



The Solution for Errors and Omissions Liability Coverage Part

In consideration of the payment of the premium and subject to the General Terms and Conditions, the Insurer and the **Insureds** agree as follows:

I. INSURING CLAUSE

The Insurer shall pay, on behalf of an **Insured**, **Loss** on account of a **Claim** first made during the **Policy Period**.

II. EXCLUSIONS

In addition to the Exclusions set forth in Section II. EXCLUSIONS of the GTC, no coverage shall be provided under this Coverage Part for **Loss** on account of that portion of a **Claim**:

- A. Antitrust - based upon, arising out of or resulting from anti-trust, price fixing or discrimination, restraint of trade, monopolization, unfair trade practices or predatory pricing;
- B. Contract - for any liability in connection with any contract, agreement, warranty or guarantee to which an **Insured** is a party, provided that this Exclusion B shall not apply to **Loss** to the extent that such **Insured** would have been liable for such **Loss** in the absence of such contract, agreement, warranty or guarantee;
- C. Electronic Funds Transfer - based upon, arising out of or resulting from the transfer of any fund, money or security;
- D. Employment Practices - based upon, arising out of or resulting from any employment-related **Wrongful Act**;
- E. False Advertising - based upon, arising out of or resulting from intentionally false or deceptive advertising;
- F. Games of Chance - based upon, arising out of or resulting from any gambling, contest, lottery, sweepstake, coupon, promotional game, or other game of chance, including any redemption in connection therewith;
- G. Government and Licensing - based upon, arising out of or resulting from any action brought by or on behalf of the Federal Trade Commission ("FTC"), the Federal Communications Commission ("FCC"), the Securities and Exchange Commission ("SEC") or any other federal, state or local government agency, or The American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI"), The Recording Industry Association of America ("RIAA"), The Society of European Stage Authors and Composers ("SESAC") or other licensing or rights organizations, in any such organization's regulatory, quasi-regulatory, or official capacity, function or duty;
- H. Infrastructure Failure - based upon, arising out of or resulting from any electrical or mechanical failure or interruption, including any electrical disturbance, surge, spike, brownout or blackout, and any outage to gas, water, telephone, cable, satellite, telecommunications or other infrastructure;
- I. Insured v. Insured - brought by, or on behalf of:
 - 1. an **Insured**, in any capacity, against any other **Insured**; or
 - 2. any entity: (a) that is either controlled, managed or operated, directly or indirectly, in whole or in part, by an **Insured**; or (b) in which an **Insured** possesses an ownership interest of at least 10%, where such entity is a publicly traded company, or 30% where such entity is a privately held company;
- J. Intellectual Property - based upon, arising out of or resulting from any infringement of copyright, patent, trademark, trade dress, trade name or service mark or any misappropriation of ideas, trade secrets or other intellectual property rights;
- K. Prior Knowledge - based upon, arising out of or resulting from any **Wrongful Act** committed prior to the **First Inception Date**, if, on or before such date, any **Insured** knew or could reasonably have foreseen that such **Wrongful Act** would result in a **Claim**; and
- L. Privacy and Network Security Events - based upon, arising out of or resulting from a **Network Security Event** or **Privacy Event**.

With respect to this Coverage Part, Exclusion E. Pollution of Section II. EXCLUSIONS of the GTC includes **Biological Agents** in addition to **Pollutants**.

III. LIMIT OF LIABILITY

The Errors and Omissions Combined Aggregate Limit of Liability stated in Item 3 of the Declarations of this Coverage Part represents the maximum amount payable for all **Loss** under this Coverage Part during the **Policy Period** for all Coverage Sub-Parts combined.

IV. OTHER INSURANCE

With the exception of insurance which is written specifically as excess of the Limit of Liability of this Coverage Part, this Coverage Part shall be excess of and shall not contribute with any valid and collectible insurance providing coverage for **Loss** for which this Coverage Part provides coverage, provided that any payment by an **Insured** of a retention or deductible under any such other insurance shall reduce the Retention under this Coverage Part by the amount of such payment which would otherwise have been **Loss** under this Coverage Part.

