under Paragraph a. above if all of the following conditions are met:
- (1) The "claim" or "suit" against the indemnitee seeks "damages" for loss for which you are obligated to pay by reason of the assumption of that indemnitee's liability in a contract or agreement that was made before the "wrongful act", including any part of "related wrongful acts", that caused such loss was known by any "described authorized person";
  - (2) The insurance provided under one or more of "your CyberFirst coverage forms" applies to such liability assumed by you; and
  - (3) The obligation to defend, or the cost of the defense of, the indemnitee, has also been assumed by you in the same contract or agreement.

When we defend a "claim" or "suit" against your indemnitee, we will pay reasonable "defense expenses". Payment of such "defense expenses" will reduce the available limits of insurance.

- e. We will have no other obligation or liability to pay sums or perform acts or services unless explicitly provided for under Supplementary Payments or under "your CyberFirst coverage forms".

## 2. Supplementary Payments

We will pay, with respect to any "claim" we are investigating, any "claim" or "suit" we settle or any "claim" or "suit" against an insured we are defending:

- a. All expenses, other than "defense expenses", we incur.
- b. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We will not be the principal under these bonds, and we do not have to furnish these bonds.
- c. All reasonable expenses incurred at our request by the insured, who is an individual, to assist us in the investigation or defense of the "claim" or "suit", including actual loss of earnings of up to \$1,000 a day by that individual because of time off from work.
- d. All costs taxed against the insured in the "suit", but only for that part of the judgment we pay.
- e. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- f. All interest on the full amount of any judgment that accrues 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 applicable limit of insurance. If we do not pay part of the judgment for any reason other than it is more than the applicable limit of insurance, we will not pay any interest that accrues on that portion of the judgment.
- g. The cost of any required appeal bond for any judgment that we appeal, but only for bond amounts for that part of the judgment that is for "damages" to which one or more of "your CyberFirst coverage forms" apply and which are within the applicable limit of insurance. We will pay, or reimburse the insured for, the cost of a higher appeal bond amount if we are

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required to do so under the law that applies. We will not be the principal under any appeal bond, and we do not have to furnish any appeal bond.

These payments will not reduce the limits of insurance.

Our duty to make such payments ends when we have used up:

a. The Aggregate Limit in the payment of:

- (1) Judgments, settlements or "defense expenses"; and
- (2) "Your cyber first-party loss"; or

b. The Each Wrongful Act Limit in the payment of judgments, settlements or "defense expenses".

### 3. Exclusions Applying Only To The Liability Coverages Provided Under Your CyberFirst Coverage Forms

The following exclusions apply only to the liability coverages provided under "your CyberFirst coverage forms". These exclusions are in addition to the exclusions contained in each such coverage form and that apply only to the liability coverage provided under such coverage form.

This insurance does not apply to:

#### a. Advertising Injury Or Personal Injury

"Advertising injury" or "personal injury".

#### b. Claims Or Suits By Certain Persons Or Organizations

Loss for which a "claim" is made or "suit" is brought by or on behalf of any "controlled organization" or "controlling person or organization".

#### c. Contractual Liability

Loss for which the insured is obligated to pay "damages" by reason of the assumption of liability in a contract or agreement that was made after the "wrongful act", including any part of "related wrongful acts", that caused such loss was known by any "described authorized person".

This exclusion does not apply to loss for which the insured would have liability for "damages" without the contract or agreement.

#### d. Criminal, Dishonest, Fraudulent, Or Malicious Wrongful Acts Or Knowing Violations Of Rights Or Laws

Loss arising out of any criminal, dishonest, fraudulent or malicious

"wrongful act", or any knowing violation of rights or laws, committed:

- (1) By the insured; or
- (2) With the consent or knowledge of the insured.

This exclusion does not apply to our duty to defend that insured until it has been determined or admitted in a legal proceeding that such "wrongful act" or knowing violation was committed:

- (1) By the insured; or
- (2) With the consent or knowledge of that insured.

#### e. Employment-Related Practices

Loss to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The "spouse", child, parent, brother or sister of that person as a consequence of loss to that person at whom any of the employment-related practices described in Paragraph (1) above is directed.

This exclusion applies:

- (1) Whether the insured may be held liable as an employer or in any other capacity; and
- (2) To any obligation to share "damages" with or repay someone else who must pay "damages" because of the loss.

#### f. Government Demands Or Proceedings

Any demand made or proceeding brought by:

- (1) The Federal Trade Commission;
- (2) The Federal Communications Commission; or
- (3) Any other federal, national, state, local or foreign government, agency or entity.

This exclusion does not apply to any "claim" made or "suit" brought by or on behalf of a federal, national, state, local or foreign government, agency

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or entity in its capacity as your customer.

**g. Injunctive Relief**

Any loss, cost or expense arising out of complying with any injunctive or other non-monetary relief or any agreement to provide such relief.

This exclusion does not apply to our duty to defend any insured against a "suit" seeking injunctive relief.

**h. Known Wrongful Acts**

Loss arising out of any "wrongful act", including any part of "related wrongful acts", that any "described authorized person" knew about before the first date we or any of our affiliated insurance companies have continuously provided this or similar coverage to you.

**i. Nuclear Energy**

Loss arising out of the "hazardous properties" of "nuclear material".

**j. Pollution**

- (1) Loss arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants".
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order, or statutory or regulatory requirement that any insured 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 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".

**SECTION II - WHO IS AN INSURED**

1. If you are designated in the CyberFirst Declarations as:
  - a. An individual, you and your "spouse" are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your partners or your members, and their "spouses", are

also insureds, but only with respect to the conduct of your business.

- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are also insureds, but only with respect to their duties as your managers.
  - d. A public entity, you are an insured. "Your boards" are also insureds. Your lawfully elected or appointed officials, "executive officers" or directors are also insureds, but only with respect to their duties as your elected or appointed officials, "executive officers" or directors.
  - e. An organization other than a partnership, joint venture, limited liability company or public entity, you are an insured. Your "executive officers" and directors are also insureds, but only with respect to their duties as your "executive officers" or directors. Your stockholders are also insureds, but only with respect to their liability as your stockholders.
2. Each of the following is also an insured:
    - a. Your "volunteer workers", but only while performing duties related to the conduct of your business, and your "employees", other than either your managers (if you are a limited liability company) or your "executive officers" (if you are an organization other than a partnership, joint venture, limited liability company or public entity), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.
    - b. Your legal representative if you die, become mentally incompetent, insolvent or bankrupt, but only with respect to duties as such. That representative will have all your rights and duties under this policy.
    - c. Members of "your boards" (if you are a public entity), but only for the conduct of their duties for you or for "your boards". "Employees" of "your boards" are also insureds, but only for work done within the scope of their employment by "your boards", or their performance of duties related to the conduct of the operations of "your boards".

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- d. Your "independent contractors", but only while performing duties related to the conduct of your business.
3. Any organization you newly form, other than a partnership or joint venture, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization.
  4. Any organization you newly acquire, other than a partnership or joint venture, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However, if such organization has gross revenue greater than 10% of your gross revenue at the time of such acquisition, coverage under this provision is provided to such organization only:
    - a. Until the 90th day after you acquire the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 90 days after you acquire it; or
    - b. Until the end of the policy period, when that date is later than 90 days after you acquire such organization, if you report such organization in writing to us within 90 days after you acquire it and we agree in writing that it will continue to be a Named Insured until the end of the policy period.

Coverage provided to a newly acquired organization under this paragraph does not apply to:

- a. Loss under any of the liability coverages provided under "your CyberFirst coverage forms" caused by a "wrongful act" committed by or on behalf of such organization before you acquired it; or
- b. "Your cyber first-party loss" caused by a "first-party incident" that occurs before you acquired such organization;

unless we agree in writing to cover such loss.

5. Any person or organization that is not otherwise an insured under this policy and that you have agreed in a written contract or agreement to include as an additional insured under this policy is an insured, but only with respect to liability for loss to which one or more of "your CyberFirst coverage forms" applies that:
  - a. Is caused by a "wrongful act" committed after you have signed and executed that contract or agreement; and

- b. Is caused, in whole or in part, by acts or omissions of you, or any person or organization acting on your behalf, under that contract or agreement.

The limits of insurance provided to such person or organization will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the CyberFirst Declarations, whichever are less.

6. Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the CyberFirst Declarations is a Named Insured if:
  - a. You maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period; and
  - b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured after the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

7. No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the CyberFirst Declarations. This paragraph does not apply to any such partnership or joint venture that otherwise qualifies as an insured under Section II - Who Is An Insured.

### SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the CyberFirst Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. "Claims" made or "suits" brought; or
  - c. Persons or organizations making "claims" or bringing "suits".

The Limits of Insurance will not be reduced by the payment of any applicable deductible.

2. The Aggregate Limit is the most we will pay for the sum of:
  - a. All "damages" and "defense expenses" for the combined total of all "claims" or "suits" for loss to which the insurance provided under one or more of "your CyberFirst coverage forms" applies; and
  - b. "Your cyber first-party loss".

If no amount is shown for the Aggregate Limit in the CyberFirst Declarations, the

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Aggregate Limit will be the higher of the Each Wrongful Act Limit or \$1,000,000.