V. GLOSSARY

- A. **Biological Agent** means any bacteria, mildew, mold, fungi, spore or other micro-organisms or mycotoxins and any of their associated toxins or any virus or other pathogen (whether or not a micro-organism).
- B. **Claim** means any:
1. written demand for monetary or non-monetary (including injunctive) relief, including a demand for arbitration, mediation or waiving or tolling of a statute of limitations; and
 2. civil proceeding, evidenced by the service of a complaint or similar pleading;
- against an **Insured** for a **Wrongful Act**, including any appeal therefrom.
- The time when a **Claim** shall be deemed first made for the purposes of this Coverage Part shall be the date on which the **Claim** is first made against, served upon or received by the **Insured**.
- C. **Computer System** means computer software, middleware, firmware, hardware, applications, tools, programs, codes, scripts, websites, associated call centers, and the data stored thereon, as well as associated input and output devices, data storage devices, networking equipment, storage area network, or other electronic data backup facilities:
1. leased, owned or operated by an **Insured**;
 2. operated for the benefit of an **Insured** by a **Service Provider**; or
 3. licensed to an **Insured**.
- D. **Corporate Information** means proprietary or confidential corporate information in any format that cannot be lawfully obtained or known by the general public, including customer lists, trade secrets and financial information that are provided to an **Insured** by a third party.
- E. **Defense Costs** means that part of **Loss** consisting of:
1. reasonable costs, charges, fees (including, attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of any **Insured**) incurred in investigating, defending, opposing or appealing any **Claim**; or
 2. the premium for appeal, attachment or similar bonds (but the Insurer shall be under no obligation to furnish any bond).
- F. **Electronic Data** means any data, text, sounds, images or similar matter, including **Corporate Information** and **Personal Information** that exists on a **Computer System**, and that is subject to scheduled back-up procedures and security protections.
- G. **First Inception Date** means the inception date of the first Errors and Omissions Liability Coverage Part and applicable Coverage Sub-Part issued to the **Parent Company** by the Insurer.
- H. **Independent Contractor** means any natural person working for a **Company** pursuant to a written contract or agreement between such natural person and the **Company** which specifies the terms of the **Company's** engagement of such natural person.
- I. **Insured** means any **Company** or **Insured Person**.
- J. **Insured Person** means any:
1. **Executive** or **Employee**; or
 2. **Independent Contractor**, but only if the **Company** agrees to indemnify the **Independent Contractor** in the same manner as an **Employee** for liability arising out of a **Claim**.
- K. **Loss** means the amount that an **Insured** becomes legally obligated to pay on account of any **Claim** including:
1. compensatory damages;
 2. judgments and settlements;
 3. pre and post-judgment interest;

4. **Defense Costs**; and
5. punitive, exemplary or multiplied damages, if and to the extent that any such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages.

In determining the most favorable jurisdiction as set forth in paragraph 5 above, due consideration shall be given to the jurisdiction with a substantial relationship to the relevant **Insureds**, to the **Company**, or to the **Claim** giving rise to such damages, and the Insurer shall not challenge any opinion of independent legal counsel (mutually agreed to by the Insurer and the **Insured**) that such damages are insurable under applicable law.

Loss does not include any portion of such amount that constitutes any:

- (a) amount not insurable under the law pursuant to which this Coverage Part is construed;
 - (b) cost incurred to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
 - (c) liquidated damages, except to the extent that the amount of such damages is equal to the amount of **Loss** resulting from a **Wrongful Act**;
 - (d) return of any fee, charge, commission, gain or other compensation paid to an **Insured**;
 - (e) cost for an **Insured** to correct, re-perform or complete any **Professional Service**; or
 - (f) tax, fine or penalty imposed by law.
- L. **Malicious Code** means the unauthorized corrupting of software, including but not limited to computer viruses, Trojan Horses, keystroke loggers, cookies, spyware, adware, worms and logic bombs, that successfully corrupts or impairs a **Computer System**.
- M. **Network Security Event** means a breach of a **Computer System** that results in:
1. the theft, corruption or deletion of **Electronic Data** from a **Computer System**;
 2. the **Unauthorized Access** to or **Unauthorized Use** of a **Computer System**;
 3. the denial of an authorized user's access to a **Computer System**, unless such denial of access is caused by a mechanical or electrical failure outside the control of the **Insured**; or
 4. the transmission of **Malicious Code** from a **Computer System**.
- N. **Personal Information** means any information not available to the general public from which an individual may be identified, including an individual's name, telephone number, social security number, medical or healthcare data or other protected health information, driver's license number or state identification number, account number(s), bank account number(s), financial account information, retirement account number(s), healthcare account number(s), employee identification number(s), home address, credit information, government identification number(s), credit card number(s), access code or password that would permit access to that individual's account.
- O. **Privacy Event** means: 1. the **Insured's** unintentional and unauthorized disclosure or loss of **Personal Information** or **Corporate Information** in the care, custody or control of any **Insured** or **Service Provider**; 2. unauthorized or surreptitious collection of **Personal Information** or **Corporate Information** by an **Insured** or the failure to provide adequate notice that such information is being collected; or 3. a violation of any **Privacy Regulation** or failure to comply with the **Insured's** own privacy policies.
- P. **Professional Services** means **Miscellaneous Professional Services**, **Technology Services**, **Technology Products** and **Media Activities**, all of which shall mean as described in the applicable Coverage Sub-Part.
- Q. **Retroactive Date** means the date, if any, stated in Item 2 of the Declarations of this Coverage Part.
- R. **Service Provider** means a business the **Insured** does not own, operate or control, but that an **Insured** hires for a fee pursuant to a written contract to perform services related to an **Insured's** business.
- S. **Unauthorized Access** means the gaining of access to a **Computer System** by an unauthorized person(s), or by an authorized person(s) in an unauthorized manner.
- T. **Unauthorized Use** means the use of a **Computer System** by an unauthorized person(s), or by an authorized person(s) in an unauthorized manner.
- U. **Wrongful Act** means as described in the applicable Coverage Sub-Part.