3. Subject to Paragraph 2. above, the Each Wrongful Act Limit is the most we will pay for the sum of all "damages" and "defense expenses" for all "claims" or "suits" for loss:
  - a. To which the insurance provided under one or more of "your CyberFirst coverage forms" applies; and
  - b. That is caused by the same "wrongful act" or "related wrongful acts".
4. If the CyberFirst Expense Reimbursement Coverage Form is part of your policy, subject to Paragraph 2. above:
  - a. The Security Breach Notification And Remediation Expenses Limit shown in the CyberFirst Declarations is the most we will pay for the sum of all of "your security breach notification and remediation expenses" for the combined total of all "security breaches";
  - b. The Crisis Management Service Expenses Limit shown in the CyberFirst Declarations is the most we will pay for the sum of all of "your crisis management service expenses" for the combined total of all:
    - (1) "Network and information security wrongful acts", if CyberFirst Network And Information Security Liability Coverage is part of your policy;
    - (2) "Errors and omissions wrongful acts", if CyberFirst Technology Errors And Omissions Liability Coverage or CyberFirst Manufacturers Errors And Omissions Liability Coverage is part of your policy; and
    - (3) "Communications and media wrongful acts", if CyberFirst Communications And Media Liability Coverage is part of your policy;
  - c. The Business Interruption And Additional Expenses Limit shown in the CyberFirst Declarations is the most we will pay for the sum of all of "your business interruption expenses" for the combined total of all "computer system disruptions";
  - d. The Extortion Expenses Limit shown in the CyberFirst Declarations is the most we will pay for the sum of all of "your cyber extortion expenses" for the combined total of all "acts of cyber extortion";
  - e. The Computer Program And Electronic Data Restoration Expenses Limit shown in the CyberFirst Declarations is the most we will pay for the sum of all of "your restoration expenses" for the combined total of all "computer violations";
  - f. The Computer Fraud Limit shown in the CyberFirst Declarations is the most we will pay for the sum of all of "your computer fraud loss" for the combined total of all "computer frauds";
  - g. The Funds Transfer Fraud Limit shown in the CyberFirst Declarations is the most we will pay for the sum of all of "your funds transfer fraud loss" for the combined total of all "funds transfer frauds"; and
  - h. The Telecommunications Theft Limit shown in the CyberFirst Declarations is the most we will pay for the sum of all of "your telecommunications theft loss" for the combined total of all "telecommunications thefts".
5. When any of "your CyberFirst coverage forms" and any other policy or insuring clause in a coverage form or bond written by us or any of our affiliated insurance companies and issued to you or any "controlled organization" or "controlling person or organization" apply or applied to the same "claim", "suit" or "first-party incident", the most we will pay for "damages", "defense expenses" and "your cyber first-party loss" is the highest limit of insurance that applies or applied to the same "claim", "suit" or "first-party incident" under any one of those policies or clauses.

This paragraph does not apply to umbrella insurance, or excess insurance, written by us or any of our affiliated insurance companies and issued to you or any "controlled organization" or "controlling person or organization" specifically to apply in excess of the Limits of Insurance shown in the CyberFirst Declarations.

## SECTION IV - DEDUCTIBLES

### 1. Liability Coverages

- a. The Each Wrongful Act Deductible shown in the CyberFirst Declarations and the rules below fix the amount of "damages" and "defense expenses" incurred by, or on behalf of, you or any insured that you will be responsible for paying, regardless of the number of:
  - (1) Insureds;

- (2) "Claims" made or "suits" brought; or
- (3) Persons or organizations making "claims" or bringing "suits".

The Each Wrongful Act Deductible does not apply to payments we make under Supplementary Payments.

- b. The Each Wrongful Act Deductible applies to all "damages" and "defense expenses" for all "claims" or "suits" for loss:
- (1) To which the insurance provided under one or more of "your CyberFirst coverage forms" applies; and
  - (2) That is caused by the same "wrongful act" or "related wrongful acts".
- c. The Limits of Insurance will not be reduced by the amount of any "damages" or "defense expenses" within the deductible amount.
- d. The terms of this policy, including those with respect to:
- (1) Our right and duty with respect to the defense of "claims" or "suits"; and
  - (2) Your duties in the event of a "wrongful act," "claim" or "suit";
- apply irrespective of the application of the deductible amount.
- e. If we settle a "claim" or "suit" for "damages", or pay a judgment for "damages" awarded in a "suit", that are subject to a deductible, we may pay any part or all of the deductible amount. You will promptly reimburse us for such part of the deductible amount as we have paid.
- f. If we pay "defense expenses" that are subject to a deductible, you will promptly reimburse us for such part of the deductible amount as we have paid.
- g. If you do not reimburse us for a deductible amount that applies to "damages" or "defense expenses", and we are awarded the deductible amount we sought, or any part of that amount, in any legal proceeding against you, you agree to pay us the amount of the award and the following:
- (1) "Our deductible recovery expenses"; and
  - (2) Interest, from the date of our notice of payment to you, on the deductible amount awarded to us.

## 2. First-Party Coverages

- a. We will not reimburse you for any of "your cyber first-party loss" to which the insurance provided under your CyberFirst Expense Reimbursement Coverage Form applies until the amount of such loss exceeds the applicable deductible shown in the CyberFirst Declarations. We will then reimburse you for the amount of such loss in excess of the applicable deductible, up to the applicable limit of insurance.
- b. The Security Breach Notification And Remediation Expenses Deductible applies to all of "your security breach notification and remediation expenses" caused by the same "security breach" or "related" "security breaches".
- c. The Crisis Management Service Expenses Deductible applies to all of "your crisis management service expenses" caused by the same "wrongful act" or "related wrongful acts".
- d. The Extortion Expenses Deductible applies to all of "your cyber extortion expenses" caused by the same "act of cyber extortion" or "related" "acts of cyber extortion".
- e. The Computer Program And Electronic Data Restoration Expenses Deductible applies to all of "your restoration expenses" caused by the same "computer violation" or "related" "computer violations".
- f. The Computer Fraud Deductible applies to all of "your computer fraud loss" caused by the same "computer fraud" or "related" "computer frauds".
- g. The Funds Transfer Fraud Deductible applies to all loss that is "your funds transfer fraud loss" caused by the same "funds transfer fraud" or "related" "funds transfer frauds".
- h. The Telecommunications Theft Deductible applies to all loss that is "your telecommunications theft loss" caused by the same "telecommunications theft" or "related" "telecommunications thefts".
- i. If more than one deductible applies to "your cyber first-party loss" caused by the same "first-party incident" or "related" "first-party incidents", we will apply each deductible separately. However, the sum of all deductible amounts applied to such loss will not exceed the largest applicable deductible.

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- j. The Limits of Insurance will not be reduced by the amount of "your cyber first-party loss" within the deductible amount.

## SECTION V - CYBER CONDITIONS

### 1. Conditions Applying To All Coverages Provided Under Your CyberFirst Coverage Forms

The following conditions apply to all coverages provided under "your CyberFirst coverage forms."

#### a. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

#### b. Other Insurance

- (1) The insurance provided under "your CyberFirst coverage forms" is excess over any valid and collectible other insurance that is available to the insured for a loss we cover under this policy, whether such other insurance is primary, excess, contingent or on any other basis.

*As used anywhere in this policy, other insurance means insurance, or the funding of losses, that is provided by, through or on behalf of:*

- (a) Another insurance company;
- (b) Any risk retention group;
- (c) Any self-insurance method or program, including any failure to buy insurance, or decision to not buy insurance, for any reason, in which case the insured will be deemed to be the provider of other insurance; or
- (d) Any similar risk transfer or risk management method.

Other insurance does not include umbrella insurance, or excess insurance, that you bought specifically to apply in excess of the Limits of Insurance shown in the CyberFirst Declarations.

- (2) We will pay only our share of the amount of the loss, if any, that exceeds the sum of:
- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

- (b) The total of all deductible and self-insured amounts under all such other insurance.

#### c. Premium Audit

- (1) We will compute all premiums for this policy in accordance with our rules and rates.
- (2) The premium shown in the CyberFirst Declarations may be an advance premium. If it is an advance premium, your policy will contain an endorsement that shows when and how we will compute your earned premium.

If the earned premium is greater than the advance premium, we will send a bill to the first Named Insured shown in the CyberFirst Declarations. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the earned premium is less than the advance premium, we will return the excess to the first Named Insured. However, if the earned premium is less than the minimum premium we are allowed to charge, your premium will never be less than such minimum premium.

- (3) If the premium is an advance premium, the first Named Insured shown in the CyberFirst Declarations must keep records of the information we need for premium computation and must send us copies of those records at such times as we may request.

#### d. Representations

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and
- (3) We have issued this policy in reliance upon your representations.

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal

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in accordance with applicable insurance laws or regulations.

**e. Separation Of Insureds**

Except with respect to the limits of insurance, and any rights or duties specifically assigned in this policy to the first Named Insured shown in the CyberFirst Declarations, this insurance applies:

- (1) As if each Named Insured were the only Named Insured; and
- (2) Separately to each insured against whom a "claim" is made or "suit" is brought.

**f. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover from others all or part of any payment we have made under this policy in connection with a "claim", "suit" or "first-party incident", those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring suit or initiate an alternative dispute resolution proceeding to enforce those rights, or will transfer those rights to us and help us enforce them.

We will apply any amounts recovered in enforcing those rights of recovery in the following order:

- (1) First, we will reimburse any person or organization (including us or the insured) any amount that person or organization has paid in excess of the limits of insurance.
- (2) Next, if there is any amount remaining, we will retain an amount equal to the amount we have paid under this policy in connection with the "claim", "suit" or "first-party incident".
- (3) Then, if there is any amount remaining, we will pay that amount to the insured, including any amounts within any applicable deductible or self-insured retention.

If any amounts are recovered in enforcing those rights of recovery, reasonable expenses incurred in enforcing such rights will be shared among all persons or organizations receiving amounts recovered. Each such person's or organization's share of those expenses is based on the ratio of its amount recovered to the total amounts recovered by all such per-

sons or organizations in enforcing such rights.

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. Loss under any of the liability coverages provided under "your CyberFirst coverage forms" caused by a "wrongful act" committed; or
- b. "Your cyber first-party loss" caused by a "first-party incident" that occurs;

subsequent to the execution of the contract or agreement.

**g. When We Do Not Renew**

If we decide not to renew this policy, we will mail or deliver to the first Named Insured shown in the CyberFirst Declarations written notice of the nonrenewal not less than 30 days before the end of the policy period.

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

**h. Currency**

Payments for "damages", "defense expenses", Supplementary Payments, and "your cyber first-party loss" will be in the currency of the United States of America. At our sole option, we may make these payments in a different currency. Any necessary currency conversion for the payment of "damages" will be calculated based on the rate of exchange published in the next Wall Street Journal subsequent to the date of judgment or settlement. Any necessary currency conversion for the payment of "defense expenses", Supplementary Payments or "your cyber first-party loss" will be calculated based on the rate of exchange published in the Wall Street Journal immediately preceding the date the payment is processed.

**i. Limitations On Our Representations And Responsibility**

It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no respon-

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sibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

**j. Common Policy Conditions References To Common Policy Declarations And Coverage Part**

All references to Common Policy Declarations in the Common Policy Conditions attached to this policy will be deemed to refer to the CyberFirst Declarations. All references to Coverage Part in the Common Policy Conditions attached to this policy will be deemed to refer to "your CyberFirst coverage forms".

**2. Conditions Applying Only To The Liability Coverages Provided Under Your CyberFirst Coverage Forms**

The following conditions apply only to the liability coverages provided under "your CyberFirst coverage forms".

**a. Duties In The Event Of A Wrongful Act, Claim Or Suit**

(1) You must see to it that we are notified as soon as practicable of a "wrongful act" which may result in a "claim" or "suit". To the extent possible, notice should include:

- a. How, when and where the "wrongful act" was committed;
- b. The nature and location of any loss caused by the "wrongful act";
- c. The names and addresses of any persons or organizations sustaining such loss, and the names and addresses of any witnesses; and
- d. The names and addresses of each insured that committed the "wrongful act".

(2) If a "claim" is made or "suit" is brought against any insured, you must:

- (a) Immediately record the specifics of the "claim" or "suit" and the date received; and
- (b) Notify us in writing of the "claim" or "suit" as soon as practicable.

(3) You and any other involved insured must:

- (a) Immediately send us copies of any demands, notices, summonses or legal papers

received in connection with the "claim" or "suit";

(b) Authorize us to obtain records and other information;

(c) Cooperate with us in the investigation, defense or settlement of the "claim" or "suit"; and

(d) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of loss to which the insurance provided under any of "your CyberFirst coverage forms" may also apply.

(4) No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

**b. Legal Action Against Us**

No person or organization has a right under this policy:

- (1) To join us as a party or otherwise bring us into a "suit" asking for "damages" from an insured; or
- (2) To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured, but we will not be liable for "damages" that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. As used in this provision, an agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

**c. Other Insurance - Defense Of Claims Or Suits**

We will have no duty to defend the insured against any "claim" or "suit" if any provider of other insurance has a duty to defend the insured against that "claim" or "suit". But we will have the right to associate in the defense and control any "claim" or "suit" that we reasonably believe is likely to involve the insurance provided under one or more of "your CyberFirst coverage forms". If no provider of other insurance defends

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any "claim" or "suit" seeking "damages", or any "suit" seeking injunctive relief, for loss to which the insurance provided under one or more of "your CyberFirst coverage forms" applies, we will undertake to do so, but we will be entitled to the insured's rights against all those providers of other insurance.

**d. Transfer Of Control Of Defense**

Before the applicable limit of insurance is used up, you may take over control of the defense, including the appeal, of any outstanding "claim" or "suit" previously reported to us if:

- (1) We and you agree; or
- (2) A court orders you to do so.

If the applicable limit of insurance is used up, we will notify you as soon as practicable of all outstanding "claims" or "suits", so you can arrange to take over control of their defense.

We agree to take whatever steps are necessary during a transfer of control of defense of an outstanding "claim" or "suit" to continue that defense and avoid a default judgment during such transfer. When we take such steps, you agree that we do not waive or give up any of our rights. You also agree to repay the reasonable expenses we incur for such steps taken after the applicable limit of insurance is used up.

**e. When We Are Prohibited From Defending An Insured**

If the laws or regulations of a country or jurisdiction prohibit us from fulfilling our duty to defend an insured, the insured will be responsible for providing that defense. We will repay that insured for the reasonable "defense expenses" incurred to provide such defense. Such payments will reduce the Limits of Insurance. Our duty to make such payments ends when we have used up:

- (1) The Aggregate Limit in the payment of:
  - (a) Judgments, settlements or "defense expenses"; and
  - (b) "Your cyber first-party loss"; or
- (2) The Each Wrongful Act Limit in the payment of judgments, settlements or "defense expenses".

**f. When We Are Prohibited From Paying Damages On Behalf Of An Insured**

If the laws or regulations of a country or jurisdiction prohibit us from paying, on behalf of an insured, amounts that the insured must pay as "damages" for loss to which the insurance provided under one or more of "your CyberFirst coverage forms" applies, the insured may pay such "damages" with our consent.

If the insured gives us proof of such payments, we will repay the insured for such "damages". But we will only repay the insured for such "damages" up to:

- (1) The Aggregate Limit in the payment of:
  - (a) Judgments, settlements or "defense expenses"; and
  - (b) "Your cyber first-party loss"; or
- (2) The Each Wrongful Act Limit in the payment of judgments, settlements or "defense expenses".

**g. When We Are Prohibited From Paying Supplementary Payments**

If the laws or regulations of a country or jurisdiction prohibit us from paying a Supplementary Payment on behalf of an insured, we will repay the insured for such Supplementary Payment that the insured incurs.

**3. Conditions Applying Only To The First-Party Coverages Provided Under Your CyberFirst Expense Reimbursement Coverage Form**

The following conditions apply only to the first-party coverages provided under your CyberFirst Expense Reimbursement Coverage Form, if that coverage form is part of your policy.

**a. Duties In The Event Of A First-Party Incident**

- (1) You must see to it that we are notified in writing as soon as practicable of a "first-party incident" which may result in "your cyber first-party loss". To the extent possible, such notice should include:
  - (a) How, when and where such "first-party incident" occurred; and
  - (b) The nature and amounts incurred by you that can be directly attributed to such "first-party incident".

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(2) You and any other involved insured must:

- (a) Notify law enforcement authorities as soon as possible if you have reason to believe that any "first-party incident" involves a violation of law;
- (b) Submit to an examination under oath at our request and give us a signed statement of your answers;
- (c) Give us a detailed sworn proof of loss within 120 days of the "first-party incident"; and
- (d) Cooperate with us in the investigation and settlement of such "first-party incident".

#### b. Legal Action Against Us

No person or organization has a right under this policy to sue us on this policy for "your cyber first-party loss":

- (1) Unless all of its terms have been fully complied with;
- (2) Until 90 days after you have filed proof of loss with us; and
- (3) Unless such suit is brought within two years from the date you discover the "first-party incident" that caused "your cyber first-party loss".

#### c. Ownership Of Property And Interests Covered

The property covered under your CyberFirst Expense Reimbursement Coverage Form is limited to property:

- (1) That you own or lease;
- (2) That you hold for others; or
- (3) For which you are legally liable, except for property inside the premises of a client of yours.

However, the insurance provided under your CyberFirst Expense Reimbursement Coverage Form is for your benefit only. It provides no rights or benefits to any other person or organization. Any claims for coverage for "your cyber first-party loss" must be presented by you.

#### d. Valuation Of Securities And Other Property

The following condition applies only to the Extortion Expenses Coverage, Computer Fraud Coverage and Funds Transfer Fraud Coverage.

- (1) The value of "securities" that we pay for a loss will be determined

at the close of business on the day the loss was discovered. We may, at our sole option:

- (a) Pay the value of such "securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "securities"; or
- (b) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "securities". However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:
  - (i) Value of the "securities" at the close of business on the day the loss was discovered; or
  - (ii) Applicable limit of insurance.

(2) The value of "other property" that we pay for a loss will be determined at the replacement cost of the property without deduction for depreciation. However, we will not pay more than the least of the following:

- (a) The applicable limit of insurance;
- (b) The cost to replace the property with property of comparable material and quality and used for the same purpose; or
- (c) The amount you actually spend that is necessary to repair or replace the property.

We will not pay on a replacement cost basis for any "other property":

- (a) Until the property is actually repaired or replaced; and
- (b) Unless the repairs or replacement are made as soon as reasonably possible after the loss.

If the property is not repaired or replaced, we will pay on an actual cash value basis.

Any "other property" that we pay for or replace becomes our property.

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**SECTION VI - EXTENDED REPORTING PERIODS**

1. We will provide one or more Extended Reporting Periods for the liability coverages provided under "your CyberFirst coverage forms", as described below, for such liability coverages that are cancelled or not renewed, or replaced or renewed by us with insurance that applies on other than a claims-made basis.
2. Extended Reporting Periods do not extend the policy period or change the scope of coverage provided. They apply only to "claims" or "suits" for loss caused by a "wrongful act" committed on or after the applicable Retroactive Date shown in the CyberFirst Declarations and before the end of the policy period.

The Extended Reporting Periods do not reinstate or increase the limits of insurance. Once in effect, Extended Reporting Periods may not be canceled.

3. A Basic Extended Reporting Period automatically applies to the liability coverages provided under "your CyberFirst coverage forms" without additional charge. This period starts with the end of the policy period and lasts for 90 days.

The Basic Extended Reporting Period does not apply to "claims" or "suits" that are covered under any future insurance you purchase, or that would be covered under such insurance but for the exhaustion of its applicable limit of insurance.

4. A Supplemental Extended Reporting Period is available, but only by an endorsement and for an extra charge. This supplemental period lasts either for 12, 24, 36 or 60 months or for an unlimited period of time, as set forth in the Supplemental Extended Reporting Period Endorsement. This supplemental period replaces the Basic Extended Reporting Period.

The Supplemental Extended Reporting Period will not go into effect unless we receive all of the following within 90 days after the end of the policy period and you have fulfilled all other duties, and complied with all other conditions and requirements, under this policy:

- (a) A written request from you to purchase the Supplemental Extended Reporting Period Endorsement;
- (b) Full payment of the earned premium for all of "your CyberFirst coverage forms";

- (c) Payment of the additional premium for the Supplemental Extended Reporting Period Endorsement; and
- (d) Repayment of any deductible you owe us under this policy.

We will determine the additional premium for that endorsement in accordance with our rules and rates. The additional premium will not exceed 200% of the annual premium for this policy.

This endorsement will set forth the terms, not inconsistent with this Section VI - Extended Reporting Periods, applicable to the Supplemental Extended Reporting Period, including a provision to the effect that the insurance afforded for "claims" or "suits" first made or brought against any insured during such period is excess over any valid and collectible other insurance available under insurance in force after the Supplemental Extended Reporting Period starts.

**SECTION VII - DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an "advertisement."
2. "Advertising injury" means injury, other than "personal injury", caused by one or more of the following offenses:
  - a. Oral or written publication, including publication by electronic means, of material in your "advertisement" that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the "claim" is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged;
  - b. Oral or written publication, including publication by electronic means, of material in your "advertisement" that:
    - (1) Appropriates a person's name, voice, photograph or likeness;

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- (2) Unreasonably places a person in a false light; or
- (3) Discloses information about a person's private life; or
- c. Infringement of copyright, "title" or "slogan" in your "advertisement", provided that the "claim" is made or the "suit" is brought by a person or organization that claims ownership of such copyright, "title" or "slogan".
3. "Claim" means a written demand that seeks "damages."
4. "Controlled organization" means any organization in which any insured owns the controlling ownership interest.
5. "Controlling person or organization" means any person or organization that owns the controlling ownership interest in you.
6. "Damages":
- a. Means a monetary amount paid to a claimant for loss.
- b. Does not include:
- (1) Credits.
  - (2) Voluntary payments.
  - (3) Amounts actually paid to you by your customer in exchange for products, services or work.
  - (4) An offset of fees, charges or commissions owed to you by your customer.
  - (5) Any fine or penalty imposed by law or regulation against the insured.
  - (6) The portion of any multiplied damage award that exceeds the amount multiplied.
  - (7) License fees or royalties of any kind.
  - (8) The amount of liquidated damages awarded pursuant to a contract or agreement that exceeds the amount of "damages" for which the insured would have liability in the absence of such contract or agreement.
  - (9) Fees, costs or expenses awarded pursuant to a prevailing party provision in a contract or agreement.
  - (10) Punitive damages, unless such damages are insurable under the applicable law.
  - (11) "Your cyber first-party loss".
7. "Defense expenses":
- a. Means any of the following fees, costs or expenses which can be directly allocated to a particular "claim" or "suit":
- (1) Fees of attorneys, or other authorized representatives where permitted, for legal services, whether by outside or staff representatives; or
  - (2) Court, alternative dispute resolution, and other specific items of expense, whether incurred by an outside vendor or by one of our employees, including:
    - (a) Expert testimony;
    - (b) Autopsy;
    - (c) Witnesses and summonses;
    - (d) Copies of documents such as birth and death certificates and medical treatment records;
    - (e) Arbitration fees;
    - (f) Fees or costs for surveillance or other professional investigations which are conducted as part of the handling of a "claim" or "suit"; and
    - (g) Fees or costs for loss prevention and engineering services which are conducted as part of handling of a "claim" or "suit".
- b. Does not include:
- (1) Our expenses, including salaries, overhead and traveling expenses of our employees, except for those fees, costs or expenses described in Paragraphs a.(1) and a.(2) above incurred while handling a "claim" or "suit".
  - (2) Fees paid to independent claims professionals or attorneys (hired to perform the function of claim investigation normally performed by claim adjusters), for developing and investigating a "claim" so that a determination can be made of the cause, extent or responsibility for the loss, including evaluation and settlement of covered "claims".
8. "Described authorized person" means:
- a. You, if you are an individual; or
  - b. Any person while he or she is:
    - (1) Your "spouse", if you are an individual;
    - (2) Your partner or member, or his or her "spouse", if you are a partnership or joint venture;

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- (3) Your manager or member, if you are a limited liability company;
  - (4) Your appointed or elected official, director or "executive officer", if you are a public entity;
  - (5) Your director or "executive officer", if you are an organization other than a partnership, joint venture, limited liability company or public entity; or
  - (6) Your risk manager, or any leader of your legal, finance, risk management or other department that is responsible for insurance matters.
9. "Domestic partner" means any person who qualifies as a domestic partner, or party to a civil union, under any:
    - a. Applicable federal, state, local or foreign law; or
    - b. Formal program established by the insured.
  10. "Employee" includes a "leased worker". "Employee" does not include a prisoner employed by any insured.
  11. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
  12. "First-party incident" means any of the following:
    - a. A "security breach".
    - b. A "wrongful act" that causes "your crisis management service expenses".
    - c. A "computer system disruption".
    - d. An "act of cyber extortion".
    - e. A "computer violation".
    - f. "Computer fraud".
    - g. "Funds transfer fraud".
    - h. "Telecommunications theft".
  13. "Hazardous properties" includes radioactive, toxic or explosive properties.
  14. "Independent contractor" means any person who is not the insured's "employee" or "volunteer worker", but who performs duties related to the conduct of the insured's business because of a contract or agreement between the insured and that person for specified services.
  15. "Joint powers authority" means any organization formed by two or more public entities that have agreed in a contract or agreement to jointly exercise any power common to them.
  16. "Leased worker" means a person hired from a labor leasing firm under an agreement between the hirer and that firm to perform duties related to the conduct of the hirer's business.
  17. "Nuclear material" means any of the following materials defined in the Federal Atomic Energy Act or any of its amendments:
    - a. Source material;
    - b. Special nuclear material; or
    - c. By-product material.
  18. "Our deductible recovery expenses" means all fees, costs, and expenses incurred by us and our attorneys to recover a deductible amount in a legal proceeding brought by us against you. But if the deductible amount awarded to us is less than the full amount of the deductible payment we sought, "our deductible recovery expenses" will be a proportional amount based on the ratio of the deductible amount awarded to the full amount of the deductible payment we sought.
  19. "Personal injury" means injury, other than "advertising injury", caused by one or more of the following offenses:
    - a. False arrest, detention or imprisonment;
    - b. Malicious prosecution;
    - c. 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, provided that the wrongful eviction, wrongful entry or invasion of the right of private occupancy is committed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;
    - d. Oral or written publication, including publication by electronic means, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the "claim" is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged; or
    - e. Oral or written publication, including publication by electronic means, of material that:
      - (1) Appropriates a person's name, voice, photograph or likeness;

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- (2) Unreasonably places a person in a false light; or
  - (3) Discloses information about a person's private life.
20. "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.
21. "Related wrongful acts" means any of the following:
- a. "Related errors and omissions wrongful acts", if the CyberFirst Technology Errors And Omissions Liability Coverage Form or the CyberFirst Manufacturers Errors And Omissions Liability Coverage Form is part of your policy.
  - b. "Related network and information security wrongful acts", if the CyberFirst Network And Information Security Liability Coverage Form is part of your policy.
  - c. "Related communications and media wrongful acts", if the CyberFirst Communications And Media Liability Coverage Form is part of your policy.
22. "Security breach" means unauthorized access to, or acquisition of, "identity information" owned, licensed, maintained or stored by you.
23. "Slogan" means a phrase that others use for the purpose of attracting attention in their advertising.
24. "Spouse" includes a "domestic partner".
25. "Suit" means a civil proceeding that seeks "damages" or injunctive relief. "Suit" includes:
- a. An arbitration proceeding that seeks such "damages" or injunctive relief and to which the insured must submit or submits with our consent; and
  - b. Any other alternative dispute resolution proceeding that seeks such "damages" or injunctive relief and to which the insured submits with our consent.
26. "Title" means a name of a literary or artistic work.
27. "Volunteer worker" means a person, other than a prisoner, who:
- a. Is not acting within the course and scope of his or her employment as an "employee" or "leased worker";
  - b. Donates his or her work; and
  - c. Is not paid a fee, salary, or other compensation for that work.
28. "Wrongful act" means any of the following:
- a. "Errors and omissions wrongful act", if the CyberFirst Technology Errors And Omissions Liability Coverage Form or the CyberFirst Manufacturers Errors And Omissions Liability Coverage Form is part of your policy.
  - b. "Network and information security wrongful act", if the CyberFirst Network And Information Security Liability Coverage Form is part of your policy.
  - c. "Communications and media wrongful act", if the CyberFirst Communications And Media Liability Coverage Form is part of your policy.
29. "Your boards":
- a. Means any board, commission or other governmental unit or department that:
    - (1) Is under your jurisdiction; and
    - (2) Is funded and operated as part of your total operating budget.
  - b. Does not include any "joint powers authority".
30. "Your cyber first-party loss" means loss to which the insurance provided under your CyberFirst Expense Reimbursement Coverage Form applies, if that form is part of your policy.
31. "Your CyberFirst coverage forms" means the coverage forms that you have purchased, as shown in the CyberFirst Declarations.